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UNITED STATES - ANTI-DUMPING DUTIES ON GREY PORTLAND CEMENT AND CEMENT CLINKER IMPORTED FROM MEXICO

Request by Mexico for the Establishment of a Panel under Article 15:5 of the Agreement

The following communication, dated 4 October 1991, has been received from the Permanent Mission of Mexico.

The Government of Mexico has instructed me to request the establishment of a panel pursuant to Article 15:5 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (Anti-Dumping Code), in order to examine a dispute between the United States and my country regarding the imposition of final anti-dumping duties on grey portland cement and cement clinker imported from Mexico.

Mexico has exhausted all the instances provided for in the Anti-Dumping Code to reach a mutually satisfactory solution to this problem; however, it proved impossible to find such a solution either during the consultations held with the United States authorities or during the conciliation process in the Committee on Anti-Dumping Practices.

We set out below the most important aspects of the case, all of them interrelated, on which we base our conviction that the measure imposed by the United States is incompatible with its obligations under this instrument and constitutes a case of nullification or impairment of benefits accruing to Mexico.

Firstly, concerning the standing of the petitioners

The Code provides that in the case of regional dumping investigations, more stringent requirements should be set than those applied for a national dumping investigation, as far as the initiation of such investigations is concerned.

In the case under consideration, before initiating the investigation the United States did not verify that the petition was made on behalf of all or almost all of the regional industry, which constitutes a breach of Article 4:1(ii) in relation with Article 5:1 of the Anti-Dumping Code.

Secondly, concerning regional injury

The Code prescribes the exceptional circumstances under which an injury determination involving a regional domestic industry may take place. Among other important requirements, it must be demonstrated that producers of all or almost all of the production within the region are experiencing injury by the dumped imports.

The United States relied on an "aggregate" analysis for the evaluation of the condition of the regional industry. Such an analysis employs only total and average data, and determines the average condition of the regional industry as a whole. However, it does not and cannot, by itself, indicate whether the producers of all or almost all of the regional production are materially injured, which infringes sub-paragraph (ii) of Article 4:1 of the Code.

Thirdly, concerning cumulative injury assessment (cumulation)

Neither the General Agreement nor the Code make explicit reference to the practice of cumulating dumped imports. Mexico does not seek to question the compatibility of this practice per se with the Code in this specific case. But it does question the way in which the cumulation was carried out in the present case, i.e. that of a regional investigation, which has an exceptional character according to the Code.

The United States cumulated the volume and the price effects of imports from Mexico and Japan, even though they concerned separate investigations relating to very different regions, as well as qualitatively different stages in the investigation processes. This violates both Article VI of the General Agreement, which provides that the determination of injury must be based on positive evidence and in general be conducted respecting due process, as well as Articles 1, 3, 4 and 6 of the Code.

Fourthly, concerning casualty and injury

(i) The Code establishes the obligation that an injury determination must involve inter alia an examination of the volume of the dumped imports and their impact on prices in the domestic market.

The United States made the required price comparisons without taking account of the wide discrepancy in the volume of transactions concerning which producers and importers provided price information. This wholly invalidated the determination of price-undercutting, thus constituting a breach of the provisions of Article 3.1 and 3.2 of the Code.

(ii) Article VI of the General Agreement and the Code set out the circumstances in which the investigating authorities may make an affirmative determination of injury: first, there must be injury, and second, a causal link must be established between that injury and the dumped imports.

Although the United States recognized in its investigation that "a number" of United States producers imported Mexican cement into the region, and that some of them were directly linked with Mexican exporters, it admitted them as petitioners and did not even exclude them from the analysis for the determination of injury to the regional industry. This violates the provisions of Article 5 of the Code on standing, and vitiates the determination of causality which has to be made pursuant to Article VI of the General Agreement and Articles 3 and 4.1(ii) of the Code.

To summarize, the United States measure in question is contrary to, inter alia, the following provisions:

- Articles 1, 3, 4, 5 and 6 of the Code, which interpret Article VI of the General Agreement.

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For further information on the factual aspects of the case and additional legal considerations, please refer to the document submitted by my delegation to this Committee on 27 June 1991 (ADP/59). Mexico reserves the right to amend and/or complement its position as appropriate.

Finally, notwithstanding this request for the establishment of a dispute settlement panel, and without prejudice to the future work of such panel, the Government of Mexico is fully disposed to conduct any additional consultations that might be required to reach a mutually satisfactory resolution of this matter with the urgency it deserves.