

# MEXICO – CORN SYRUP<sup>1</sup>

(DS132)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	United States	ADA Arts. 3, 5, 6, 7, 10 and 12	Establishment of Panel	25 November 1998
			Circulation of Panel Report	28 January 2000
Respondent	Mexico		Circulation of AB Report	NA
			Adoption	24 February 2000

## 1. MEASURE AND PRODUCT AT ISSUE

- **Measure at issue:** Mexico's definitive anti-dumping duty measure.
- **Product at issue:** High-fructose corn syrup (HFCS) from the United States.

## 2. SUMMARY OF KEY PANEL FINDINGS<sup>2</sup>

- **ADA Art. 5.2 (initiation of investigation – application):** The Panel rejected the US claim that the anti-dumping application in this case was inconsistent with Art. 5.2 due to insufficient evidence of threat of material injury. The applicant need provide only such information as is reasonably available to it.
- **ADA Art. 12.1 (notice of initiation):** The Panel rejected the US claim that Art. 12.1 requires the investigating authority to address, in the notice of initiation, the definition of the relevant domestic industry.
- **ADA Arts. 5.3 (initiation of investigation), 5.8 (termination of investigation) and 6.4 (evidence):** The Panel rejected the United States' claims: (i) that Mexico did not have enough evidence of a threat of injury or of a causal link between the dumped imports and injury to justify initiation of the investigation under Art. 5; and (ii) that Mexico had acted improperly under Art. 5.8 when it did not reject the domestic industry's application. Neither Art. 5.3 nor Art. 6.4 requires an authority to resolve all questions of fact prior to initiation.
- **ADA Art. 3 (injury determination – threat of injury):** The Panel found that Mexico violated Arts. 3.1, 3.4 and 3.7 by failing to consider all the factors governing injury under Art. 3, because an investigation of threat of material injury requires a consideration of not only the factors pertaining to threat of material injury, but also factors relating to the impact of imports on the domestic industry (Art. 3.4). The Panel found that Mexico failed to consider the domestic industry “as a whole” in its threat of material injury analysis, as required by Art. 3.4, when it considered only a portion of the industry's production, and thus violated Arts. 3.1, 3.2, 3.4 and 3.7. The Panel found that Mexico violated Art. 3.7(i) because it failed to consider a certain fact relevant to the context of its threat determination and the likelihood of substantially increased imports.
- **ADA Art. 7.4 (provisional measure):** The Panel found Mexico's application of the provisional anti-dumping measure beyond six months to be inconsistent with Art. 7.4.
- **ADA Arts. 10 (retroactivity) and 12 (explanation of determination):** The Panel concluded that Mexico's retroactive levying of final anti-dumping duties was inconsistent with Art. 10.2, because such retroactive application for the period of provisional measures requires an authority to make a specific finding that, in the absence of provisional measures, the effect of the dumped imports would have led to a determination of injury to the domestic industry. The Panel also found a violation of Art. 12, which sets out the requirements for a public notice of an affirmative final determination, because Mexico's determination contained no explanation of the facts and conclusions underlying Mexico's decision to retroactively apply anti-dumping duties. The Panel also found that Mexico's failure to release bonds collected under the provisional measure was inconsistent with Art. 10.4.

<sup>1</sup> Mexico – Anti-Dumping Investigation of High Fructose Corn Syrup from the United States

<sup>2</sup> Other issues addressed: requirements of panel request (DSU Art. 6.2 and ADA Art. 17.4); terms of reference (identification of measures in the context of the ADA); sufficiency of panel request (ADA Art. 17.5(i)); evidence not on record (ADA Art. 17.5(ii)); evidentiary issues (reference to NAFTA proceedings and to alleged statements made during consultations).

## MEXICO – CORN SYRUP (ARTICLE 21.5 – US)<sup>1</sup> (DS132)

PARTIES		AGREEMENT	TIMELINE OF THE DISPUTE	
Complainant	United States	ADA Art. 3	Referred to the Original Panel	23 October 2000
			Circulation of Panel Report	22 June 2001
Respondent	Mexico		Circulation of AB Report	22 October 2001
			Adoption	21 November 2001

### 1. MEASURE TAKEN TO COMPLY WITH THE DSB RECOMMENDATIONS AND RULINGS

- Mexico's redetermination on threat of injury in relation to its definitive anti-dumping duties on high-fructose corn syrup (HFCS) imports from the United States.

### 2. SUMMARY OF KEY PANEL/AB FINDINGS<sup>2</sup>

- **ADA Art. 3.7 (injury determination – likelihood of increased imports):** The Appellate Body upheld the Panel's finding that the Mexican authority's redetermination on "likelihood of increased imports" was inconsistent with Art. 3.7(i), as it did not provide a reasoned explanation for its conclusion that there was a likelihood of substantially increased imports. The Appellate Body rejected Mexico's argument that the Panel incorrectly applied the standard of review under Arts. 17.5 and 17.6 by relying on the existence of an alleged agreement entered into by soft-drink bottlers promising restraint in their use of HFCS, even though the existence of this restraint agreement was never found as a matter of fact in the domestic investigation. The Appellate Body found that the "establishment" of facts by investigating authorities that panels are to assess under the standards set out in ADA Arts. 17.5 and 17.6(i) and DSU Art. 11 includes both "affirmative findings" of events as well as "assumptions" relating to such events made by those authorities in the course of their analyses. Since the Mexican authority made an assumption about the existence of the restraint agreement, it was logical for the Panel to examine Mexican authority's conclusions based on the same assumption. The Appellate Body also found that any assumption that the Panel made about the restraint agreement was not, in any event, the basis for its finding of inconsistency under Art. 3.7(i).
- **DSU Art. 6.2 (requirements of panel request):** The Appellate Body rejected Mexico's request that the Appellate Body reverse the Panel's substantive findings because the Panel had failed to address and consider (i) the lack of consultations between Mexico and the United States before the measure was referred to the original panel and (ii) the US failure to indicate in their panel request whether consultations had been held. Since Mexico had failed to indicate to the Panel that it was raising an objection based on these issues, the Panel in this case did not have a duty to address the issues referred to by Mexico. Nor was the Panel required to consider, on its own motion, these issues, as the lack of prior consultations or the absence, in the panel request, of an indication "whether consultations were held" is not a defect that a panel must examine even if both parties to the dispute remain silent on it.
- **DSU Art. 12.7 (basic rationale for panel's findings):** The Appellate Body held that the Panel satisfied its duty under Art. 12.7 to provide a "basic rationale" for its findings. The Appellate Body stated that Art. 12.7 obliges panels to set forth explanations and reasons sufficient to disclose the essential, or fundamental, justification for its findings and recommendations. Whether Art. 12.7 is satisfied must be determined on a case-by-case basis, and in some situations a panel's "basic rationale" might be found in other documents, such as the original panel report in the case of the Art. 21.5 proceedings, provided that such reasoning is quoted or incorporated by reference.

<sup>1</sup> Mexico – Anti-Dumping Investigation of High Fructose Corn Syrup (HFCS) from the United States, Recourse to Article 21.5 of the DSU by the United States

<sup>2</sup> Other issues addressed: DSU Arts. 3.7 and 6.2 (consultations, etc.); terms of reference (Art. 21.5 proceeding); panel's factual standard of review (ADA Art. 17.6(i)).