WORLD TRADE ORGANIZATION

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UNITED STATES – FINAL ANTI-DUMPING MEASURES ON STAINLESS STEEL FROM MEXICO

Request for the Establishment of a Panel by Mexico

The following communication, dated 2 October 2006, from the delegation of Mexico to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

Acting on instructions from the relevant Mexican Government authorities, I hereby request the establishment of a panel pursuant to Articles 4 and 6 of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article XXIII of the General Agreement on Tariffs and Trade of 1994 (GATT 1994) and Article 17 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade of 1994 (Anti-Dumping Agreement), regarding the issues listed hereunder. To that end, we have requested a meeting of the Dispute Settlement Body on 13 October 2006:

A. Consultations

On 26 May 2006, the Government of Mexico requested consultations with the Government of the United States of America (United States) under Articles 4 and 6 of the DSU, Article XXII:1 of the GATT 1994 and Article 17 of the Anti-Dumping Agreement, regarding the laws, regulations, administrative practices, measures and methodologies for calculating dumping margins, including zeroing practices.[1] The consultations were held on 15 June 2006. They allowed a better understanding of the parties' positions but failed to resolve the dispute.

B. Measures

In the anti-dumping proceedings carried out by the United States Department of Commerce (USDOC) the United States uses the following methodologies to calculate dumping margins:

In original investigations, USDOC first subdivides reported domestic market and export sales (also known as "normal value" sales), using a "control number", into a series of "averaging groups" on a model-specific basis. For each averaging group, it compares normal value and export price, and takes as the "dumping margin" the amount by which normal value exceeds export price. It then aggregates the results of the various model-based comparisons. In doing so, however, it adds up only "positive" results, disregarding (treating as zero, or "zeroing") the negative results (i.e. comparison results where the weighted-average export price for the model exceeds the weighted-average normal value). This practice is known as "model zeroing". Lastly, USDOC calculates the overall margin of dumping for the period of investigation by dividing the sum of the positive results (numerator) by the

[1] WT/DS344/1; G/L/778; G/ADP/D67/1 (1 June 2006).

total value of all the export sales used in the comparisons (including those with negative differences) (denominator).

In administrative reviews (i.e. when USDOC calculates the magnitude of dumping margins in order to assess an importer's final liability for payment of anti-dumping duties and the future percentage of the cash deposit), USDOC first subdivides the comparisons of domestic market sales (also known as "normal value" sales), using a "control number", into a series of monthly "averaging groups" on a model-specific basis. The comparison is usually between each reported individual export transaction and the average normal value of the identical or most similar contemporaneous monthly averaging group to which it corresponds. USDOC then adds together the results of these comparisons. In doing so, however, it adds only the "positive" results, disregarding (zeroing) the negative results (i.e. the results of a comparison where the individual export transaction price for the model exceeds the weighted-average normal value). This practice is known as "simple zeroing".

- In order to determine the amount of cash deposits, USDOC calculates an overall margin of dumping for the period of the administrative review for the "class or kind of merchandise" by dividing the sum of the positive results (numerator) by the total value of all the export sales used in the comparisons (including those with negative results) (denominator).

- In order to determine the amount of the anti-dumping duties to be assessed, USDOC usually calculates the importer-specific amount by dividing the sum of the positive differences (numerator) of each importer by the total customs-entered value of each importer's export sales.

This means that the United States calculates a margin of dumping and collects anti-dumping duties in excess of the dumping actually done by the companies concerned. The United States uses this methodology systematically in all administrative reviews.

The calculation methodologies described above are general measures applied on a prospective basis, and the United States implements them under the following laws, regulations, administrative procedures and measures:

- Section 736, 751, 771 (35)(A) and (B), and section 777(A)(c) and (d) of the Tariff Act of 1930, as amended;

- The Statement of Administrative Action that accompanied the Uruguay Round Agreements Act, H.R. Doc. No. 103-316, vol. I;

- USDOC regulations codified at Title 19 of the United States Code of Federal Regulations, sections 351.212(b), 351.414(c), (d) and (e);

- The Import Administration Anti-Dumping Manual (1997 edition), including the computer programme(s) to which it refers.

The calculation methodologies described above were applied by the United States respectively for determining the dumping margin in the original anti-dumping investigation and for the final results of the administrative reviews listed in the annex attached hereto.

