

ANNEX D

Request for Consultations and Request for the Establishment of a Panel

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ANNEX D-1

REQUEST FOR CONSULTATIONS BY THE UNITED STATES

**WORLD TRADE
ORGANIZATION**

WT/DS295/1
G/L/631
G/ADP/D50/1
G/SCM/D54/1
23 June 2003
(03-3349)

Original: English

MEXICO – DEFINITIVE ANTI-DUMPING MEASURES ON BEEF AND RICE

Request for Consultations by the United States

The following communication, dated 16 June 2003, from the Permanent Mission of the United States to the Permanent Mission of Mexico and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with the Government of Mexico pursuant to Article 4 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes*, Article XXII:1 of the *General Agreement on Tariffs and Trade 1994* ("GATT 1994"), Article 17.3 of the *Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994* ("AD Agreement"), and Article 30 of the *Agreement on Subsidies and Countervailing Measures* ("SCM Agreement"), with respect to Mexico's definitive anti-dumping measures on beef and long grain white rice, published in the *Diario Oficial* on 28 April 2000¹ and 5 June 2002² respectively, as well as any amendments thereto or extensions thereof³ and any related measures⁴ and also with respect to certain provisions of Mexico's Foreign Trade Act and its Federal Code of Civil

¹ *Resolución final de la investigación antidumping sobre las importaciones de carne y despojos comestibles de bovino, mercancía clasificada en las fracciones arancelarias 0201.10.01, 0202.10.01, 0201.20.99, 0202.20.99, 0201.30.01, 0202.30.01, 0206.21.01, 0206.22.01 y 0206.29.99 de la Tarifa de la Ley del Impuesto General de Importación, originarias de los Estados Unidos de América, independientemente del país de procedencia, Diario Oficial, Segunda Sección 8 (28 de Abril de 2000).*

² *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).*

³ Including any further determinations made pursuant to court order or remand.

⁴ These include, for example, the *Resolución final de la investigación sobre elusión del pago de cuotas compensatorias impuestas a las importaciones de carne de bovino en cortes deshuesada y sin deshuesar, mercancía clasificada en las fracciones arancelarias 0201.20.99, 0202.20.99, 0201.30.01, 0202.30.01 de la Tarifa de la Ley del Impuesto General de Importación, originarias de los Estados Unidos de América, independientemente del país de procedencia, Diario Oficial, Primera Sección 1 (22 de Mayo 2001).*

Procedure. These measures appear to be inconsistent with Mexico's obligations under the provisions of GATT 1994, the AD Agreement, and the SCM Agreement.

In particular, the United States believes that the anti-dumping measures on beef and rice are inconsistent with at least the following provisions:

- Article 3 of the AD Agreement, because Mexico, *inter alia*, based its injury (or threat) and causation analyses on only six months of data for each of the years examined; failed to collect or examine recent data; failed in the beef investigation to evaluate all relevant economic factors and indices having a bearing on the state of the industry; 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;
- Article 5.8 of the AD Agreement, because Mexico failed to terminate the rice 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 beef and rice measures after negative final determinations of dumping;
- Article 6 of the AD Agreement, because Mexico, *inter alia*, failed to provide respondent US exporters with ample opportunity to present in writing all evidence which they considered relevant in respect of the anti-dumping investigations and failed to give all interested parties a full opportunity for the defense of their interests, and Article 6 and Annex II of the AD Agreement by improperly applying the facts available to a US respondent rice exporter that was investigated and found to have no shipments during the period of investigation;
- Article 9 of the AD Agreement, in conjunction with Article 6, because of the manner in which Mexico determined anti-dumping margins for US exporters that were not individually investigated;
- Article 6 and 9 of the AD Agreement and Article VI of GATT 1994, because Mexico, *inter alia*, limited the application of the respondent-specific margins that it calculated in the beef investigation to selected grades of meat imported within 30 days of slaughter (applying "facts available" margins to the respondents' other shipments) and limited the application of a particular US respondent exporter's margin after conducting an "anti-circumvention review" that found the respondent was not engaged in circumvention;
- Articles 9 and 11 of the AD Agreement, because Mexico rejected requests by certain US respondent exporters to conduct reviews of the beef anti-dumping order; and
- Article 12 of the AD Agreement, because Mexico failed in its final determinations in both investigations 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.

In addition, the following provisions of Mexico's Foreign Trade Act appear to be inconsistent with Mexico's obligations under the provisions of the AD Agreement and the SCM Agreement:

- Article 53, which 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 appears to be inconsistent with Articles 6.1.1 and 12.1.1 of the AD and SCM Agreements, respectively, which specify that exporters/foreign producers shall be given

at least 30 days to respond to questionnaires, and that, as a general rule, the 30 days are to be counted from the date of receipt of the questionnaire;

- Article 64, which codifies the "facts available" approach that Mexico applied in the rice and beef investigations, as described in the fourth bullet above. This provision appears to be inconsistent with Article 9 of the AD Agreement, in conjunction with Article 6; and with Article 6.8 of the AD Agreement and Article 12.7 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;
- Article 68, which 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 the second bullet above), with Article 9 of the AD Agreement, and with Articles 11.9 and 21.1 of the SCM Agreement;
- Article 89D, which appears to require that "new shippers" requesting expedited reviews demonstrate that their 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, which require authorities to conduct reviews without regard to such a condition; and
- Article 93V, which appears to provide for the application of definitive anti-dumping or countervailing duties on products entered prior to the date of application of provisional measures (1) for longer than allowed under the AD and SCM Agreements, and (2) even if not all AD or SCM Agreement requirements for applying such duties are met. This provision appears to be inconsistent with Articles 7 and 10.6 of the AD Agreement and Articles 17 and 20.6 of the SCM Agreement.

Finally, Article 366 of Mexico's Federal Code of Civil Procedure, in conjunction with Article 68 of the Foreign Trade Act, appears to be inconsistent with Articles 9 and 11 of the AD Agreement and Articles 19 and 21 of the SCM Agreement to the extent that the provisions prevent Mexico from conducting reviews of anti-dumping 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*.

Mexico's measures also appear to nullify or impair benefits accruing to the United States directly or indirectly under the cited agreements.

We look forward to receiving your reply to the present request and to fixing a mutually convenient date for consultations.

ANNEX D-2

REQUEST FOR THE ESTABLISHMENT OF A PANEL BY THE UNITED STATES

**WORLD TRADE
ORGANIZATION**

WT/DS295/2
22 September 2003

(03-5043)

Original: English

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;

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).

- (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;
 - (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.
