

GENERAL AGREEMENT

ON TARIFFS AND TRADE

RESTRICTED

ADP/143

18 October 1996

Special Distribution

(96-4375)

Committee on Anti-Dumping Practices

Original: English

MEXICO - IMPOSITION OF ANTI-DUMPING DUTIES ON IMPORTS OF CERTAIN STEEL FROM CANADA

Request for Conciliation under Article 15.3 of the Agreement

Communication from Canada

The following communication, dated 9 October 1996, has been received from the Permanent Mission of Canada.

The Mexican Ministry of Trade and Industrial Development made final determinations of dumping with regard to imports of steel from Canada on 28 December 1995 (plate in coil) and on 30 December 1995 (hot-rolled steel). In addition, final determinations were made that such imports caused injury to the Mexican domestic industry. As a result, definitive anti-dumping duties were imposed at rates for hot-rolled steel of 15.37 per cent for one Canadian company (Dofasco) and 45.86 per cent for all others, and for plate in coil, of 31.08 per cent. The rate for hot-rolled steel was subsequently eliminated (in February 1996) with respect to exports by the one Canadian company (Dofasco) that was actually investigated by the Mexican investigating authority.

Canada believes that certain aspects of the dumping and injury determinations are flawed and violate the provisions of several Articles of the Tokyo Round Anti-Dumping Code (the Code) and of Article VI of the GATT. In brief, Canada believes that the margins of dumping were incorrectly calculated and that the findings of injury were unwarranted in view of the facts as presented.

With a view to reaching a mutually satisfactory resolution of the matter, Canada held consultations with Mexico under Article 15.2 of the Code on 10 July 1996, with regard to the imposition of anti-dumping duties on imports of both hot-rolled steel and steel plate in coil from Canada. In Canada's view, while these consultations allowed for an exchange of views, no evidence or arguments were put forward by Mexico to address to Canada's satisfaction the concerns raised. Canada would refer to the Committee on Anti-Dumping Practices, document ADP/142 of 19 April 1996 as well as document ADP/M/51 of 20 September 1996, for further background information on the matter.

Because of the failure to resolve the matter through consultations, Canada wishes to take advantage of the special meeting of the Tokyo Round Anti-Dumping Committee, which was called at the request of another delegation, to refer the matter of these Mexican measures to the Committee for conciliation.

Canada's principal concerns with the Mexican determinations concerning hot-rolled steel and steel plate in coil are the following:

In both cases, the overall investigations exceeded the time limits outlined in the Code Article 5.5 which stipulates that, except in special circumstances, investigations shall be concluded within one calendar year. Investigations were initiated 27 October 1993 (hot-rolled steel) and 28 October 1993 (plate in coil), and concluded 30 December 1995 (hot-rolled steel) and 31 December 1995 (plate in coil), a period of more than two years.

In both investigations, Titan Industrial Corporation, a US distributor of Canadian steel, completed a questionnaire as requested by the Mexican investigating authority yet this information was not used to establish a separate rate for this company. The Mexican investigating authority argued that it is not necessary to calculate a dumping margin for a "marketer", since this would be the equivalent of determining a dumping margin for a sales department. Canada does not agree with this argument and believes that Titan has a right to a separate rate as supported by Code Articles 2.3, 2.4 and 2.5. It is also Canada's view that, consistent with these Articles, the investigating authority should have considered acquisition costs and third-country prices, or should have asked the distributor to provide costs of production, before rejecting the distributor's questionnaire and not assessing a separate rate. In this case, the Mexican investigating authority did not follow any of these procedures.

On 26 February 1996, Mexico issued a clarification of its final anti-dumping determination for imports of hot-rolled steel lowering one Canadian producer's (Dofasco) assessed rate from 15.37 per cent to 0 per cent. This correction was due to an exchange rate error made during the investigation in comparing Dofasco's home and export market prices. Canada does not understand the basis for the calculation of an "all other" rate for imports of hot-rolled steel from Canada that is higher than the rate assessed for the sole exporter originally investigated, Dofasco. In Canada's view, the calculation of the "all other" rate was inconsistent with Code Article 2, and Articles VI:1 and :2 of the GATT.

