

Committee on Anti-Dumping Practices

Original: Spanish

Committee on Subsidies and Countervailing Measures

REPLIES TO QUESTIONS POSED BY VENEZUELA¹ CONCERNING
THE NOTIFICATION OF MEXICAN LAWS AND REGULATIONS²

The following communication, dated 15 September 1995, has been received from the Permanent Mission of Mexico.

MEXICAN LEGISLATION ON ANTI-DUMPING PRACTICES
AND COUNTERVAILING MEASURES

Questions from Venezuela

Venezuela has the following questions concerning the Mexican legislation on anti-dumping practices and on subsidies and countervailing measures notified on 2 May 1995 under World Trade Organization Articles 18.5 and 32.6 respectively.

DETERMINATION AND DEFINITION OF SUBSIDY

The Mexican legislation on subsidies and countervailing duties says nothing about the determination and calculation of the amount of the subsidy, and little that is specific as regards the adjustments to the amount and the definition of subsidy.

How do the Mexican authorities determine the amount of the subsidy and the adjustments, and what criteria do they use to determine whether a practice can be regarded as a subsidy, in accordance with Articles 1, 2 and 14 of the Agreement on Subsidies and Countervailing Measures?

Reply

The method for calculating the benefit conferred on the recipient of a subsidy has been duly worked out by the investigating authority and in administrative practice it has been used in various proceedings. Basically, the benefit consists of a transfer of resources under conditions different from market conditions. Consequently, the benefit is measured as the difference between the market price and the price actually paid, multiplied by the quantity of the subsidized good concerned (water, electricity, etc. with regard to subsidies on inputs). See, for example, the preliminary resolutions on

¹G/ADP/W/38-G/SCM/W/46.

²G/ADP/N/1/MEX/1 and G/SCM/N/1/MEX/1.

flat rolled steel published in the Diario Oficial de la Federación (Official Journal), on 14, 17 and 18 April 1995. However, this method has not yet been incorporated in Mexican legislation. The amendments and additions to the Foreign Trade Act and the Regulations now being prepared include this methodology, which must be perfectly consistent with the provisions of the SCM Agreement.

However, it is important to note that Articles 1, 2 and 14 of the SCM Agreement must be observed by the Mexican investigating authority. This compulsory requirement is based on Article 133 of the Political Constitution of the United Mexican States, which establishes that the Constitution and the laws enacted by the Congress of the Union, together with treaties in keeping therewith, concluded by the President of the Republic, with the approval of the Senate, will be the Supreme Law of the whole of the Union. In Mexico, treaties are directly applicable, in other words, they do not stand in need of a legislative act after they have been promulgated in order for them to apply; they are directly incorporated in the domestic legal system and, accordingly, the SCM Agreement 1994, in fulfilling the requirements indicated, now forms part of our legislation on unfair practices; it has the same status as the Foreign Trade Act.

Conflicts between both systems are resolved by the Act itself, which stipulates in Article 2 that its provisions are a matter of public policy and applicable throughout the Republic, without prejudice to the provisions of treaties to which Mexico is a party. Accordingly, in the event of any discrepancy between the GATT 1994 Agreements and the Foreign Trade Act, or if the latter were silent, the provisions of the Agreements would prevail. The Regulations under the Foreign Trade Act are lower in status than the GATT 1994 Agreements, for which reason the provisions of Agreements take precedence over those contained in the Regulations.

DETERMINATION OF INJURY AND THREAT OF INJURY

Cumulative assessment of imports

The WTO Agreements lay down three conditions for imports of a product subject to dumping to be cumulatively assessed. Thus, imports will be cumulatively assessed, among other things, if the margin of dumping or the amount of subsidization for each country is more than *de minimis*, as defined in Article 5.8 (AD Code) and Article 11.9 (SCM Code) respectively, and the volume of imports is not negligible. Although it takes into account the other aspects of the cumulative assessment of imports, the Mexican legislation says nothing about the margin being more than *de minimis* (Article 43 of the Act and Article 67 of the Regulations).

What criterion have the Mexican authorities applied for this purpose?

