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

Request for Consultations by Mexico

The following communication, dated 18 February 2003, from the Permanent Mission of Mexico to the Permanent Mission of the United States and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

Acting on instructions from the relevant Mexican Government authorities, I hereby request the holding of consultations with the Government of the United States, pursuant to Article 4 of the WTO Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article XXII of the General Agreement on Tariffs and Trade 1994 (GATT 1994) and Article 17 of the Anti-Dumping Agreement (ADA), in relation to the measures listed hereunder:

The following determinations by the United States Department of Commerce (the Department) and the United States International Trade Commission (the Commission):

- Oil country tubular goods from Mexico: Final results of sunset review, 66 Fed. Reg. 14131 (9 March 2001) ("sunset review by the Department");

- Oil country tubular goods from Argentina, Italy, Japan, Korea and Mexico: 66 Fed. Reg. 35997 (10 July 2001) ("sunset review by the Commission");

- Oil country tubular goods from Mexico and other countries: Final determination to continue applying anti-dumping duties, 66 Fed. Reg. 38630 (25 July 2001); and

- Oil country tubular goods from Mexico: Final results of anti-dumping duty administrative review – 1 August 1998 – 31 July 1999, 66 Fed. Reg. 15832 (21 March 2001) (Final results of the fourth administrative review).

The following US laws, regulations and administrative practices:

- Sections 751 and 752 of the *Tariff Act* of 1930, codified at Title 19 of the *United States Code*, sections 1675 and 1675a; and the United States Statement of Administrative Action accompanying the Uruguay Round Agreements Act;

- The Department's Policies regarding the conduct of sunset reviews of anti-dumping and countervailing duties; *Policy Bulletin*, 63 Federal Register 18871 (16 April 1998);

- The Department's regulations for sunset reviews of anti-dumping duties, codified at Title 19 of the *United States Code of Federal Regulations*, Section 351.218;

- The Commission's regulations for sunset reviews of anti-dumping duties, codified at Title 19 of the *United States Code of Federal Regulations*, Section 207.60-69 (Subpart F); and

- The Department's regulations for administrative review, including those codified at Title 19 of the *United States Code of Federal Regulations*, Sections 351.213, 351.221 and 351.222.

As explained hereunder, Mexico considers that these measures are contrary to the obligations of the United States under the Marrakesh Agreement Establishing the World Trade Organization (the WTO Agreement) and the Agreements annexed thereto, and that they have resulted in the nullification or impairment of benefits directly or indirectly accruing to Mexico under this Agreement. In particular, Mexico considers that the US anti-dumping measures are inconsistent with the following provisions:

- Articles 1, 2, 3, 6, 11 and 18 of the ADA;

- Articles VI and X of the GATT 1994;

- Article XVI:4 of the WTO Agreement.

Mexico's claims are listed as follows:

A. With regard to the sunset review of the anti-dumping duties conducted by the Department (66 Fed. Reg. 14131 (9 March 2001)) and their continued application pursuant to the final determination to maintain the anti-dumping duties (66 Fed. Reg. 38630 (25 July 2001)):

1. The Department misapplied the "would be likely to lead" standard in its determination as to whether termination of the anti-dumping measure "would be likely to lead to continuation or recurrence of dumping", in a manner inconsistent with Articles 2 and 11.3 of the ADA.

2. The standard used by the Department for determining whether termination of anti-dumping duties would be likely to lead to continuation or recurrence of dumping relies on a presumption in favour of maintaining the anti-dumping duties, in a manner inconsistent with Articles 2 and 11.3 of the ADA.

B. With regard to the sunset review of the anti-dumping duties conducted by the Commission (66 Fed. Reg. 35997 (10 July 2001)), and their continued application pursuant to the final determination to maintain anti-dumping duties (66 Fed. Reg. 38630 (25 July 2001)):

1. The Commission applied the "would be likely to lead" standard in determining whether termination of the anti-dumping measure "would be likely to lead to continuation or recurrence of injury ...", in a manner inconsistent with Articles 3 and 11.3 of the ADA.

2. The Commission failed to conduct an "objective examination" of the record based on "positive evidence" when it determined that revocation of the anti-dumping measure "would

be likely to lead to continuation or recurrence of injury …". Hence the Commission acted inconsistently with Articles 3.1, 6.6, 11.3 and 11.4 of the ADA.

3. The Commission failed to base its determination of injury on the "effects of dumping" on the domestic industry and to consider whether injury was caused by "any known factors other than the dumped imports", in a manner inconsistent with Articles 3.5 and 11.3 of the ADA.

4. The cumulative assessment of injury carried out by the Commission is therefore inconsistent with Articles 3.3 and 11.3 of the ADA.

5. The United States applied the aforementioned laws, regulations and administrative provisions to the sunset review of OCTG from Mexico in a manner inconsistent with Articles 3 and 11.3 of the ADA, by following the standards laid down in these laws, regulations and administrative provisions, under which the Commission is required to determine whether injury would be likely to continue or recur "within a reasonably foreseeable time" and to "consider that the effects of revocation or termination may not be imminent, but may manifest themselves only over a longer period of time".

C. As regards the Department's determination not to revoke the anti-dumping measure in the fourth administrative review of oil country tubular goods coming from Mexico:

1. The Department's determination not to revoke the anti-dumping measure in the fourth administrative review was inconsistent with the United States' obligations under Articles 2, 6 and 11 of the ADA, insofar as an anti-dumping measure is to be terminated once it has been demonstrated that the measure is not necessary to offset dumping.

2. The Department's decision to impose new conditions on *Tubos de Acero de México, S.A. de C.V.* (*Tamsa*) through retroactive application without prior notice has imposed new requirements on *Tamsa* in order for the anti-dumping measures to be revoked, which is inconsistent with Articles X:2 and X:3(a) of the GATT 1994 and Article 11.2 of the ADA.

3. The methodology used by the Department, based on the practice known as "zeroing", which was applied to a negative dumping margin calculated for one of the products exported by *Hylsa* and which led to the application of a dumping margin of 0.79 per cent, is inconsistent with Articles 2.4 and 11.2 of the ADA.

D. The aforementioned US laws, regulations and administrative provisions compel both the Department and the Commission to act inconsistently with the United States' obligations under the WTO, or prevent the Department or the Commission from acting in conformity with the United States' obligations under the WTO, particularly in the determination of dumping. These laws, regulations and administrative provisions are therefore inconsistent *per se* with the United States' obligations under Articles 1, 2, 11 and 18 of the ADA and Article VI of the GATT 1994. Moreover, insofar as these laws, regulations and administrative provisions are inconsistent with the above provisions, they are inconsistent with Article 18.4 of the ADA and Article XVI:4 of the WTO Agreement.

The above claims, viewed cumulatively, show that the United States maintained an anti-dumping duty longer than and beyond the extent necessary to counteract dumping, and in circumstances neither contemplated by nor consistent with the ADA, thereby acting inconsistently with Article VI of the GATT 1994 and Article 11.1 of the ADA. They likewise demonstrate that the

United States failed to administer its laws, regulations and administrative provisions in a uniform, impartial and reasonable manner, thereby acting inconsistently with Article X:3(a) of the GATT 1994.

Mexico reserves the right to raise further factual and legal claims during the course of the consultations. It looks forward to receiving the US Government's response to this request in order to set a mutually convenient date for consultations.