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Committee on Anti-Dumping Practices

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RESPONSES TO QUESTIONS FROM BRAZIL, THE UNITED STATES AND AUSTRALIA ON THE ANTI-DUMPING LEGISLATION OF MEXICO¹

Introduction

Further to the information supplied in document ADP/W/206, this document contains replies to the follow-up questions submitted by Brazil, the United States and Australia, in documents ADP/W/226, ADP/W/229 and ADP/W/235, respectively.

As various questions are again raised in those documents on the basis of Mexico's Regulatory Act, it is important to make it quite clear that, as stated in the introduction to document ADP/W/206 and as explained at the meeting in April 1989, for countries parties to the Anti-Dumping Code Mexico applies the Enacted Agreement (in other words, the Anti-Dumping Code as domestic legislation approved by the Senate), and the Regulatory Act and Regulations insofar as they are not inconsistent with the Enacted Agreement.

In other words, under the Mexican system it is impossible that there should be any incompatibility between Mexico's obligations under the Anti-Dumping Code and its domestic legislation since, for the countries members of the Code, that legislation, i.e. the Enacted Agreement, is identical in all respects to the Anti-Dumping Code; on the other hand, for countries not members of the Code, Mexico applies the Regulatory Act and its Regulations according to the type of measures concerned (anti-dumping or other) and the country in question (GATT contracting party or non-GATT contracting party).

The foregoing is clearly established since the Agreement on Implementation of Article VI of the General Agreement was enacted in accordance with Mexican constitutional procedure (see document ADP/M/22, paragraph 5) and that in accordance with Article 133 of the Political Constitution of the United Mexican States:

"This Constitution, the laws of the Congress of the Union ensuing therefrom and all treaties that are in accordance therewith, concluded by the President of the Republic with the approval of the Senate, shall be the Supreme Law of the entire Union..."

¹ ADP/1/Add.27 and Corr.1 and ADP/1/Add.27/Suppl.1

Accordingly, the replies concerning the Regulatory Act are provided as a further demonstration of the transparency with which Mexico applies its anti-dumping legislation in relation to the rest of the world, and not as a basis for the examination of Mexican legislation in the work of the Committee. Otherwise, Mexico would be requested to grant the benefits of the Anti-Dumping Code to all countries, regardless of whether or not they are parties to it or grant similar treatment through GATT or any other international instrument.

Furthermore, it should be pointed out that the replies provided by Mexico to this Committee refer exclusively to the aspects concerning anti-dumping procedures, and that where they touch on other aspects, that is purely for information purposes. Mexico reserves the right to deal with those other aspects in the relevant GATT bodies or forums.

Finally, it should be noted that, as in the case of document ADP/W/206, for easier reading Mexico's replies have been grouped by topic, and not by country.

II. Replies

A. Foreign Trade Regulatory Act Implementing Article 131 of the Constitution

Article 1

(Question (a) of Brazil)

The establishment of the regulatory or restrictive measures set forth in Article 1, paragraph II, of the Foreign Trade Act is compatible with GATT Articles III, VIII, X, XI and XIII inasmuch as their possible implementation is based on the obligations assumed by Mexico when acceding to the General Agreement, in conformity with its Protocol and paragraph 83 of the Report of the Working Party.

Article 5

(Question (b) of Brazil)

The regulatory or restrictive measures referred to in Article 1, paragraph II (a) - (d), concerning the unfair practices to which the cases provided for in Article 5, paragraph V, refer, are applicable to the products of countries with regard to which Mexico does not have international obligations relating to anti-dumping.

For the countries parties to the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade ("The Agreement" or "The Code"), the provisions of the Enacted Agreement apply. Consequently, for those cases, the remedy against dumping and/or subsidies established by the Regulatory Act is the application of countervailing duties in accordance with the ad hoc procedure contained in the Act and its Regulations.

Article 7.1

(Question 1 of Australia and first question of the United States)

For Mexico, the term "similar goods" has the same definition as that used by the Code for "like product". Mexico considers it has made this clear by adopting the Code as domestic legislation, as it informed the Anti-Dumping Committee at its meeting in April.

