

**UNITED STATES – ANTI-DUMPING MEASURES ON OIL COUNTRY  
TUBULAR GOODS (OCTG) FROM MEXICO**

Recourse to Article 21.5 of the DSU by Mexico

*Request for Consultations*

The following communication, dated 21 August 2006, from the delegation of Mexico to the delegation of the United States and to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 21.5 of the DSU.

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Mexico hereby requests the United States to enter into consultations under Articles 4 and 21.5 of the *Understanding on Rules and Procedures Governing the Settlement of Disputes* (DSU), and paragraph 1 of the *Agreement between Mexico and the United States Regarding Procedures under Articles 21 and 22 of the Dispute Settlement Understanding*<sup>1</sup> with respect to the disagreement as to the existence or consistency with the covered agreements of the measures taken to comply with the recommendations and rulings of the Dispute Settlement Body (DSB) in *United States – Anti-Dumping Measures on Oil Country Tubular Goods (OCTG) from Mexico* (WT/DS282).

**1. Background**

On 28 November 2005, the DSB adopted the Appellate Body Report and the Panel Report, as modified by the Appellate Body, in this dispute. The resulting DSB rulings related to the "likelihood of dumping" determination by the US Department of Commerce (USDOC) in the sunset review of the anti-dumping duty order on OCTG from Mexico. The Panel found that the USDOC's likelihood of dumping determination in the sunset review for OCTG from Mexico was inconsistent with Article 11.3 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the Anti-Dumping Agreement).<sup>2</sup> The Panel's findings in this regard were not appealed by the United States.

The United States and Mexico mutually agreed, pursuant to Article 21.3(b) of the DSU, that the reasonable period of time (RPT) for the United States to implement the recommendations and rulings of the DSB would be six months, expiring on 28 May 2006.<sup>3</sup>

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<sup>1</sup> WT/DS282/12.

<sup>2</sup> Panel Report, *United States – Anti-Dumping Measures on Oil Country Tubular Goods (OCTG) from Mexico*, WT/DS282/R, adopted on 28 November 2005, paragraph 8.2.

<sup>3</sup> *United States – Anti-Dumping Measures on Oil Country Tubular Goods (OCTG) from Mexico*, Agreement under Article 21.3(b) of the DSU, 17 February 2006, WT/DS282/11.

On 9 June 2006, subsequent to the expiration of the RPT, the USDOC issued a Determination under Section 129(b) of the Uruguay Round Agreements Act that purported to bring the United States into compliance with the recommendations and rulings of the DSB and with the WTO obligations of the United States.<sup>4</sup>

Mexico considers that the United States has failed to implement the recommendations and rulings of the DSB, and is in breach of its WTO obligations, for the following reasons:

## **2. The United States did not implement the recommendations and rulings of the DSB**

The USDOC issued the Section 129 Determination on 9 June 2006, i.e. subsequent to 28 May 2006, the agreed expiration date of the RPT. Besides the fact that the USDOC failed to issue its implementation decision within the RPT and unduly maintained an anti-dumping order, in Mexico's view, the USDOC's Section 129 Determination and the continued existence of the anti-dumping duty order on OCTG from Mexico are inconsistent with the obligations of the United States under the Anti-Dumping Agreement.<sup>5</sup> The USDOC did not properly establish a factual basis or objectively assess the facts that were before it as to whether dumping would be likely to continue or recur. USDOC's conclusions are not based on positive evidence, and the evidence developed does not support a WTO-consistent determination that dumping would be likely to continue or recur consistent with the requirements of Article 11 of the Anti-Dumping Agreement:

- The United States failed to comply with the strict conditions for the maintenance of the anti-dumping duty order beyond five years, in violation of its obligations under Article 11.1 and 11.3 of the Anti-Dumping Agreement;
- The USDOC's inference of likely dumping based on the decline of Mexican OCTG imports subsequent to the entry into force of the anti-dumping duty order, and the USDOC's reliance on the Mexican OCTG volume decline to support the Section 129 Determination, are inconsistent with US obligations under Article 11.3 of the Anti-Dumping Agreement;
- The USDOC failed to rely on positive evidence and did not objectively assess the facts in making findings and reaching conclusions regarding the Mexican exporters Tubos de Acero de Mexico S.A. (TAMSA) and Hylsa S.A. de C.V. (Hylsa), in violation of US obligations under Article 11.3. These violations included:
  - o The USDOC's failure to ascribe probative value to TAMSA's three consecutive zero dumping margins for the purposes of the Section 129 determination, which is inconsistent with US obligations under Article 11.3 of the Anti-Dumping Agreement;

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<sup>4</sup> Memorandum to David M. Spooner, Assistant Secretary for Import Administration from Stephen J. Claeys, Deputy Assistant Secretary for AD/CVD Operations, *Section 129 Determination: Final Results of Sunset Review, Oil Country Tubular Goods from Mexico*, A-201-817, 9 June 2006.

