

**GUATEMALA - DEFINITIVE ANTI-DUMPING MEASURE
ON GREY PORTLAND CEMENT FROM MEXICO**

Request for the Establishment of a Panel by Mexico

The following communication, dated 15 July 1999, from the Permanent Mission of Mexico to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

Following consultations and a dispute settlement procedure between the Governments of Mexico and Guatemala, on 19 June 1998 the Panel in the case Guatemala - Anti-Dumping Investigation Regarding Portland Cement From Mexico issued its Report (WT/DS60/R) in which it concluded, *inter alia*, that Guatemala had violated the provisions of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (hereinafter the Anti-Dumping Agreement):

- By failing to notify the Government of Mexico before proceeding to initiate the investigation, as required by Article 5.5 of the Anti-Dumping Agreement;
- by initiating the investigation when there was not sufficient evidence to justify initiation, as required by Article 5.3 of the Anti-Dumping Agreement.

The Panel therefore recommended that the Dispute Settlement Body should request Guatemala to bring its action into conformity with its obligations under the Anti-Dumping Agreement.

The Panel concluded that the entire investigation rested on an insufficient basis, and therefore should never have been conducted. It also determined that it was a violation which could not be corrected during the course of the ensuing investigation. Consequently, the Panel suggested that Guatemala revoke the existing Anti-Dumping Measure on imports of Mexican cement as the only appropriate means of implementing its recommendation.

On 2 November 1998, in document WT/DS60/AB/R, the Appellate Body reversed the conclusion reached in paragraph 7.27 of the Report of the Panel that the matters referred to in Mexico's request for the establishment of a panel were properly before it. However, not having examined the merits of the case, the Appellate Body itself recognised Mexico's right to seek new consultations regarding the definitive anti-dumping measure imposed by the Government of Guatemala, and where appropriate, to pursue another complaint under the dispute settlement mechanism.

On 5 January 1999, the Government of Mexico requested consultations with the Government of Guatemala under Article 7.3 of the Anti-Dumping Agreement, Article 4 of the Understanding on

Rules and Procedures Governing the Settlement of Disputes (hereinafter the DSU), and Article XXIII of the General Agreement on Tariffs and Trade 1994 (hereinafter the GATT 1994) concerning the definitive measure to collect definitive anti-dumping duties (definitive anti-dumping measure) imposed on imports of grey portland cement from the Mexican firm Cooperativa La Cruz Azul S.C.L. (Cruz Azul) as well as the actions that preceded it. These consultations were held on 23 February 1999.

Since the consultations failed to settle the dispute, Mexico hereby challenges the definitive anti-dumping measure imposed by Guatemala on imports of grey portland cement from Cruz Azul through the final resolution, "Resolution 000113", published in the *Diario de Centro América* on 30 January 1997, as well as the actions that preceded it, including the provisional anti-dumping measure and various matters relating to the initiation of the investigation and the anti-dumping proceeding, as being contrary to Guatemala's obligations under Article VI of the GATT 1994 and Articles 1, 2, 3, 5, 6, 7, 9, 10, 12 and 18 of the Anti-Dumping Agreement as well as Annexes I and II of the Anti-Dumping Agreement. Mexico's complaints are as follows:

A. The application submitted by the firm Cementos Progreso S.A. and the subsequent initiation of the investigation by the Guatemalan authority did not comply with the requirements set forth in Articles 1, 2, 3, 5, and 12 of the Anti-Dumping Agreement. Mexico has the following specific complaints with respect to this stage:

