

MEXICO – DEFINITIVE ANTI-DUMPING MEASURES ON BEEF AND RICE

Request for the Establishment of a Panel by the United States

The following communication, dated 19 September 2003, from the Permanent Mission of the United States to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

The United States considers that certain measures of the Government of Mexico are inconsistent with Mexico's commitments and obligations under the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"), the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* ("AD Agreement"), and the *Agreement on Subsidies and Countervailing Measures* ("SCM Agreement"). In particular:

(1) On 5 June 2002, Mexico published in the *Diario Oficial* its definitive antidumping measure on long-grain white rice.¹ This measure appears to be inconsistent with the following provisions of the AD Agreement and the GATT 1994:

- (a) Article VI of the GATT 1994 and Articles 1, 3.1, 3.2, 3.4, 3.5, and 4.1 of the AD Agreement because Mexico based its injury and causation analyses on only six months of data for each of the years examined; failed to collect or examine recent data; failed to properly evaluate the relevant economic factors; failed to base its determination on a demonstration that the dumped imports are, through the effects of dumping, causing injury within the meaning of the AD Agreement; and failed to base its injury determinations on positive evidence or to conduct objective examinations of the volume of dumped imports, the effect of those imports on prices in the domestic market of like products, and the impact of the imports on domestic producers of those products;
- (b) Article 5.8 of the AD Agreement, because Mexico failed to terminate the antidumping investigation after a negative preliminary determination of injury, and Articles 5.8 and 11.1 of the AD Agreement because Mexico failed to exclude certain respondent US exporters from the measure after negative final determinations of dumping;

¹ Resolución final de la investigación antidumping sobre las importaciones de arroz blanco grano largo, mercancía clasificada en la fracción arancelaria 1006.30.01 de la Tarifa de la Ley de los Impuestos Generales de Importación y de Exportación, originarias de los Estados Unidos de América, independientemente del país de procedencia, Diario Oficial, Segunda Sección 1 (5 de Junio de 2002).

- (c) Articles 6.1, 6.2, and 6.4 of the AD Agreement, because Mexico, *inter alia*, failed to give all of the interested parties in the investigation notice of the information that the authorities required or ample opportunity to present in writing all evidence which they considered relevant in respect of the antidumping investigation, failed to give all interested parties a full opportunity for the defense of their interests, and failed to provide timely opportunities for the respondent US exporters to see all information that was relevant to presentation of their cases, that was not confidential as defined in Article 6.5, and that the authorities used in their investigation;
 - (d) Article 6.8 of the AD Agreement, and paragraphs 1, 3, 5, 6, and 7 of Annex II of the AD Agreement, by improperly rejecting information submitted by US exporters and applying the facts available in the evaluation of injury;
 - (e) Article 6.9 of the AD Agreement, because the investigating authorities, before the final determination was made, failed to inform the respondent US exporters of the essential facts under consideration which formed the basis for the decision to apply a definitive measure;
 - (f) Articles 6.6, 6.8, 6.10, 9.3, 9.4, and 9.5 of the AD Agreement, and paragraphs 1, 3, 5, 6, and 7 of Annex II of the AD Agreement, by applying the facts available to a US respondent rice exporter that was investigated and found to have no shipments during the period of investigation;
 - (g) Articles 1, 6.1, 6.6, 6.8, 6.10, 9.3, 9.4, 9.5, 12.1, and 12.2 of the AD Agreement, and paragraphs 1, 3, 5, 6, and 7 of Annex II of the AD Agreement, by applying the facts available in establishing the antidumping margins that it assigned to US exporters that were not individually investigated, and by doing so in an improper manner;
 - (h) Article 12.2 of the AD Agreement, because Mexico failed in its final determination in the rice investigation to set forth in sufficient detail the findings and conclusions reached on all issues of fact and law considered material or to provide all relevant information on the matters of fact and law and reasons which led to the imposition of final measures; and
 - (i) Article VI:2 of the GATT 1994, because Mexico levied an antidumping duty greater in amount than the margin of dumping.
- (2) Certain provisions of Mexico's Foreign Trade Act also appear to be inconsistent with Mexico's obligations under various provisions of the AD Agreement and the SCM Agreement. Specifically:
- (a) Article 53 of the Foreign Trade Act requires interested parties to present arguments, information, and evidence to the investigating authorities within 28 days of the day after publication of the initiation notice. This provision does not appear to permit the investigating authorities to grant extensions of the 28-day deadline. Accordingly, the provision appears to be inconsistent with Articles 6.1.1 and 12.1.1 of the AD and SCM Agreements, respectively, which specify that due consideration should be granted to extension requests and that such requests should, upon cause shown, be granted whenever practicable;
 - (b) Article 64 of the Foreign Trade Act codifies the "facts available" approach that Mexico applied in the rice investigation, as described in subparagraphs (f) and (g) of section (1) above. This provision appears to be inconsistent with Articles 6.1, 6.6,