C. Claims

1. As such claims

Mexico considers that the above-mentioned United States laws, regulations, administrative procedures, measures and methodologies for determining the dumping margin in original investigations and administrative reviews are inconsistent as such with the obligations of the United States under the Marrakesh Agreement Establishing the World Trade Organization (WTO Agreement), the GATT 1994 and the Anti-Dumping Agreement, and that they have resulted in the nullification or impairment of benefits accruing to Mexico under Article 3.8 of the DSU. In particular, Mexico considers that the United States' laws, regulations, administrative procedures, measures and methodologies for determining the margin of dumping in original investigations and in administrative reviews described above are, as such, inconsistent with at least the following provisions:

- With respect to original investigations and administrative reviews: Article 1 of the Anti-Dumping Agreement and Article VI:1 and VI:2 of the GATT 1994 as regards the zeroing methodologies and the consequent imposition and collection of anti-dumping duties;

- With respect to original investigations: Articles 2.1, 2.4, and 2.4.2 of the Anti-Dumping Agreement insofar as the comparison of normal value and export price is inconsistent with these provisions;

- With respect to administrative reviews: Articles 2.1 and 2.4 of the Anti-Dumping Agreement insofar as the comparison of normal value and export price is inconsistent with these provisions;

- With respect to administrative reviews: Article 9 (including but not limited to Article 9.3) of the Anti-Dumping Agreement insofar as the measures result in the imposition and collection of an anti-dumping duty in an amount in excess of the margin of dumping pursuant to Article 2 of the Anti-Dumping Agreement;

- With respect to original investigations and administrative reviews: Article XVI:4 of the WTO Agreement and Article 18 of the Anti-Dumping Agreement insofar as the United States has failed to take all necessary steps, of a general or particular character, to ensure the conformity of its laws, regulations, administrative procedures and measures with the provisions of the GATT 1994 and the Anti-Dumping Agreement.

2. As applied claims

In the original investigation and administrative reviews identified in the Annex attached hereto, the United States applied the laws, regulations, administrative procedures, measures and methodologies described above. Accordingly, Mexico considers that the determinations made by USDOC and the subsequent determination of anti-dumping duties and the future cash deposits are inconsistent with the following provisions of the Anti-Dumping Agreement, the GATT 1994 and the WTO Agreement:

- With respect to the original investigation: Article VI:1 and VI:2 of the GATT 1994, Articles 1, 2.1, 2.4, 2.4.2 and 18.4 of the Anti-Dumping Agreement, and Article XVI:4 of the WTO Agreement, for the reasons set forth above;

- With respect to the administrative reviews: Article VI:1 and VI:2 of the GATT 1994, Articles 1, 2.1, 2.4, 9 (including, but not limited to Article 9.3) and 18.4 of the Anti-Dumping Agreement, and Article XVI:4 of the WTO Agreement, for the reasons set forth above.

D. Request

Accordingly, Mexico respectfully requests that a panel be established pursuant to Article XXIII of the GATT 1994, Articles 4 and 6 of the DSU and Article 17 of the Anti-Dumping Agreement. The terms of reference shall be the terms provided in Article 7 of the DSU. Mexico asks that this request be placed on the agenda of the next meeting of the WTO Dispute Settlement Body.

ANNEX

United States –Final Anti-Dumping Measures on Stainless Steel from Mexico (Investigation and Order)

Specific Case No. 1

The measure

This case concerns the imposition of anti-dumping duties on certain stainless steel products from Mexico (USDOC case number A-201-822; 64 Federal Register (FR) 30790 of 8 June 1999 and 64 FR 40560 of 27 July 1999). The *ad valorem* rate of the anti-dumping duty was 30.85 per cent for ThyssenKrupp Mexinox S.A. de C.V. and all other companies.

Use of the zeroing methodology

In calculating the dumping margin in the original investigation of stainless steel from Mexico, USDOC utilized the zeroing methodology. It thus disregarded results where the difference between the applicable normal value and the export price was negative, i.e. where normal value was lower than export price.

Dumping margin without zeroing

By using the above methodology, USDOC calculated a dumping margin of 30.85 per cent. Had it not used the zeroing methodology (i.e. had the comparison of the negative results been included), the dumping margin would have been lower. The use of zeroing increased the exposure of ThyssenKrupp Mexinox S.A. de C.V. and led to the imposition of excessive anti-dumping duties through the collection of excessive estimated duty deposits.

United States –Final Anti-Dumping Measures on Stainless Steel from Mexico

(First Administrative Review)

Specific Case No. 2

The measure

This case concerns the imposition of anti-dumping duties on stainless steel from Mexico (USDOC case number A-201-822; 67 FR 6490 of 12 February 2002 and 67 FR 15542 of 2 April 2002). The review period was from January 1999 to June 2000 and the *ad valorem* rate of the anti-dumping duties was 2.28 per cent for ThyssenKrupp Mexinox S.A. de C.V.

