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Committee on Anti-Dumping Practices

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Committee on Subsidies and Countervailing Measures

QUESTIONS CONCERNING THE NOTIFICATIONS PROVIDED BY THE
GOVERNMENT OF MEXICO OF LAWS AND REGULATIONS
UNDER ARTICLES 18.5 AND 32.6 OF THE AGREEMENTS

The following communication, dated 3 July, has been received from the Permanent Mission of Canada.

Please find attached Questions from Canada on Mexico's Notified Laws and Regulations Governing Countervailing and Anti-Dumping Duties.

With reference to the Notification of Laws and Regulations by Mexico under Article 18.5 of the Agreement on Implementation of Article VI and Article 32.6 of the Subsidies and Countervailing Measures Agreement of the GATT 1994, documents G/ADP/N/1/MEX/1 and G/SCM/N/1/MEX/1, submitted 2 May 1995, Canada would like to address the following general items:

1. Mexico has noted that their laws respecting unfair trade include, *inter alia*, the Agreement on the Implementation of Article VI and the Agreement on Subsidies and Countervailing Measures of the GATT 1994 (hereafter referred to as the Agreements). Could Mexico clarify whether their intention is to revert to the Agreements where their other laws are silent, or in cases where other laws may be interpreted in conflict with provisions of the Agreements?
2. What is the legal mechanism in Mexican law for the implementation of decisions rendered by the WTO?
3. Is there any means by which domestic interests could use Mexican laws or the Mexican constitution, including the practice of AMPARO, to challenge or prevent the government from implementing a WTO Dispute Settlement Body (DSB) panel decision?

Standing

1. Mexican law and regulation does not appear to contain references to the manner in which "an examination to determine the degree of support" (SCM Article 11.4; Agreement on Implementation of Article VI, Article 5.4) for a complaint will be made. How will Mexican authorities determine whether a complaint is expressly supported by domestic producers?
2. With respect to Article 75(VI) of the Regulations, and for the purposes of determining whether the required level of industry support exists, where the complainant is a member of an industry organization, is it assumed that the other members of the industry organization also support the request for initiation of an investigation?

Injury

1. Article 29 of the Foreign Trade Act provides that "evidence of injury or threat of injury be required whenever the country of origin or source of the goods in question observes reciprocity". Could Mexico please clarify the meaning of this qualification as it relates to requirement in the Agreements that material injury be demonstrated to be caused by subsidized or dumped imports before any duty may be imposed?
2. Does the expression "not significant" in Article 67 of the Regulations mean "*de minimis*"? Similarly, is the phrase "identifiable adverse effects on domestic production" intended to mean "negligible"?
3. In addition, how will Mexican authorities implement the requirement to "examine any known factors other than the dumped/subsidized imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped/subsidized imports" (SCM Agreement Article 15.5; Agreement on Implementation of Article VI, Article 3.5)?
4. What types of "other elements" would the Ministry "deem appropriate" in its consideration of the question of injury under Article 41(iv)?

5. The last paragraph of Article 42 requires the Ministry to take into account all factors "... which make it possible to conclude ..." that future imports will cause injury. Will Mexico also consider factors that do not indicate injury?

Procedural time-limits

Clarification would be appreciated with respect to the specific procedural time-limits under Mexican law and regulation for the rendering of a preliminary and final resolutions and respecting the implementation and duration of provisional duties. Of specific interest is Article 57.1 of Mexico's Foreign Trade Act, which appears to allow for the fixing of a provisional duty 45 days following the publication of the resolution to initiate an investigation, rather than the 60 days called for in Article 7.3 of the Agreement on the Implementation of Article VI and 17.3 of the SCM Agreement.

Sunset provisions

1. In regard to Article 109 of the Regulations, is the intent that the declaration of elimination can only be made after interested parties have been notified? If so, should not that notification be made before the time-limit elapses, and not after, as is stated?
2. Can Mexico clarify whether undertakings will be subject to the same sunset provisions as duties?

Anti-circumvention

In light of the specific obligation in Article 18.1 of the Agreement not to take actions against the dumping of exports from another Member except in accordance with the provisions of GATT 1994 as interpreted by the Agreement, could Mexico indicate the basis in the Agreements for the *de facto* anti-circumvention provisions in Article 71? In asking this question, Canada would like to note that the issue of circumvention was referred to the Committee on Anti-Dumping Practices through the Marrakesh Ministerial Decision on Anti-Circumvention.

Definition of subsidy

How will the definition of subsidy contained in Article 37 of the Foreign Trade Act operate in conjunction with Articles 1 and 2 of the SCM Agreement?

