WORLD TRADE ORGANIZATION

WT/DS132/2
14 October 1998

(98-3944)

Original: English

MEXICO - ANTI-DUMPING INVESTIGATION OF HIGH-FRUCTOSE CORN SYRUP (HFCS) FROM THE UNITED STATES

Request for the Establishment of a Panel by the United States

The following communication, dated 8 October 1998, from the Permanent Mission of the United States to the Chairman of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

On 4 September 1997, the United States requested consultations with the Government of Mexico (Mexico) pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU) and Article 17.3 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (the "Antidumping Agreement") regarding the 25 June 1997 provisional antidumping measure, "Resolución Preliminar de la Investigación Antidumping Sobre las Importaciones de Jarabe de Maiz de Alta Fructosa, Mercancía Clasificada en las Fracciones Arancelarias 1702.40.99 y 1702.60.01 de la Tarifa de la Ley del Impuesto General de Importación, Originarias de Los Estados Unidos de América, Independientemente del País de Procedencia" (preliminary resolution of dumping and injury imposing provisional antidumping measures on imports of high-fructose corn syrup grades 42 and 55 (HFCS) from the United States (also referred to as "provisional measure" or "preliminary determination")), including actions preceding this measure, by the Secretariat of Commerce and Industrial Development of the Government of Mexico (SECOFI). The United States and Mexico held consultations on 8 October 1997.

On 8 May 1998, the United States requested consultations with Mexico pursuant to Article 4 of the DSU and Article 17.3 of the Antidumping Agreement regarding SECOFI's 23 January 1998 final antidumping measure, "Resolución Final de la Investigación Antidumping Sobre las Importaciones de Jarabe de Maíz de Alta Fructosa, Mercancía Clasificada en las Fracciones Arancelarias 1702.40.99 y 1702.60.01 de la Tarifa de la Ley del Impuesto General de Importación, Originarias de Los Estados Unidos de América, Independientemente del País de Procedencia" (final resolution of dumping and injury, levying final antidumping duties on imports of HFCS grades 42 and 55 from the United States (also referred to as "final measure" or "final determination")), including actions by SECOFI preceding this measure. The United States and Mexico held consultations on 12 June 1998.

The consultations held on 8 October 1997 and 12 June 1998 did not result in a mutually agreeable solution.

As summarized below pursuant to Article 6 of the DSU and Article17 of the Antidumping Agreement, the United States considers that SECOFI's final antidumping measure, including actions

by SECOFI preceding this measure, is inconsistent with the obligations of Mexico under Articles 1, 2, 3, 4, 5, 6, 7, 10 and 12 of the Antidumping Agreement and Article VI of GATT 1994.

(a) SECOFI's final determination states that, prior to initiating its antidumping investigation, SECOFI knew of the existence of HFCS production in Mexico. However, SECOFI's public notice of initiation of the antidumping investigation of imports of HFCS from the United States (the "initiation notice") states that the Secretary resolved to initiate this antidumping investigation on the basis of the allegation of the National Sugar and Alcohol Industries Chamber (the "Sugar Chamber") that HFCS was not produced in Mexico during the period relevant for this investigation. In failing to provide the information that it knew, prior to initiation, that HFCS was being produced in Mexico, SECOFI's initiation notice did not meet the requirements of the Antidumping Agreement to provide adequate information summarizing the factors on which the allegation of threat of material injury was based.

(b) Since, contrary to its initiation notice, SECOFI knew there was HFCS production in Mexico, SECOFI failed to provide, either in its initiation notice, or in any contemporaneous document available to interested parties, information explaining its basis for treating sugar as the domestic like product. Moreover, SECOFI failed to fulfil its obligations to determine that the Sugar Chamber's application had been made by or on behalf of the relevant domestic industry and to determine that there was sufficient evidence to justify initiation of an investigation.

(c) The evidence available to SECOFI as to the alleged threat of material injury was insufficient to justify initiation. The Sugar Chamber's application failed to provide such information as was reasonably available to the Sugar Chamber on relevant factors and indices having a bearing on the alleged threatened impact of allegedly dumped HFCS imports on the state of the Mexican sugar industry. Because of the Sugar Chamber's failure to submit such information, its application did not contain required information concerning either the likely impact of the allegedly dumped imports on the Mexican sugar industry or the causal link between the allegedly dumped imports and the alleged threatened material injury.

(d) In its final determination of threat of material injury, SECOFI failed to examine the likely impact of dumped HFCS imports on the Mexican sugar industry as a whole, and instead examined the likely impact of such imports only on a portion of the domestic industry. If Mexico should claim that SECOFI concluded in the final determination that the part of the domestic sugar industry serving the industrial market and the part serving the household market were separate industries, this conclusion was not stated in the final determination, and was contrary to the findings and conclusions on which SECOFI based its definition of the domestic like product in the final determination.

(e) In its final determination of threat of material injury, SECOFI failed to examine the likely impact of dumped imports on the domestic industry and to evaluate several relevant economic factors and indices having a bearing on the state of the industry.

(f) SECOFI's basis for concluding that there was a likelihood of substantially increased importation or that further dumped imports were imminent was inconsistent with its reasons for declining to resolve whether Mexican soft drink bottlers had entered into a restraint agreement with the Mexican sugar industry.

(g) SECOFI's application of provisional antidumping measures exceeded the time period provided in the Antidumping Agreement for the application of provisional measures. SECOFI imposed provisional antidumping measures pursuant to its 25 June 1997 public notice thereof, which remained in place until the effective date of its final determination, published on 23 January 1998.

(h) SECOFI did not, in finding threat of material injury in the final determination, conclude that the effect of the dumped imports would, in the absence of provisional measures, have led to a determination of injury. Consequently, Mexico's failure to release in an expeditious manner the bonds posted by respondent U.S. exporters is inconsistent with the Antidumping Agreement.

(i) SECOFI did not properly analyze whether there was a difference in level of trade between Archer Daniel Midland's (ADM) constructed export price and its normal value. ADM requested that SECOFI adjust its normal value in order to make due allowance for this difference, and provided SECOFI with information and argumentation to substantiate its claim. SECOFI summarily rejected ADM's request, finding that there was no difference in level of trade, without ever requesting from ADM the kind of evidence it required. Thus, SECOFI failed to indicate to ADM the information necessary to ensure a fair comparison. SECOFI also failed to provide its reasons for rejecting ADM's claim in its final determination.

(j) With respect to determining whether to apply a lesser duty, SECOFI failed to provide requisite factual and legal analysis and the reasons supporting that conclusion in the final determination, and appears to have engaged in a practice of creating documents which it chose not to disclose and which were designated "government confidential". The Antidumping Agreement requires that a final determination imposing a definitive duty contain, "all relevant information on the matters of fact and law and reasons which have led to the imposition of final measures ... [including] the reasons for the acceptance or rejection of relevant arguments or claims made by the exporters and importers".

(k) During its investigation, SECOFI failed to provide respondent U.S. exporters a full opportunity for the defense of their interests, e.g. by failing to provide timely opportunities to review relevant information and by failing to inform respondent U.S. exporters of the essential facts under consideration. Further, SECOFI failed to satisfy itself as to the accuracy of information provided by the Sugar Chamber.

Accordingly, the United States respectfully requests that, pursuant to Article 6 of the DSU, Article XXIII:2 of GATT 1994 and Article 17 of the Antidumping Agreement, a panel be established at the next meeting o the Dispute Settlement Body to examine and find that Mexico's final antidumping measure, including actions preceding this measure, were inconsistent with its obligations under the Antidumping Agreement and Article VI of GATT 1994.

_____