<sup>5</sup> Mexico notes that nearly identical arguments and reasoning that USDOC has used to support the Section 129 Determination have so far been rejected three times by a NAFTA panel reviewing successive remand determinations issued by USDOC in the context of a NAFTA proceeding with respect to USDOC's sunset determination. See Panel Decision and Remand Order, *Oil Country Tubular Goods from Mexico*, USA-MEX-2001-1904-03, 11 February 2005, ("First NAFTA Panel Decision and Remand Order"); Panel Decision and Remand Order, *Oil Country Tubular Goods from Mexico*, USA-MEX-2001-1904-03, 3 February 2006 ("Second NAFTA Panel Decision and Remand Order"); Panel Decision and Remand Order, *Oil Country Tubular Goods from Mexico*, USA-MEX-2001-1904-03, 28 July 2006 ("Third NAFTA Panel Decision and Remand Order").

- o The USDOC's findings regarding the "other factors" identified by TAMSA concerning the impact that the 1994 peso devaluation and TAMSA's long-term US dollar denominated debt had on the margin of dumping during the original investigation, and hence whether the original dumping margin and these two factors could be probative of the likelihood of recurrence of dumping, which are inconsistent with US obligations under Article 11.3 of the Anti-Dumping Agreement;

Other violations of the WTO obligations of the United States include:

- The USDOC's reliance as purported "evidence of continued dumping" on the preliminary determination that Hylsa was dumping at 1.47 per cent from the fourth administrative review of the anti-dumping order on OCTG from Mexico. The 1.47 per cent margin was calculated by the USDOC using the practice known as "zeroing,"<sup>6</sup> which is inconsistent with the United States' WTO obligations. In relying on a margin calculated through a "zeroing" methodology, and by relying on a finding of "dumping" by Hylsa after USDOC had already issued a determination that Hylsa was not dumping, the USDOC acted inconsistently with US obligations under Articles 2, 9, and 11 of the Anti-Dumping Agreement. Additionally, in relation to the pending NAFTA litigation to which the USDOC makes reference, the Section 129 Determination does not reflect the fact that USDOC has calculated a zero dumping margin in its redetermination on remand in connection with that NAFTA litigation.<sup>7</sup>
- The decision of the US Trade Representative not to direct the USDOC to "implement" the Section 129 Determination, pursuant to Section 129(b)(4) of the Uruguay Round Agreements Act, which is inconsistent with US obligations under Article 13 of the Anti-Dumping Agreement. In failing to implement the Section 129 Determination, the United States has denied the Mexican respondents an opportunity for judicial review in US courts of the determination purportedly providing the basis for the United States to continue the imposition of anti-dumping duties on OCTG from Mexico.

As a consequence of the violations enumerated above, the United States has failed to bring its measures into conformity with its WTO obligations within the meaning of Article 18.4 of the Anti-Dumping Agreement and Article XVI:4 of the Marrakesh Agreement Establishing the WTO. The United States has also breached Articles 1 and 18.1 of the Anti-Dumping Agreement.

Mexico reserves all of its WTO rights in respect of the purported compliance by the United States with its obligations in this dispute. It also reserves the right to raise additional claims during the course of consultations and to take any other action under the DSU.

Mexico looks forward to receiving the reply of the United States to this request and to fixing a mutually convenient date for consultations.

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<sup>6</sup> This rate was then lowered to 0.79 per cent twelve days after the sunset determination, and subsequently determined to be zero per cent following the remand proceeding conducted pursuant to a NAFTA panel ruling. See NAFTA Panel Decision and Remand Order, *Oil Country Tubular Goods from Mexico*, USA-MEX-2001-1904-05, 27 January 2006.

<sup>7</sup> See U.S. Department of Commerce, *Redetermination on Remand, In the Matter of: Oil Country Tubular Goods from Mexico; Final Results of Antidumping Duty Review and Determination Not to Revoke*, 27 April 2006.