Reference is made to the Ministry issuing a list of export subsidies. Has this been done, and if so will Mexico notify this list to the Committee? If not, on what basis will the list be prepared (i.e., Annex I, the Illustrative List of Export Subsidies)?

Non-actionable subsidies

Is the reference to "except where such practices are regarded as internationally acceptable" (in Article 37) intended to cover non-actionable subsidies within the meaning of the SCM Agreement?

Are non-actionable subsidies deducted from calculation of the amount of subsidy for the purposes of countervailing duty investigations and enforcement of determinations?

Calculation of the amount of subsidy

There do not appear to be any specific guidelines in Mexican law or regulations with respect to the methodology for calculating the amount of subsidy. How will Mexican authorities do this calculation?

Developing country Members

How will Mexican authorities treat the exports of developing country Members in a countervailing duty investigation?

Massive imports of subsidized goods

There appears to be no explicit requirement under Mexican law or regulation that implements the requirement of Article 20.6, that in cases of massive imports of subsidized goods, countervailing duties may only be applied retroactively against prohibited subsidies. How will Mexico administer this requirement?

Specific questions regarding Annex I: the Foreign Trade Act

1. Is the reference to "general costs" in, among other places, Article 31, subparagraph II, intended to mean administrative, selling and general costs as set out in Article 2.2.2 of the Agreement on the Implementation of Article VI? If this is not the case, could Mexico explain what is meant by the term "general costs"?
2. Could Mexico indicate what the possible outcome of a Conciliation Meeting would be, and what basis there is in the Agreements for the process provided for in Article 61?
3. Why does the second paragraph of Article 62 of the Foreign Trade Act use the phrase "provided they are sufficient to discourage the imports of goods" when referring to a duty less than the full margin of dumping or amount of subsidy rather than the wording "... if such lesser duty would be adequate to remove the injury to the domestic industry," as contained in Article 9.1 of the Agreement on Implementation of Article VI and Article 19.2 of the SCM Agreement?
4. Article 66 requires an importer to prove that like goods are from a non-subject Member in order to be not assessed a countervailing duty. Could Mexico clarify whether an importer would have to do anything in addition to the requirements set out in the normal Mexican Rules of Origin procedures?
5. Could Mexico reconcile the apparent quantitative restriction on exporters in Article 72 where the exporter voluntarily agrees to "cease exports" with Article 8.1 of the Agreement on the Implementation of Article VI which only allows for the exporter to "cease exports to the area in question at dumped prices"? Canada is concerned that an undertaking that restricts exports is a de facto voluntary export restraint, as prohibited by Article 11 of the WTO Agreements on Safeguards.
6. Could Mexico provide the text of Article 6 of its Foreign Trade Act which is referred to in Article 73 of that Act?
7. Could Mexico provide a detailed explanation of the difference between "confidential information" and "restricted commercial information" and any test to determine whether information qualifies as "restricted commercial information", as noted in Article 80, and include examples of each type of information? Do the Mexican authorities intend to allow for the release of both types of information if the party presenting the information so allows?
8. Could Mexico indicate whether there are any specific time-limits on the public hearings noted in Article 81?

9. Could Mexico indicate why interested parties are prohibited from providing statements by authorities as noted in Article 82? Could Mexico include in its explanation which authorities are being referred to and possible examples of such prohibited statements?
10. Could Mexico indicate whether all interested parties would be notified of the proceedings instituted in accordance with the second paragraph of Article 82 such that they would have adequate time to prepare and participate in such proceedings should they so desire? Could Mexico provide examples of such proceedings and the applicable procedures?
11. The second paragraph of Article 83 indicates that, in the absence of an exporter allowing verification to take place, the Ministry "shall assume that the requesting party's claims are true, unless there exists element which indicate otherwise". Could Mexico indicate whether the statement means that, in the event of non-cooperation, the Ministry will use the best information available as required by Article 6.8 and Annex II of the Agreement on the Implementation of Article VI?
12. Could Mexico provide the text of those portions of the Mexican Federal Tax Code applicable to the administrative proceedings referred to in Article 85?
13. Could Mexico indicate how it would take into account the interests of other production processes and consumers as contemplated by Article 88?
14. In respect of Articles 87 and 89, would Mexico characterize their proposed system for the collection of duties as prospective in nature?
15. Article 93 III and IV provide for fines as a result of the provision of false information or the failure to provide information. Could Mexico indicate whether such fines are applicable to nationals or corporations of other Members and/or governments of other members? If yes, under what WTO authority does Mexico base this provision?
16. In regard to the retroactive application of final measures as provided for in Article 93 V, could Mexico explain why they used a three-month time restriction rather than the 90 day maximum in Article 10.6 of the Agreement on the Implementation of Article VI and Article 20.6 of the SCM Agreement?
17. In respect of the last paragraph in Article 93, could Mexico indicate whether foreign nationals would be subject to penal and civil sanctions and what such penal and civil sanctions may be, including examples where appropriate?
18. Regarding the appeal of final countervailing measures noted in Article 94, could Mexico indicate the relationship between the "Ministry" and the Ministry of Finance and Public Credit?
19. Could Mexico provide the text of Article 239 bis of the Mexican Federal Tax Code noted in Article 95, and explain the "deadline" referred to in the last paragraph and the related process?