6.8, 6.10, 9.3, 9.4, and 9.5 of the AD Agreement, and paragraphs 1, 3, 5, 6, and 7 of Annex II of the AD Agreement; and with Articles 6.6, 6.8, 6.10, 9.3, 9.4, and 9.5 of the AD Agreement, paragraphs 1, 3, 5, 6, and 7 of Annex II of the AD Agreement, and Articles 12.5, 12.7, and 19.3 of the SCM Agreement, to the extent that it requires the application of facts available rates to exporters with no shipments during the period of investigation;

- (c) Article 68 of the Foreign Trade Act appears to require reviews of respondent exporters that were not assigned a positive margin in an investigation, and appears to require that respondent exporters seeking reviews demonstrate that their volume of exports during the period of review was "representative." This provision appears to be inconsistent with Articles 5.8 and 11.1 of the AD Agreement (as described in subparagraph (b) of section (1) above), with Articles 9.3 and 11.2 of the AD Agreement, and with Articles 11.9, 21.1, and 21.2 of the SCM Agreement;
- (d) Article 89D of the Foreign Trade Act appears to require that "new shippers" requesting expedited reviews demonstrate that their exports were subsequent to the period of investigation and that the volume of exports during the period of review was "representative." This provision appears to be inconsistent with Article 9.5 of the AD Agreement and Article 19.3 of the SCM Agreement;
- (e) Article 93V of the Foreign Trade Act appears to provide for the application of fines on importers that enter products subject to antidumping and countervailing duty investigations while such investigations are underway. This provision appears to be inconsistent with Article 18.1 of the AD Agreement and Article 32.1 of the SCM Agreement.

(3) Mexican officials have asserted that Article 366 of Mexico's Federal Code of Civil Procedure and Articles 68 and 97 of the Foreign Trade Act prevent Mexico from conducting reviews of antidumping or countervailing duty orders while a judicial review of the order is ongoing, including a "binational panel" review pursuant to Chapter Nineteen of the *North American Free Trade Agreement*. These provisions appear to be inconsistent with Articles 9.3, 9.5, and 11.2 of the AD Agreement, and Articles 19.3 and 21.2 of the SCM Agreement.

On 16 June 2003, the United States Government requested consultations with the Government of Mexico pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* ("DSU"), Article XXII:1 of the GATT 1994, Article 17.3 of the AD Agreement, and Article 30 of the SCM Agreement. The United States and Mexico held such consultations on 31 July and 1 August 2003. These consultations provided some helpful clarifications but unfortunately did not resolve the dispute.

Accordingly, the United States respectfully requests, pursuant to Article 6 of the DSU, Article 17.4 of the AD Agreement, and Article 30 of the SCM Agreement, that the Dispute Settlement Body establish a panel to examine this matter, with the standard terms of reference as set out in Article 7.1 of the DSU. The United States further asks that this request for a panel be placed on the agenda for the next meeting of the Dispute Settlement Body to be held on 2 October 2003.