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

Request for Consultations by the United States

The following communication, dated 8 May 1998, from the Permanent Mission of the United States to the Permanent Mission of Mexico and to the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

My authorities have instructed me to request consultations with the Government of Mexico pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes and Article 17.3 of the Agreement on Implementation of Article VI of the GATT 1994 (the Anti-dumping Agreement) regarding the anti-dumping investigation of high-fructose corn syrup (HFCS) grades 42 and 55 from the United States conducted by the Secretariat of Commerce and Industrial Development (SECOFI) of the Government of Mexico, the 23 January 1998 notice of final determination of dumping and injury in that investigation and the consequent imposition of definitive anti-dumping measures on imports of HFCS grades 42 and 55 from the United States.

On 27 February 1997, SECOFI published a notice initiating this anti-dumping investigation on the basis of an application dated 14 January 1997, from the Mexican National Chamber of Sugar and Alcohol Producers, an association of producers of sugar. The United States considers that this application did not contain the information required under Article 5 of the Anti-dumping Agreement, and that the determination by Mexico to initiate an investigation was inconsistent with the obligations of Mexico under Articles 2, 4 and 5 of the Anti-dumping Agreement. The United States also considers that Mexico's public notice of initiation did not meet the requirements of Article 12 of the Anti-dumping Agreement.

The United States considers that Mexico made a determination of threat of injury in contravention of Articles 3 and 12 of the Anti-dumping Agreement, including by failing to evaluate all relevant economic factors and indices having a bearing on the state of the industry, and failing to determine that further dumped exports were imminent and that material injury would occur unless protective action were taken. Mexico also failed to consider the impact of dumped imports on the full range of operations of the domestic industry producing the product determined to be the like product.

Mexico's application of provisional anti-dumping measures in this investigation exceeded the time provided for in Article 7.4 of the Anti-dumping Agreement. Mexico's public notice imposing definitive anti-dumping measures did not contain a decision, explanation and statement of reasons as to whether the amount of the anti-dumping duty was the full margin of dumping or less, as required

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by Articles 9 and 12 of the Anti-dumping Agreement. Moreover, in making its threat of injury determination, Mexico failed to determine under Article 10.2 of the Anti-dumping Agreement that the effect of the dumped imports would, in the absence of the provisional measures, have led to a determination of injury. Consequently, the United States considers Mexico's failure to release in an expeditious manner the bonds posted by respondent U.S. exporters is inconsistent with Article 10.4 of the Anti-dumping Agreement.

The United States also considers that on numerous occasions throughout this investigation Mexico failed to comply with the requirements of Article 6 of the Anti-dumping Agreement, including by: failing to satisfy itself as to the accuracy of information provided to it by the petitioner domestic industry; failing to provide respondent U.S. exporters with timely opportunities to review all of the information relevant to the presentation of their cases and to prepare presentations on the basis of such information; failing to inform the respondent U.S. exporters of the essential facts under consideration which formed the basis for its decision whether to apply provisional measures; and not requiring all interested parties providing confidential information to furnish non-confidential summaries thereof. Furthermore, in contravention of Article 6.5, Mexico authorized a representative of the petitioner domestic industry to inspect the confidential information provided by respondent U.S. exporters, without providing them with advance notice of such disclosure and without obtaining the specific permission of the parties submitting the confidential information.

In addition, the United States considers that Mexico did not calculate the margin of dumping for respondent U.S. exporter Archer Daniels Midland Company in accordance with the requirements of Article 2 of the Anti-dumping Agreement.

The United States reserves its right to raise further factual claims and legal matters during the course of consultations. We look forward to receiving your reply to the present request and to fixing a mutually convenient date for consultations.