1. Contrary to the provisions of Article 5.2 of the Anti-Dumping Agreement, the application for initiation did not include relevant evidence of dumping, threat of injury and a causal link between the two as defined in Articles 2 and 3 of that Agreement.
2. The Guatemalan authority violated the provisions of Article 5.3 of the Anti-Dumping Agreement by not examining the accuracy and adequacy of the evidence provided in the application. In this respect, the Ministry of the Economy also violated Article 5.3 by initiating the investigation without sufficient evidence to justify such initiation.
3. The Guatemalan authority violated the provisions of Article 5.8 of the Anti-Dumping Agreement by not rejecting the application submitted by Cementos Progreso S.A. and promptly terminating the investigation when there was not sufficient evidence of dumping or threat of injury, as defined in Articles 2 and 3 of the Anti-Dumping Agreement, to justify proceeding with the case.
4. The Government of Guatemala also failed to comply with the provisions of Article 5.7 of the Anti-Dumping Agreement by not simultaneously considering the evidence of both dumping and threat of injury, as defined in Articles 2 and 3 of the Anti-Dumping Agreement, in deciding whether or not to initiate the investigation.
5. Furthermore, the Ministry of the Economy violated Article 5.5. of the Anti-Dumping Agreement by failing to notify the Government of Mexico before proceeding to initiate the investigation through the publication of the notice of initiation on 11 January 1996.
6. In addition to its failure to ensure that there was sufficient evidence under Article 5 of the Anti-Dumping Agreement, Guatemala did not comply in a timely manner with its obligation under Article 12.1 of the Anti-Dumping Agreement to notify the Government of Mexico and Cruz Azul.

7. Similarly, the public notice of initiation fails to comply with the requirements of Article 12.1.1 of the Anti-Dumping Agreement by not supplying adequate information on the basis on which dumping is alleged in the application or a summary of the factors on which the allegation of threat of injury is based.
8. Guatemala failed to comply with its obligations under Article 1 of the Anti-Dumping Agreement by initiating an investigation in contravention of the provisions of the Anti-Dumping Agreement, in particular those indicated in indents 1 to 7 above.

B. The Government of Guatemala acted in contravention of Article 6.1.3 of the Anti-Dumping Agreement by failing to provide the full text of the written application to the exporter, Cruz Azul, and to the Government of Mexico as soon as the investigation had been initiated.

C. The provisional anti-dumping measure imposed by the Ministry of the Economy of Guatemala on 28 August 1996 violated Articles 7 and 12 of the Anti-Dumping Agreement with respect to Articles 2, 3 and 5 of that Agreement, as well as Articles 1 and 18 of the Anti-Dumping Agreement and Article VI of the GATT 1994.

1. The provisional measure, which had a significant impact, was imposed in contravention of Article 7.1 of the Anti-Dumping Agreement for the following reasons:
 - (a) The investigation was not initiated in accordance with Article 5 of the Anti-Dumping Agreement, nor was Cruz Azul given adequate opportunities to submit information and make comments.
 - (b) A preliminary affirmative determination of dumping was not properly made under Article 2 of the Anti-Dumping Agreement, *inter alia* because no valid determination had been made of normal value or of the export price.
 - (c) Guatemala's preliminary determination of threat of injury is contrary to Article 3 of the Anti-Dumping Agreement, *inter alia* because: (i) it does not comply with obligation for such determinations to be based on fact and not merely on allegation, conjecture or remote possibility; (ii) because the Ministry of the Economy did not properly consider the factors set forth in that Article of the Anti-Dumping Agreement; (iii) because there is no demonstration of the causal relationship between the dumped imports and the threat of injury to the domestic industry as required under Article 3.5 of the Anti-Dumping Agreement; (iv) because the decision to apply anti-dumping measures was not examined with special care in conformity with Article 3.8 of the Anti-Dumping Agreement. Consequently, the Guatemalan authority could not validly judge the provisional measures necessary, under Article 7.1 of the Anti-Dumping Agreement, to prevent injury being caused to the domestic industry of Guatemala during the investigation.
2. By applying the provisional anti-dumping measure in contravention of Article 7.1 of the Anti-Dumping Agreement, Guatemala violated the provisions of Article VI of the GATT 1994 and Articles 1 and 18 of the Anti-Dumping Agreement.
3. The public notice of imposition of the provisional measure of 28 August 1996 failed to comply with the requirements of Article 12.2.1 of the Anti-Dumping Agreement by not providing sufficiently detailed explanations for the preliminary determination on dumping. In particular, it failed to provide a full explanation of the reasons for the

methodology used in the establishment and comparison of the export price and the normal value under Article 2 of the Anti-Dumping Agreement. It also failed to provide sufficiently detailed explanations of the considerations relevant to the preliminary threat of injury determination as set out in Article 3 of the Anti-Dumping Agreement.