Use of the zeroing methodology

In calculating the dumping margin in the first administrative review of stainless steel from Mexico, USDOC utilized the simple zeroing methodology, thereby disregarding results where the difference between the applicable normal value and the export price was negative, i.e. where normal value was lower than export price.

Dumping margin without zeroing

By using the above methodology, USDOC calculated a dumping margin of 2.28 per cent. Had it not used the simple zeroing methodology (i.e. had the comparison of the negative results been included), the dumping margin would have been 6.02 per cent, and no anti-dumping duties would have been collected.

United States –Final Anti-Dumping Measures on Stainless Steel from Mexico (Second Administrative Review)

Specific Case No. 3

The measure

This case concerns the imposition of anti-dumping duties on certain stainless steel products from Mexico (USDOC case number A-201-822; 68 FR 6889 of 11 February 2003 and 68 FR 13686 of 20 March 2003). The review period was from July 2000 to June 2001, and the *ad valorem* rate of the anti-dumping duties was 6.15 per cent for ThyssenKrupp Mexinox S.A. de C.V.

Use of the zeroing methodology

In calculating the dumping margin in the second administrative review of stainless steel from Mexico, USDOC utilized the simple zeroing methodology, thereby disregarding results where the difference between the applicable normal value and the export price was negative, i.e. where normal value was lower than export price.

Dumping margin without zeroing

By using the above methodology, USDOC calculated a dumping margin of 6.15 per cent. Had it not used the simple zeroing methodology (i.e. had the comparison of the negative results been included), the dumping margin would have been 1.83 per cent, and lower anti-dumping duties would have been collected.

United States –Final Anti-Dumping Measures on Stainless Steel from Mexico (Third Administrative Review)

Specific Case No. 4

The measure

This case concerns the imposition of anti-dumping duties on stainless steel from Mexico (USDOC case number A-201-822; 69 FR 6259 of 10 February 2004). The review period was from July 2001 to June 2002, and the *ad valorem* rate of the anti-dumping duties was 7.43 per cent for ThyssenKrupp Mexinox S.A. de C.V.

Use of the zeroing methodology

In calculating the dumping margin in the third administrative review of the anti-dumping investigation concerning certain stainless steel products from Mexico, USDOC utilized the simple zeroing methodology, thereby disregarding results where the difference between the applicable normal value and the export price was negative, i.e. where normal value was lower than export price.

Dumping margin without zeroing

By using the above methodology, USDOC calculated a dumping margin of 7.43 per cent. Had it not used the simple zeroing methodology (i.e. had the comparison of the negative results been included), the dumping margin would have been 4.96 per cent, and lower anti-dumping duties would have been collected.

United States –Final Anti-Dumping Measures on Stainless Steel from Mexico (Fourth Administrative Review)

Specific Case No. 5

The measure

This case concerns the imposition of anti-dumping duties on stainless steel from Mexico (USDOC case number A-201-822; 70 FR 3677 of 26 January 2005). The review period was from July 2002 to June 2003, and the *ad valorem* rate of the anti-dumping duties was 5.42 per cent for ThyssenKrupp Mexinox S.A. de C.V.

Use of the zeroing methodology

In calculating the dumping margin in the fourth administrative review of stainless steel from Mexico, USDOC utilized the simple zeroing methodology, thereby disregarding results where the difference between the applicable normal value and the export price was negative, i.e. where normal value was lower than export price.

Dumping margin without zeroing

By using the above methodology, USDOC calculated a dumping margin of 5.42 per cent. Had it not used the zeroing methodology (i.e. had the comparison of the negative results been included), the dumping margin would have been 1.54 per cent, and lower anti-dumping duties would have been collected.

United States –Final Anti-Dumping Measures on Stainless Steel from Mexico (Fifth Administrative Review)

Specific Case No. 6

The measure

This case concerns the imposition of anti-dumping duties on stainless steel from Mexico (USDOC case number A-201-822; 70 FR 73444 of 12 December 2005). The review period was from

July 2003 to June 2004, and the *ad valorem* rate of the anti-dumping duties was 2.96 per cent for ThyssenKrupp Mexinox S.A. de C.V.

Use of the zeroing methodology

In calculating the dumping margin in the fifth administrative review of stainless steel from Mexico, USDOC utilized the simple zeroing methodology, thereby disregarding results where the difference between the applicable normal value and the export price was negative, i.e. where normal value was lower than export price.

Dumping margin without zeroing

By using the above methodology, USDOC calculated a dumping margin of 2.96 per cent. Had it not used the zeroing methodology (i.e. had the comparison of the negative results been included), the dumping margin would have been 4.57 per cent, and no anti-dumping duties would have been collected.