

ANNEX F

REQUEST FOR THE ESTABLISHMENT OF A PANEL

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WORLD TRADE ORGANIZATION

WT/DS282/2
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UNITED STATES – ANTI-DUMPING MEASURES ON OIL COUNTRY TUBULAR GOODS (OCTG) FROM MEXICO

Request for the Establishment of a Panel by Mexico

The following communication, dated 29 July 2003, from the Permanent Mission of Mexico to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 18 February 2003, the Government of Mexico requested consultations¹ with the Government of the United States of America (United States) pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article XXII.1 of the General Agreement on Tariffs and Trade 1994 (GATT 1994), and Article 17.3 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the Anti-Dumping Agreement) regarding the final determinations of the United States Department of Commerce (the Department) and the United States International Trade Commission (the Commission) in the sunset and fourth administrative reviews of oil country tubular goods (OCTG) from Mexico, as well as certain United States laws, regulations, procedures, administrative provisions and practice as described below:

Mexico and the United States held consultations on 4 April 2003, but they failed to settle the dispute.

Mexico therefore requests, pursuant to Article 6 of the DSU, Article XXIII of the GATT 1994 and Article 17.4 of the Anti-Dumping Agreement, that a panel be established at the next meeting of the Dispute Settlement Body, to be held on 18 August 2003. Mexico further requests that the panel have the standard terms of reference, as provided for in Article 7 of the DSU.

¹ WT/DS282/1; G/L/605; G/ADP/D47/1.

Mexico considers that the measures set forth below are inconsistent with the obligations of the United States under the Marrakesh Agreement Establishing the World Trade Organization (the WTO Agreement) and the Agreements annexed thereto, and that they have resulted in the nullification or impairment of benefits accruing directly or indirectly to Mexico under those Agreements:

- Oil Country Tubular Goods ("OCTG") From Mexico: Final Results of Sunset Review of Antidumping Duty Order, Federal Register, Vol. 66, page 14131 (9 March 2001) and the accompanying Issues and Decision Memorandum ("Department's Sunset Review Determination");
- Oil Country Tubular Goods From Argentina, Italy, Japan, Korea, and Mexico, Inventory Nos. 701-TA-364 (Review), 731-TA-711, and 713-716 (Review), USITC Publication 3434 (June 2001); and Federal Register, Vol. 66, page 35997 (10 July 2001) ("Commission's Sunset Review Determination");
- Continuation of Countervailing and Antidumping Duty Orders on Oil Country Tubular Goods from Argentina, Italy, Japan, Korea and Mexico, and Partial Revocation of Those Orders from Argentina and Mexico With Respect to Drill Pipe, Federal Register, Vol. 66, page 38630 (25 July 2001);
- Oil Country Tubular Goods From Mexico; Final Results of Antidumping Duty Administrative Review and Determination Not To Revoke in Part, Federal Register, Vol. 66, page 15832 (21 March 2001) and the accompanying Issues and Decision Memorandum ("Fourth Administrative Review Determination Not To Terminate");
- Sections 751 and 752 of the Tariff Act of 1930, as amended, codified at Title 19 of The United States Code §§ 1675 and 1675a, and the United States Statement of Administrative Action accompanying the Uruguay Round Agreements Act (the "SAA"), H.R. Doc. No. 103-316, Vol. 1;
- the Department's Policies Regarding the Conduct of Five-year ("Sunset") Reviews of Antidumping and Countervailing Duty Orders; Policy Bulletin, Federal Register, Vol. 63, page 18871 (16 April 1998) ("Department's Sunset Policy Bulletin");
- the Department's sunset review regulations, codified at Title 19 of the United States Code of Federal Regulations § 351.218, and the Commission's sunset review regulations, codified at Title 19 of the United States Code of Federal Regulations §§ 207.60-69; and
- the Department's administrative review regulations, including those codified at Title 19 of the United States Code of Federal Regulations §§ 351.213, 351.221, and 351.222.

These United States anti-dumping measures are inconsistent with the following provisions of the Anti-Dumping Agreement, the GATT 1994, and the WTO Agreement:

- Articles 1, 2, 3, 6, 11, and 18 of the Anti-Dumping Agreement;
- Articles VI and X of the GATT 1994; and
- Article XVI.4 of the WTO Agreement.

Mexico's claims are described in detail below:

A. With respect to the Department's Sunset Review Determination:

1. The Department's "likely" standard for determining whether termination of the anti-dumping duty would be likely to lead to continuation or recurrence of dumping, the Department's determination in this regard, and the Department's calculation of the "likely" margin of dumping reported to the Commission, are inconsistent, both as such and as applied, with Articles 11.1, 11.3, 2.1, 2.2, 2.4, 6.1, 6.2, 6.4, 6.6, and 6.9 of the Anti-Dumping Agreement.

2. The Department's standard for determining whether termination of the anti-dumping duties would be likely to lead to continuation or recurrence of dumping is based on a presumption in favour of maintaining the anti-dumping duties, in violation of Articles 2 and 11.3 of the Anti-Dumping Agreement.