D. Mexico considers that many of the actions of the Guatemalan Ministry of the Economy during the investigation, including the provisional measure, were contrary to a number of Guatemala's obligations under different articles of the Anti-Dumping Agreement, procedural violations which had a direct impact on the result of the investigation and ultimately on the consequent imposition of a definitive anti-dumping measure which also violates Article VI of the GATT 1994 and the Anti-Dumping Agreement, *inter alia*, for the following reasons:

1. By failing to establish a precise period of time for submitting evidence and not setting a time-limit for admitting and receiving evidence, Guatemala violated Articles 6.1 and 6.2 of the Anti-Dumping Agreement.
2. The investigating authority of Guatemala denied Cruz Azul the opportunity to examine the information used by the Ministry of the Economy in the course of the investigation, violating Articles 6.1.2, 6.2 and 6.4 of the Anti-Dumping Agreement.
3. By failing to satisfy itself as to the accuracy of the information supplied by the applicant firm Cementos Progreso S.A. on which it based its conclusions throughout the various stages of the investigation, the Guatemalan authority failed to comply with its obligation under Article 6.6 of the Anti-Dumping Agreement.
4. By extending the period of investigation in the ninth month following the initiation thereof without justifying its decision, Guatemala violated Article 6.2 and paragraph 1 of Annex II of the Anti-Dumping Agreement.
5. Guatemala wrongly asked Cruz Azul for information on costs corresponding to both periods of investigation - the period originally indicated and the extended period - when the anti-dumping investigation was initiated on prices. This action violated Article 2.4 of the Anti-Dumping Agreement.
6. By conducting a verification visit of Cruz Azul without the firm's express consent, the Guatemalan investigating authority violated the provisions of Articles 2.4 and 6.7 and paragraphs 3, 7 and 8 of Annex I of the Anti-Dumping Agreement.
7. By rejecting the technical accounting evidence concerning the normal value and the export price of Cementos Cruz Azul during the period of investigation originally established, Guatemala acted in contravention of Articles 6.1, 6.2 and 6.8 of the Anti-Dumping Agreement.
8. The Guatemalan authority accepted confidential information from Cementos Progreso S.A. without provision of a public version thereof, justification of the confidential nature of the information or timely transmission to Cruz Azul of the documentation submitted by Cementos Progreso S.A., thus violating the provisions of Articles 6.1, 6.2, 6.3 and 6.5 of the Anti-Dumping Agreement.
9. The Guatemalan investigating authority did not inform Cruz Azul in a timely manner of the essential facts that would be taken into consideration in imposing the definitive

anti-dumping measure, and therefore violated Cruz Azul's right to defend its interests under Article 6.9 of the Anti-Dumping Agreement.

10. In the final stage of the proceeding, the Ministry of the Economy changed the determination of threat of injury made when the investigation was initiated and when the provisional measure was imposed to a determination of injury. It did so without giving Cruz Azul any opportunity to defend its interests or to present relevant evidence, in violation of the provisions of Articles 6.1 and 6.2 of the Anti-Dumping Agreement.