The authority will take account of the criteria laid down in this respect by the Code itself (Article 2.4): when there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country, or when, because of the particular market situation, sales do not permit a proper comparison. With regard to this latter assumption, the case may be mentioned of sales in the domestic market of the country of origin which are marginal in relation to the total production of the product under investigation.

Article 8.III

(Second question of the United States)

To follow up the reply already given to the United States in document ADP/W/206, it is stressed that the authority would adjust the margin detected so as to be able to establish a duty for the margin corresponding to the dumping ingredient and for that corresponding to the subsidy.

Article 10

(Questions (c) and (d) of Brazil, and 2 of Australia)

Further information has been requested on this question.

Please refer to the reply already given on this Article in document ADP/W/206, paragraph 2.

Article 10 of the Foreign Trade Act quantifies what Mexico considers to be representative domestic production. In so doing Mexico seeks to give a content to the spirit and letter of the Code in this regard; by this provision, it reduces the authorities' discretion to determine the cases where representativity exists, thus enhancing transparency and legal security for the parties involved in an investigation.

The Article in question should be interpreted in conjunction with the definition of injury to domestic production set out in Article 1.VIII of the Regulations, where it is clearly established that serious injury must be caused to the domestic producer or producers representing a significant part of domestic production.

Article 10.VII

(Question 3 of Australia)

The words "where appropriate", at the beginning of this paragraph of Article 10, make it clear that the injury test shall be granted only to countries falling within the provisions of Article 14 of the Act, in other words those that have signed an agreement on this point with Mexico.

This is precisely the case of Australia, which as a signatory of the Code has full benefit of the application of the injury test.

In all investigations concerning these countries (Article 14 countries) it is, of course, required that evidence be provided of the dumping/material injury causal connection.

Article 11

(Questions (e) of Brazil and 4(a), (b), (c), and (d) of Australia and third question of the United States 1.2.3.)

4(c) of Australia.

The evidence for this claim lies in the original resolutions published by Mexico in its official journal, which establishes the date when the complaint was received and the date it was decided.

As Mexico has stated, the lapse of time between the two dates has averaged three months.

4(d) of Australia.

Mexico considers that there is no need to amend its legislation. As stated above, the Code is Mexican law and only applies to parties to the Code.

For all other questions relating to Article 11, please see the reply already given in document ADP/W/206.

Article 13

(Question (f) of Brazil.)

The answer is yes.

Article 14

(Fourth question of the United States.)

The answer is yes. For all parties to the General Agreement that are not members of the Code, the injury test is granted as provided for in Article VI, paragraph 6(a).

Article 19

(Fifth question of the United States.)

No. If injury or threat of injury were no longer found to exist, the countervailing duty would be removed.

B. Regulations against unfair international trade practices

Article 1.VIII

(Question of Australia)

Please refer to the answer already given for this Article in document ADP/W/206.

The term "significant part of national production" means the same as the term "a major proportion of the total domestic production" laid down in Article 4.1 of the Code.

Article 11

(Question (a) of Brazil)

The administrative authority states that the notification requirement is fulfilled through publication in the Official Journal of the Federation.

Article 15

(Questions 1, 2 and 3 of the United States)

It should be pointed out that the English version is a mistranslation and should read: "a period of not less than fifteen working days". Please see the original reply.

As stated in the reply to the question on Article 12 of the Foreign Trade Act, during the period of thirty working days the secretariat reviews the facts on which its provisional decision was based. For the purposes of such review, account is taken, inter alia, of information requested through questionnaires.

Please see the reply already given in document ADP/W/206 concerning Article 11 of the Act.

Article 32

(Question of the United States)

The authority considers that "justified causes" for reviewing a final resolution exist when the circumstances that gave rise to it change. Article 19 sets down some of these causes.

Other Articles

(Question (b) of Brazil)

This question is not relevant to the work of this Committee.