Reply

At the present time, the criteria established in Article 5.8 of the AD Agreement and Article 11.9 of the SCM Agreement concerning *de minimis* margins and volumes that are not negligible must be observed by the investigating authority for the reasons set out in the reply to Question 1, for investigations initiated after the entry into force of the Agreements. Previously, the investigating authority had not fixed any definite criterion in this regard.

Reciprocity of evidence of injury

Article 29 of the Mexican Act states that evidence of injury or threat of injury is required whenever the country of origin or source of the goods observes reciprocity. What specifically does this provision concerning reciprocity mean? Has this provision been applied on any occasion?

If so, how was it applied and against which country? Since the Codes say nothing about reciprocity for determining injury or threat of injury, how does this provision fit in with the Codes?

Reply

Reciprocity in the context of this Article means that Mexico grants the injury test to those countries which also grant it in investigations of Mexican products.

A clear example of this is the investigations regarding the Peoples Republic of China, against which some investigations were initiated in past years and it was not provided with the corresponding evidence of injury.

Finally, as Mexico is a WTO Member it is obliged to grant it to all other Members, for in conformity with the AD Agreement and the SCM Agreement, Members grant the injury test both for anti-dumping and for subsidies investigations.

Article 40 of the Mexican Act provides for the entire group of producers of the goods produced during the immediately preceding stage in the line of production of the like product to be taken as the "domestic industry" when all the national producers of the like product are related to the exporters or importers or are themselves importers of the product subject to dumping.

Since this contradicts the provisions of the Codes concerning the definition of domestic industry (Article 4.1 of the Anti-Dumping Code and Article 16.1 of the SCM Code), including the provisions concerning like goods (footnote 46 of the SCM Code), how will Mexico ensure that these provisions are not infringed?

Reply

The expression "domestic industry" in Article 40 of the Act must be interpreted in the light of the requirements both of the AD Agreement and the SCM Agreement, including, for example, footnote 46 of the SCM Agreement. Accordingly, the investigating authority will observe those provisions, which require the term "like product" to be interpreted as meaning a product which is identical, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.

INITIATION OF INVESTIGATION AND INVESTIGATION PROCEDURES

Ex officio initiation

The Mexican legislation does not expressly establish the parameters or circumstances within which an investigation may be initiated *ex officio* (Article 49 of the Act and Article 135 of the Regulations.)

In what circumstances or within which parameters may the Mexican authorities initiate an investigation without having received a written request from the domestic industry affected? Would the provisions of Article 5.6 (Anti-Dumping Code) and Article 11.6 (SCM Code) be taken into account?

Reply

For the Ministry to initiate an investigation without having received a written request from an interested party, special circumstances must exist and the investigating authority must obtain the requisite information to demonstrate that there are grounds to presume the existence of price discrimination or subsidies, injury to the domestic industry producing the product to be investigated, and a causal link.

Since application of the WTO Agreements is mandatory in our country for the reasons explained earlier, the investigating authority will have to take account of the terms of the Agreements in initiating an investigation *ex officio*.

Degree of support for or opposition to the application

Since the Mexican legislation says nothing about the situation in which more than 50 per cent of the domestic industry is opposed to the application, in accordance with Article 5.4 (Anti-Dumping Code) and Article 11.4 (SCM Code), please explain whether Mexico would take these provisions into account and decide not to initiate an investigation if more than 50 per cent of the domestic industry were opposed to the application.

Reply

The investigating authority would abide by the terms of the articles mentioned in the question because, as already stated, the provisions contained in the AD Agreement and SCM Agreement take precedence over Mexican legislation in the event of inconsistencies. If, in examining the support for or opposition to the application it is found that the application is not supported by more than 50 per cent of the domestic industry, the investigation will not be initiated, unless the enterprise or enterprises supporting the application account for at least 25 per cent of the total domestic production.

Notification of the exporting government

The Mexican legislation (Article 53 of the Act) says nothing about the obligation under Article 5.5 (Anti-Dumping Code) to notify the government of the exporting member that an application has been received, before proceeding to initiate an investigation.

How have the Mexican authorities fulfilled this obligation?

Reply

The Foreign Trade Act does not include an obligation to notify the exporter's government that an application for an investigation has been submitted before proceeding to initiate investigations. However, since the provisions of Agreements must be observed by the Mexican authorities for the reasons explained, this obligation is complied with.