E. By applying the definitive anti-dumping measure without properly complying with the relevant requirements, Guatemala violated Articles 1, 2, 3, 9, 12 and 18 of the Anti-Dumping Agreement. The application of the definitive measure in such circumstances contravenes Article VI of the GATT 1994. The specific complaints are as follows:

1. In making its definitive determination of dumping, the Guatemalan authority did not make a valid determination of the normal value or of the export price, and hence of the margin of dumping, in conformity with Article 2 of the Anti-Dumping Agreement.
2. The Ministry of the Economy changed, without justification, the determination of threat of injury made when the investigation was initiated and the provisional measure imposed to a definitive determination of injury. This change was made without an objective examination by the authority based on affirmative evidence of the alleged threat of injury, or of injury, under Article 3 of the Anti-Dumping Agreement.
3. The Guatemalan authority could not establish a causal relationship between the allegedly dumped imports and the alleged injury to the Guatemalan domestic industry in conformity with Article 3.5 of the Anti-Dumping Agreement.
4. Similarly, the public notice of conclusion by which an affirmative determination was reached to impose a definitive duty does not comply with the requirements of Article 12 of the Anti-Dumping Agreement in that it does not contain all relevant information on the matters of fact and law, nor does it provide sufficiently detailed explanations of the reasons that led the Guatemalan authority to impose the definitive measure or to make several of its determinations, for example, the unjustified change of threat of injury to injury.
5. Since the Guatemalan authority failed to make a valid determination of dumping, of the alleged threat of injury or the alleged injury, or to demonstrate the causal relationship between them in conformity with Articles 2 and 3 of the Anti-Dumping Agreement both upon initiating the investigation and upon imposing the provisional and definitive measures, and in view of the violations of Articles 5, 6, 7 and 12 of the Anti-Dumping Agreement committed at the initiation and in the course of the investigation, Guatemala applied a definitive anti-dumping measure to grey portland cement from the firm Cruz Azul without properly meeting the relevant requirements. This, in its turn, constitutes a violation of Article VI of the GATT 1994 and of Articles 1, 9 and 18 of the Anti-Dumping Agreement.

F. The definitive anti-dumping measure imposed by Guatemala on imports of grey portland cement from Cruz Azul and the actions preceding the imposition during the course of the investigation, including the provisional anti-dumping measure, nullify and impair the benefits

accruing to Mexico under the GATT 1994 Anti-Dumping Agreement, in particular Article VI of the GATT 1994 and Articles 1, 2, 3, 5, 6, 7, 9, 12 and 18 of the Anti-Dumping Agreement and Annexes I and II to that Agreement in that they involve: (i) the initiation of an investigation without sufficient evidence; (ii) the imposition of a provisional anti-dumping measure and a definitive anti-dumping measure without complying with the disciplines of the Anti-Dumping Agreement; and (iii) a number of procedural violations prejudicial to the rights of Mexico and Cruz Azul. If Guatemala had complied with the mentioned provisions, it would never have initiated or conducted the investigation much less imposed provisional and definitive anti-dumping measures which affect Mexico's exports of grey portland cement. In this connection, it should be mentioned that the Mexican exports of grey portland cement under investigation were severely affected.

For all of these reasons, and in conformity with Article 17 of the Anti-Dumping Agreement and Article 6 of the DSU, Mexico respectfully requests the establishment of a panel to:

- (a) Examine, in the light of Article VI of the GATT 1994 and the Anti-Dumping Agreement, the matter referred to the DSB by Mexico on the basis of this request and of the direct precedents to this WTO dispute as set forth in the Report of the Panel (WT/DS60/R) and of the Appellate Body (WT/DS60/AB/R);
 - (b) conclude that the definitive anti-dumping measure imposed by Guatemala and the actions preceding that measure, including the provisional measure, constitute violations of Article VI of the GATT 1994 and the articles of the Anti-Dumping Agreement mentioned in this request;
 - (c) recommend that Guatemala bring its measure into conformity with Article VI of the GATT 1994 and the Anti-Dumping Agreement;
 - (d) suggest that Guatemala revoke the anti-dumping measures and refund the anti-dumping duties collected under those measures.
-