B. With respect to the Commission's Sunset Review Determination:

1. The Commission's "likely" standard for determining whether termination of the anti-dumping duties would be likely to lead to continuation or recurrence of injury is inconsistent, both as such and as applied, with Articles 11.1, 11.3, 3.1, 3.2, 3.4, 3.5, 3.7, and 3.8 of the Anti-Dumping Agreement.

2. The United States statutory requirements that the Commission determine whether termination of the anti-dumping duties would be likely to lead to continuation or recurrence of the injury "within a reasonably foreseeable time" (19 U.S.C. § 1675a(a)(1)) and that the Commission "shall consider that the effects of revocation or termination may not be imminent, but may manifest themselves only over a longer period of time" (19 U.S.C. § 1675a(a)(5)), are inconsistent, both as such and as applied, with Articles 3.1, 3.2, 3.4, 3.5, 3.7, 3.8, 11.1, and 11.3 of the Anti-Dumping Agreement.

3. The Commission's determination that termination of the anti-dumping duties would be likely to lead to continuation or recurrence of the injury is inconsistent with Articles 3.1, 3.2, 3.4, 3.5, 3.7, 3.8, 11.1, and 11.3 of the Anti-Dumping Agreement inasmuch as the Commission did not conduct an "objective examination" of the record and did not base its determination on "positive evidence."

4. The Commission's Sunset Review Determination is inconsistent with Articles 3.1, 3.2, 3.3, 3.4, 3.5, 3.7, 3.8, 11.1, and 11.3 of the Anti-Dumping Agreement inasmuch as the Commission:

- (a) Failed to base its determination on a proper analysis of the volume of dumped imports, their effect on prices in the domestic market, and the consequent impact of the dumped imports on the domestic industry;
- (b) failed to evaluate all relevant economic factors and indices having a bearing on the state of the domestic industry, including all the factors enumerated in Article 3.4;
- (c) failed to base its determination on the "effects of dumping" on the domestic industry;
- (d) failed to consider, in making its determination, "any known factors other than the dumped imports"; and
- (e) in making its determination, improperly considered the WTO-inconsistent margin reported by the Department.

5. The Commission's Sunset Review Determination is inconsistent with Articles 3.1, 3.2, 3.3, 3.4, 3.5, 3.7, 3.8, 11.1, and 11.3 of the Anti-Dumping Agreement because the Commission used a "cumulative" injury analysis in determining whether termination of the anti-dumping duty would be likely to lead to continuation or recurrence of injury.

C. With respect to the Fourth Administrative Review Determination Not to Terminate:

1. The Department's determination not to terminate the anti-dumping duty immediately when it was demonstrated that the continued application of the duty was not necessary to "offset dumping," is inconsistent with Articles 11.1, 11.2, 2.1, 2.2, 2.4, 6.1, 6.2, 6.4, 6.6, and 6.9 of the Anti-Dumping Agreement.

2. The Department applied conditions for termination of the anti-dumping duty on Tubos de Acero de Mexico, S.A. de C.V. ("TAMSA"), where such conditions are not part of the standard under Article 11.2, and had not been published in advance of their application, in violation of Article 11.1 and 11.2 of the Anti-Dumping Agreement and Article X.2 of the GATT 1994.

3. The Department used a "zeroing" methodology for negative dumping margins in calculating the dumping margin of Hylsa, S.A. de C.V. ("Hylsa") and, as a result, failed to make a fair comparison in calculating the dumping margin, which is inconsistent with Articles 11.1, 11.2, and 2.4 of the Anti-Dumping Agreement.

D. The Department and the Commission failed to apply United States anti-dumping laws, regulations, decisions and rulings in a uniform, impartial, and reasonable manner, as required by Article X.3(a) of the GATT 1994. The facts and claims set forth above reveal a lack of uniformity, impartiality and objectivity on the part of the United States in administering laws, regulations, procedures, and practice in relation to the anti-dumping duties on OCTG from Mexico.

E. The Department and the Commission acted inconsistently with Article 1 of the Anti-Dumping Agreement, inasmuch as the anti-dumping duty on OCTG from Mexico was not applied under the circumstances provided in Article VI of the GATT 1994. The Department and the Commission acted inconsistently with Article 18.1 of the Anti-Dumping Agreement, inasmuch as the anti-dumping duty measure on OCTG from Mexico was not imposed in accordance with the provisions of the GATT 1994, as interpreted by the Anti-Dumping Agreement.

F. Insofar as the aforementioned United States laws, regulations and administrative procedures do not comply with the United States WTO obligations, they are inconsistent with Article XVI.4 of the WTO Agreement and Article 18.4 of the Anti-Dumping Agreement.

Mexico respectfully requests that the panel recommend that the United States bring its measures into conformity with its WTO obligations. Pursuant to Article 19 of the DSU, Mexico requests that the panel suggest that the United States implement the recommendation by terminating the anti-dumping duties on OCTG from Mexico, and repealing or amending WTO-inconsistent laws, regulations, procedures, and administrative provisions.