Provision of text of application

The Mexican legislation does not mention the obligation to provide the whole text of the application to the authorities of the exporting member and the known-exporters, in accordance with Article 6.1.3 (Anti-Dumping Code) and Article 12.1.3 (SCM Code).

Has this obligation been fulfilled? Are the Mexican authorities in a position to fulfil it?

Reply

The Mexican authority has been following this practice, for Article 53 of Act sets out that the obligation to send the interested parties, together with the corresponding notification, a copy of the application submitted and any attached documents. Accordingly, it will continue this practice in the future.

MARGIN OF DUMPING, AMOUNT OF SUBSIDY AND NEGLIGIBLE IMPORT VOLUME

The Mexican legislation says nothing about the *de minimis* rule or the significance of the import volume, as mentioned in Article 5.8 (Anti-Dumping Code) and Article 11.9 (SCM Code). Do the Mexican authorities take into account this rule or some percentage for determining the margin of dumping, amount of the subsidy and whether the imports are negligible?

Reply

The Foreign Trade Act does not specify any particular percentage to determine whether the import volume is not negligible, nor does it contain any mention of the *de minimis* rule. However, the provisions of the GATT Agreements must be observed by the investigating authority, for they are part of our legislation, as explained earlier. Accordingly, the terms of Article 5.8 of the Anti-Dumping Code and Article 11.9 of the SCM Code will be observed.

PROVISIONAL MEASURES

Period after which provisional measures may be imposed

The Mexican legislation expressly specifies that a period of at least 45 days must elapse before provisional measures can be applied (Article 57.I of the Act). This contradicts Article 7.3 (Anti-Dumping Code) and Article 17.3 (SCM Code), which restrict the application of provisional measures to no sooner than 60 days from the date of initiation of the investigation.

How do the Mexican authorities ensure that this obligation is fulfilled?

Reply

The seeming contradiction between Article 57 of the Foreign Trade Act and Article 7.3 of the AD Agreement and Article 17.3 of the SCM Agreement does not exist, for the following reason: the Foreign Trade Act establishes in Article 3 that periods specified in days shall be understood as working days, whereas the periods established in the Code are in calendar days; therefore, both periods are very similar and, in fact, the period under Mexican legislation is longer than the one in the Code, for which reason, the two legislations are perfectly compatible.

UNDERTAKINGS

Article 112.3 of the Regulations mentions the possibility of restricting exports to the product investigated through undertakings, which contradicts the provisions of Article 8.1 (Anti-Dumping Code).

What measures have the Mexican authorities taken to prevent this arrangement from being converted into export quotas and how do they reconcile this provision with the provisions of the Code concerning the cessation of exports?

Reply

For the reasons explained in the reply to Question 1, in the event of inconsistencies between the AD Agreement and the Regulations under the Foreign Trade Act, the investigating authority must observe the terms of the Agreements. Therefore, in all matters pertaining to price undertakings, the authority must observe the terms of Article 8 of the AD Agreement.

IMPOSITION AND COLLECTION OF DUTIES

The Mexican Act provides for the possibility of imposing countervailing duties less than the margin of dumping or the amount of the subsidy (Article 62 of the Act) provided they are sufficient to discourage imports of goods in circumstances involving unfair international trade practices. However, the Regulations (Article 90) mention the same possibility but stipulate that the duty must be sufficient to eliminate the injury or threat of injury.

How have the Mexican authorities applied this provision, given that there is a contradiction between the Act itself and the Regulations and with the provisions of Article 9.1 (Anti-Dumping Code) and Article 19.2 (SCM Code)?

Reply

Article 90 of the Regulations does not contradict Article 62 of the Foreign Trade Act, but simply supplements it. Thus, it is not correct to state that there is an inconsistency between Article 62 of the Foreign Trade Act and Article 90 of the Regulations and Articles 9.1 of the AD Agreement and 19.2 of the SCM Agreement, since those Articles cover the same situation: the imposition of a countervailing duty lower than the margin of dumping if the duty is enough to eliminate the harm or threat of harm to domestic production. An example of this is the resolution on caustic soda published in the Diario Oficial de la Federación (Official Journal) on 12 July 1995.