

WORLD TRADE ORGANIZATION

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Committee on Anti-Dumping Practices
Committee on Subsidies and Countervailing Measures

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NOTIFICATION OF LAWS AND REGULATIONS UNDER ARTICLES 18.5 AND 32.6 OF THE AGREEMENTS

Questions Posed by CHILE Regarding the Notification of MEXICO¹

The following communication, dated 13 October 2003, has been received from the Permanent Mission of Chile.

Comments on Mexico's Foreign Trade Act

1. Article 29 of the Mexican Law states that:

"... Evidence of injury shall be required whenever the country of origin or source of the goods in question observes reciprocity."

Questions

- (i) According to the WTO Anti-Dumping Agreement, should it not always be the investigating authority which determines injury, irrespective of any action another country may be understood to be taking in this connection?
- (ii) Under the Mexican Law, who is authorized to establish whether the existence of injury is determined in anti-dumping investigations in another country?

2. In connection with the determination of dumping in the course of an investigation, Article 2.6 of the WTO Anti-Dumping Agreement provides for the possibility of investigating a like product, meaning a product which is identical, or in the absence of such a product, another product with closely resembling characteristics. The Mexican Law includes closely resembling products in the investigation, even where a product exists which is alike in all respects (identical).

Question

Would not the combined use of the terms "identical" and "like" in the Mexican Law lead to the consideration of a greater number of categories of products than those permitted by the WTO in an investigation?

¹ G/ADP/N/1/MEX/1/Suppl.2-G/SCM/N/1/MEX/1/Suppl.1-G/SG/N/1/MEX/1/Suppl.1.

3. Article 31.I of the Mexican Law provides that the third country price used as an alternative to the price in the country of origin for determining normal value "shall be the highest price, provided that it is representative".

Questions

- (i) Could the above-mentioned provision artificially increase the dumping margin calculated?
- (ii) Is this provision not inconsistent with the WTO rule requiring comparison with the representative price of a product exported to an appropriate third country, which does not necessarily correspond to the highest price?

4. The second paragraph of Article 33 of the Mexican Law provides that:

"... In the case of each sector or industry under investigation, the Ministry may determine whether such sector or industry operates according to market principles ...".

In this case, the Ministry shall regard as normal value the price in a third country deemed to be a substitute country.

Questions

- (i) Within what parameters may the Ministry determine whether a sector or industry under investigation operates according to market principles?
- (ii) Does not the fact of disregarding the price used in an industry or sector based on a unilateral determination by the investigating authority, constitute a violation of WTO rules?

5. According to the third paragraph of Article 40 of the Mexican Law, in the event that producers are related to exporters or importers, they may alternatively be referred to as "manufacturers of the goods produced during the immediately preceding stage in the same continuous line of production".

Question

The foregoing is not permitted by the WTO. Would this not constitute an excessively broad interpretation of the concept of like product?

6. Article 42.IV of the Mexican Law refers to the "inventory of the goods under investigation" as a decisive factor in determining a threat of injury.

Question

Should this Article not refer to inventories, as in Article 3.7(iv) of the WTO Anti-Dumping Agreement?

7. Under Articles 54 and 55 of the Mexican Law, interested parties, in addition to producers, distributors and traders, are required to provide all the information needed by the Ministry, otherwise the latter shall decide on the basis of the information available.

Question

Should not these Articles refer separately to anti-dumping and countervailing duty investigations, since the latter relate to government actions, concerning which detailed information should not be obtained by private companies but from the governmental authority?

8. Article 64 of the Mexican Law provides that:

"The Ministry shall calculate individual margins of price discrimination or subsidization for foreign producers that provide sufficient evidence to that end; such individual margins shall serve as a basis for determining specific countervailing duties.

The Ministry shall determine a countervailing duty on the basis of the highest margin of price discrimination or subsidization obtained from the facts available, in the following cases:

- I. When the producers fail to appear at the investigation; or
- II. when the producers fail to provide the information in a proper and timely fashion, significantly impede the investigation, or supply information or evidence that is incomplete, incorrect or does not derive from their accounts, thus preventing the determination of an individual margin of price discrimination or subsidization; or
- III. when the producers have not exported the product subject to investigation during the investigation period".

