

WORLD TRADE ORGANIZATION

RESTRICTED

G/ADP/W/70

G/SCM/W/79

25 October 1995

(95-3269)

Committee on Anti-Dumping Practices

Original: Spanish

Committee on Subsidies and Countervailing Measures

REPLIES TO QUESTIONS POSED BY AUSTRALIA¹ CONCERNING THE NOTIFICATION OF MEXICAN LAWS AND REGULATIONS²

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

AUSTRALIA

I. Anti-Dumping Duty Legislation of Mexico (G/ADP/N/1/MEX/1)

Reply to question 1.1

Article 133 of the Political Constitution of the United Mexican States establishes that the Constitution and the laws enacted by the Congress of the Union, and any treaties that are in accordance with the Constitution, concluded by the President of the Republic with the approval of the Senate, shall be the Supreme Law throughout the Union.

In Mexico treaties are applied directly, i.e. once promulgated, no further legislation is required for their application. They become directly incorporated into domestic law. Accordingly, the 1994 Anti-Dumping Agreement meets the requirement set out in the preceding paragraph and therefore has been incorporated in our legislation on unfair practices. As regards order of precedence, it is on the same level as the Foreign Trade Act, while the Regulations of the Foreign Trade Act rank lower, which means that the 1994 GATT Agreements override the provisions of the Regulations.

Reply to question (b)

Under Article 133 of the Constitution, the Anti-Dumping Agreement (an international treaty) and the Foreign Trade Act (issued under the Constitution) have the same status. However, where there is an inconsistency between them, the Anti-Dumping Agreement prevails, since Article 2 of the Act states that "the provisions of the present Act are public policy and shall apply throughout the Republic, without prejudice to the provisions of international treaties or agreements to which Mexico is a party". Accordingly, in the event of any inconsistency between the 1994 GATT Agreements and the Foreign Trade Act, or of any omission in the latter, the provisions of the Agreements would prevail. The

¹G/ADP/W/8-G/SCM/W/16.

²G/ADP/N/1/MEX/1 and G/SCM/N/1/MEX/1.

Regulations of the Foreign Trade Act have lower status than the 1994 GATT Agreements, and the latter therefore prevail over the Regulations.

Reply to question (c)

Yes, Mexico plans to amend the Foreign Trade Act and its Regulations to align them with the Anti-Dumping Agreement in order to eliminate certain inconsistencies and provide for some institutions specified for in the Agreements.

Reply to question (d)

The provisions of the Agreements may be invoked administratively by the investigating authority during the administrative investigation, and judicial review will rule as to whether the investigating authority applied the proper provisions.

Reply to question 2

The Ministry will examine the degree of support for, or opposition to, the application submitted by domestic producers of the like product, to determine whether producers accounting for more than 50 per cent of total domestic output support the application for the initiation of an anti-dumping investigation.

Reply to question 3

The apparent contradiction between Articles 53 of the Act and 7.3 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, 1994 does not exist for the following reasons. Article 3 of the Act establishes that where periods are expressed in days, the days shall be taken to mean working days, whereas the periods in the Agreement referred to calendar days. The periods in both are very similar and, in fact, the period in the domestic legislation is longer than the one in the Agreement. The two are therefore quite compatible.

Reply to question 4

The apparent contradiction between Articles 57 of the Act and 7.3 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, 1994 does not exist for the following reasons. Article 3 of the Act establishes that where periods are expressed in days, the days shall be taken to mean working days, whereas the periods in the Agreement referred to calendar days. The periods in both are very similar and, in fact, the period in the domestic legislation is longer than the one in the Agreement. The two are therefore quite compatible.

Reply to question 5

The Regulations and the Anti-Dumping Agreement are compatible, since Article 2.4.1 of the Anti-Dumping Agreement includes what is provided for in Article 59 of the Regulations. They are compatible in that they establish the general rule that the exchange rate to be used is the rate on the date of sale. However, Article 58 does not contain the other provisions on rate of exchange contained in Article 2.4.1 of the Anti-Dumping Agreement. For the reasons set out in replies 1 and 2, the investigating authority must comply with the Anti-Dumping Agreement and must therefore apply the provisions of Article 2.4.1.

Reply to question 6

Article 8 of the Anti-Dumping Agreement only allows price undertakings designed to ensure that the exporter revises his prices or puts an end to dumped exports in order to eliminate the harmful effect of dumping. Consequently, the investigating authority must comply with the provisions of the Article for the reasons stated above, and cannot accept undertakings in the form of quantitative restrictions on exports.

Reply to question 7

The investigating authority will have to comply with Article 3.3 of the Anti-Dumping Agreement for the cumulative assessment of the effects of imports in the cases provided for in that Article.

Countervailing Duty Legislation of Mexico (G/SCM/N/1/MEX/1)

Reply to question 1

The replies to questions 1-4 and 7 also apply in this case.

Reply to question 2

As explained in the reply to Question 1, the SCM Agreement, and specifically the definition of subsidy in Article 1, must be complied with by the investigating authority.

Reply to question 3

The Mexican authority will have to comply with the provisions of the SCM Agreement and the conditions in Annex 2 of the Agriculture Agreement, for the reasons set out in the reply to Question 1.