During the consultations held with Mexico, Mexico informed Canada that, as standard practice, it derives its "all other" rate based on the higher of either (a) the highest rate determined for any one exporter investigated, or (b) the petitioners' allegations against any one exporter. In justifying the hot-rolled steel decision, Mexico has stated that its "all other" rate is based solely on the petitioners' unverified allegations against a specific exporter, apparently a US distributor of Canadian hot-rolled steel. No investigation was ever conducted against any of the US distributors alleged to have been dumping hot-rolled steel from Canada. In Canada's view, Mexico did not provide these interested parties in the exporting country with the opportunity to provide evidence as required by Code Article 6.1. By not doing so, Mexico is in violation of Code Article 8.3 and GATT Article VI:2 in assessing the dumping duty for "all other" exporters above the actual margin of dumping assessed against the only Canadian company which was individually investigated.

Furthermore, in the plate-in-coil case, as Titan's questionnaire response was rejected by the Mexican investigating authority, and no Canadian producers were shipping directly to Mexico, the investigating authority assessed the rate for imports of Canadian plate in coil based solely on the petitioners' allegations, again against a specific exporter. There was no verification, or attempt to verify, these allegations, nor was any effort made to examine information that could have been made available and, in fact, was made available by Titan, a US distributor exporting Canadian plate in coil. In Canada's view, Mexico again did not provide interested parties in the exporting country with the opportunity to provide evidence as required by Code Article 6.1. By not doing so, Mexico is in violation of Code Article 8.3 and GATT Article VI:2 in unilaterally assessing a single dumping duty rate for all exporters.

In addition, Canada questions the basis for the assessment of an "all other" rate on hot-rolled steel in Canada's case that is higher than the highest individual company rate assessed. Imports from all other countries investigated, without exception, were assessed an "all other" rate equal to, but not greater than, the highest individual company rate assessed. This apparently unequal treatment by Mexico

of imports from Canada appears to be in violation of the most-favoured-nation obligation of GATT Article I:1.

Also, Canada does not understand Mexico's differing treatment of imports being imported by the petitioners versus imports being imported by the petitioners' customers in Mexico. In the consultations, Mexico stated that imports of a competing product by the petitioners themselves did not constitute potentially injurious competition, but the same product imported by the petitioners' customers in Mexico did. Canada therefore believes Mexico's methodology is inconsistent with Code Article 3.4 and Article VI:6 of the GATT requiring a causal link between allegedly dumped imports and injury to the domestic industry since it differentiates between one kind of allegedly dumped import and another.

In Canada's view, the establishment of a new re-rolling mill which produces flat steels, including hot-rolled sheets, during the period of allegedly injurious dumping by Canadian producers, is a strong indication that the domestic market was not being adversely affected by Canadian imports. Investors would be unlikely to establish a new production facility in a market being injured by allegedly dumped imports. Furthermore, with respect to the plate-in-coil case, the final determination states that Mexican producers were running at 90 per cent of capacity, a very high capacity utilization rate for any steel producer, Mexican or international. This casts serious doubt over the domestic producers' ability to supply increased domestic demand. In the consultations, however, Mexico stated that it required only one factor to show injury. In both decisions, price suppression was cited as supporting an affirmative final injury determination. Given that international steel prices were depressed throughout the period of investigation, Canada seriously questions Mexico's adherence to Code Article 3.4 and Article VI:6 of the GATT requiring a causal link between allegedly dumped imports and injury to the domestic industry.

In summary, Canada believes that a number of elements of the Mexican anti-dumping duty decisions which led to the imposition of anti-dumping duties on Canadian steel products are inconsistent with the GATT Anti-Dumping Code. These include the excessive duration of the investigations, which were initiated in October 1993 and were not concluded until December 1995, the decision by the Mexican authorities not to assign an individual company margin to the principal distributor of Canadian hot-rolled steel to Mexico, the calculation and imposition of the "all other" anti-dumping duty rate in both cases, and certain elements of the injury determination made by the Mexican authorities.

Further, it is Canada's position that had the Mexican authorities concluded the investigation within the time period called for under Article 5.5 of the GATT Anti-Dumping Code, Canada would have had ample time to pursue the matter of these anti-dumping duties in this forum. In view of the delay, however, Canada's ability to pursue this matter within the appropriate forum was seriously constrained.

Nevertheless, Canada wishes to formally request at this time that this matter be referred to the Committee for conciliation as provided under Article 15.3 of the GATT Anti-Dumping Code.