Specific questions regarding Annex II: Regulations under the Foreign Trade Act

1. Could Mexico explain what is intended in the second sentence of Article 43 by the reference to "... factors of a transitory nature or the economic situation" and provide examples of such factors or such an economic situation?
2. Could Mexico explain the use of the phrase "materials and components" in respect of indirect manufacturing costs in Article 46 I A.

3. Article 46 I notes that production costs are to be determined based on the weighted average cost incurred in all the factories of each exporter whereas Article 2.2.1.1 of the Agreement on the Implementation of Article VI provides that such costs shall normally be based on records kept by the producer or exporter in accordance with the generally accepted accounting principles in the country of export as long as such records reasonably reflect those costs. As these costing methodologies may not yield the same result, could Mexico reconcile the difference in its regulations and the Agreement?
4. In respect of Article 46 I, and in light of Article 54 I, could Mexico indicate whether export packing costs would be included in a constructed cost of production?
5. Could Mexico explain what is meant in Article 46 II by the inclusion in "overheads" of the depreciation of assets not related to production and provide an explanation of the difference between assets not related to production and assets not in use (see also Article 46 VI)?
6. Could Mexico reconcile its intended use of acquisition costs as a surrogate for the cost of production of goods in Article 47 with the requirements in Article 2.2.1.1 of the Agreement on the Implementation of Article VI?
7. Could Mexico explain the reference to the "Ministry for the supplier enterprises" in the second paragraph of Article 47: what this body is and what its relationship would be to an exporter or supplier?
8. The last paragraph of Article 54 denotes a general rule regarding the allocation of expenses of a general character, and Article 56 notes two "general rules" in respect of adjustments required to account for differences in physical characteristics. Are these rules meant to be discretionary or mandatory?
9. Could Mexico elaborate on the specific methodologies envisioned to adjust for quantitative differences between normal value and export price as noted in Article 55 II and explain the use of the term "model of prices" in Article 55 III B?
10. The last paragraph of Article 55 makes reference to "available information". Could Mexico explain why it did not use the phrase "best available information" as used in Article 6.8 and Annex 11 of the Agreement on the Implementation of Article VI?
11. Could Mexico elaborate on the Article 58 adjustment for the effects of inflation, and provide the basis in the Agreements for this provision?
12. Article 75(I) and Article 80(I) would suggest that there are multiple competent administrative authorities which can entertain requests, and issue resolutions for the initiation of an investigation. Could Mexico please clarify the meaning of these two provisions?
13. What is meant by:
 - (i) The Article 75(VII) reference to "the legal basis of the request"? and
 - (ii) the Article 75(XV) reference to "other regulatory or trade-restrictive measures concerning the product", (i.e., do these include unilateral trade measures to be imposed by the Mexican authorities)?
14. Could Mexico provide an explanation of the meaning of "summons" in the context of Article 81(I) of the Regulations? Does it refer to a formal instrument which requires the person served (i.e., summoned), to appear before the relevant authority under threat of penalty of law?

15. Do Articles 82(F) and 83(F) mean that Mexico intends to implement a lesser duty rule?
16. Article 89 allows the Ministry to fix duties for exporters who have been given the opportunity, but did not participate in the investigation. Could Mexico indicate whether such duties will be calculated based on known margins, i.e., weighted average, or set at the highest known margin?
17. Article 93 requires the publication of the reply to a request for clarification or explanation of resolutions under which final duties are imposed. In order to clarify the intent of such an explanation, will the request also be published?
18. Regarding the undertaking provisions in Article 112, could Mexico clarify it is understood that undertakings are subject to the prohibition of an increase in export price greater than an amount necessary to eliminate the margin of dumping or amount of subsidy as provided for in SCM Article 18.1 and the Agreement on Implementation of Article VI Article 8.1?
19. In regard to Article 136, does Mexico intend to include union in the list of legally constituted organizations able to bring complaints?