

**GUATEMALA – ANTI-DUMPING
INVESTIGATION REGARDING PORTLAND
CEMENT FROM MEXICO**

Notification of an Appeal by Guatemala under
paragraph 4 of Article 16 of the Understanding on Rules
and Procedures Governing the Settlement of Disputes (DSU)

The following notification, dated 4 August 1998, sent by Guatemala to the Dispute Settlement Body (DSB), is circulated to Members. This notification also constitutes the Notice of Appeal, filed on the same day with the Appellate Body, pursuant to the *Working Procedures for Appellate Review*.

Pursuant to Article 16.4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and Rule 20 of the Working Procedures for Appellate Review, the Government of Guatemala hereby notifies its decision to lodge an appeal with the Standing Appellate Body in connection with certain issues of law in the Report of the Panel on "Guatemala – Anti-Dumping Investigation Regarding Portland Cement from Mexico" (WT/DS60/R), as well as certain legal interpretations developed by the Panel.

Guatemala requests the Standing Appellate Body to review the following errors of law and erroneous legal interpretations developed by the Panel in relation to the DSU, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the "Anti-Dumping Agreement" or "ADP Agreement") and the General Agreement on Tariffs and Trade 1994 (GATT 1994).

- A. In concluding that the dispute was properly before it and that it had jurisdiction to consider Mexico's claims, the panel:
1. Erred in law in finding that, under Articles 4, 6, 7 and 19 of the DSU and Articles 1 and 17 of the ADP Agreement, it had jurisdiction to consider Mexico's claims that the initiation of the investigation conducted by Guatemala violated Article 5.3 and Article 5.5 of the ADP Agreement.
 2. Erred in law in its finding that the requirements of Articles 4 and 6 of the DSU are not applicable to consultation or dispute settlement as provided for in Article 17 of the ADP Agreement.
 3. Erred in law in finding that specific aspects of the initiation and/or conduct of the anti-dumping investigation, in themselves, are a matter that can be examined under Article 17 of the ADP Agreement, regardless of whether a specific anti-dumping measure is in dispute, which is a violation of Articles 4, 6, 7 and 19 of the DSU and Articles 1 and 17 of the ADP Agreement.

4. Erred in law because it considered claims in which it is argued that the initiation of the investigation violates Article 5.3 and Article 5.5 of the ADP Agreement, yet the initiation cannot be considered in the context of the final measure, which lies outside its terms of reference, nor in the context of the provisional measure, which the Panel itself declined to consider, just as it declined to consider our preliminary objections to the provisional measure.
- B. In making recommendations and suggesting how to apply them without identifying the relevant anti-dumping measure, and denying Guatemala its right to determine the appropriate means to do so, the panel:
1. Erred in law, violating Article 19.1 of the DSU by recommending - in the English version of the Report (the Panel's working language) - that Guatemala should bring its "action", and not a specific "measure", into conformity with its obligations under Article 5.3 and Article 5.5 of the ADP Agreement.
 2. Erred in law and gave an erroneous interpretation of Article 19.1 of the DSU by making a recommendation concerning an "action".
 3. Erred in law and in its interpretation of Article 19.1 of the DSU by suggesting that, for the purposes of implementing its recommendations, Guatemala should revoke the anti-dumping measure, when the final measure lies outside the Panel's terms of reference and its Report contains only a recommendation regarding an "action".
- C. In concluding that Guatemala did not rebut the presumption that the alleged delay in the notification to Mexico required under Article 5.5 of the Anti-Dumping Agreement nullified or impaired the benefits accruing to Mexico and in concluding that the alleged delay did not constitute a "harmless error", the panel:
1. Erred in law and in its interpretation of Article 3.8 of the DSU by concluding that Guatemala did not rebut the presumption that the alleged delay in the notification required under Article 5.5 of the Anti-Dumping Agreement nullified or impaired the benefits accruing to Mexico. The Panel's interpretation of DSU Article 3.8 of the DSU is erroneous, since it converts the presumption mentioned in the said Article into something irrefutable .
 2. Erred in law and in its interpretation of Article 3.2 of the DSU and Article 17.6 of the Anti-Dumping Agreement by failing to applying the "harmless error" principle – in accordance with the customary rules of public international law – and to conclude that the alleged delay in notifying Mexico was harmless.
 3. Erred in law by concluding that Guatemala violated the Anti-Dumping Agreement and by recommending that Guatemala should bring its "action" into conformity with Article 5.5, without taking into account that any alleged delay in notification did not cause any injury whatsoever to Mexico.
 4. Erred in law by not applying the standard of review established in Article 17.6(ii) of the Anti-Dumping Agreement in respect of Guatemala's permissible interpretation of that Article.

- D. In concluding that Guatemala violated Article 5.3 of the Anti-Dumping Agreement by initiating the investigation without sufficient evidence, the panel:
1. Erred in law and in its interpretation of Article 5 of the Anti-Dumping Agreement by concluding that Guatemala failed to comply with the requirements of Article 5.3 of the Anti-Dumping Agreement in initiating the investigation.
 2. Erred in law by not applying the standard of review established in Article 17.6(ii) of the Anti-Dumping Agreement in its interpretation of Articles 2, 3, 5 and 12 of the Anti-Dumping Agreement and by rejecting Guatemala's permissible interpretation of those Articles.
 3. Erred in law by not applying the standard of review established in Article 17.6(i) of the Anti-Dumping Agreement in its assessment of the facts as to whether Guatemala complied with Article 5.3 of the Anti-Dumping Agreement. The Panel invalidated Guatemala's assessment that it had sufficient evidence, and replaced it with its own assessment of that evidence.
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