Question

In the above cases, should not Article 6.8 and Annex II of the WTO Anti-Dumping Agreement be applied, in other words, should not determinations be based on the facts available and not the highest margin?

The same question applies to the provisions of Article 83 of the Mexican Law concerning searches of establishments.

9. Article 67 of the Law provides that:

"Final countervailing duties shall remain in effect for the length of time and to the extent necessary to offset the injury to the domestic industry".

Question

Is this provision not inconsistent with Article 11.1 of the WTO Anti-Dumping Agreement, which requires an anti-dumping duty to remain in force only as long as and to the extent necessary to counteract dumping which is causing injury?

10. According to Article 70.B of the Mexican Law, one or more producers may request a review of countervailing duties.

Question

Is this provision not inconsistent with Article 11.3 of the WTO Anti-Dumping Agreement, which provides that the request for review should be made "by or on behalf of the domestic industry"?

11. The second paragraph of Article 80 of the Mexican Law provides that:

"The Ministry shall provide timely opportunities for interested parties to examine all information contained in the administrative dossier for the presentation of their cases ...".

"Confidential information shall be made available only to the accredited legal representatives of interested parties ... No interested party shall have access to restricted commercial or confidential government information."

"Persons with authorized access to confidential information may not use such information for their personal benefit and shall be under the obligation to take all measures necessary to prevent any disclosure thereof ...".

Questions

- (i) Is not the act of making available to the legal representatives of all interested parties confidential information provided by another party, without the latter's prior authorization, a violation of Article 6.5 of the WTO Anti-Dumping Agreement, which provides that confidential information must be protected by confidential treatment?
- (ii) Should not access to confidential information be limited to those countries with which individual agreements for that purpose are in force?

12. Article 86 of the Mexican Law establishes a link with monopolistic practices and authorizes the investigating authorities to "inform" the competent authority when elements give it cause to suspect that any of the parties was involved in such practices.

Questions

- (i) Does this article allow confidential information to be used for other purposes by an agency other than the one carrying out the investigation?
- (ii) Would not this practice give rise to an inconsistency with Article 6.5 of the Anti-Dumping-Agreement, which provides that confidential information "shall not be disclosed without specific permission of the party submitting it"?

13. Article 89.A of the Mexican Law states that the interested parties may request the Ministry to decide whether a product is subject to a countervailing duty, and that there is a time-limit for issuing the final resolution.

Questions

- (i) During the above-mentioned time-limit, is entry of the merchandise permitted?
- (ii) If not, what would happen if the merchandise is a perishable product?

14. Article 89.B.III of the Mexican Law provides that the importation of goods from the same country of origin as the product subject to a countervailing duty or safeguard measure that have relatively slight differences from the product in question is deemed to constitute circumvention.

Questions

- (i) By whom and under what conditions is a determination made that a product has "relatively slight differences"?
- (ii) Is this not a violation of Article 2.6 of the WTO Anti-Dumping Agreement which defines the term "like product"?

15. Article 89.D provides an opportunity to exporters of goods subject to a countervailing duty who have not been investigated to request such investigation, but this opportunity is limited to those exporters who exported no such goods during the period of investigation and who also export after that period.

Questions

- (i) Are not the above limitations contrary to Article 6.10.2 of the WTO Anti-Dumping Agreement, which places no restrictions on the submission of voluntary responses?
- (ii) What is the situation regarding exporters seeking to export for the first time to Mexico or those who had exported prior to the period under investigation?

16. Article 89.F.IV provides that the Ministry may "decide to extend the countervailing duty in effect for another five years following the date on which the duty lapses".

Question

Is it not arbitrary to extend a countervailing duty for five years without making the length of that extension subject to an estimate of the possible duration of the dumping that is causing the injury?

17. Article 93.V of the Mexican Law provides for the retroactive application of a measure. Article 10.6 of the WTO Anti-Dumping Agreement authorizes such application, subject to proof of critical circumstances, based on a time-limit of 90 days prior to the date of the provisional measure.

Question

Inasmuch as it specifies no criteria and establishes a time-limit of five months after initiation and in relation to the final measure, is not the Mexican legislation inconsistent with the WTO provisions?
