

Original: English

**MEXICO – PROVISIONAL ANTI-DUMPING MEASURE  
ON ELECTRIC TRANSFORMERS**

Request for Consultations by Brazil

The following communication, dated 20 December 2000, from the Permanent Mission of Brazil to the Permanent Mission of Mexico and to the Chairman of the Dispute Settlement Body, is circulated in accordance with Article 4.4 of the DSU.

Upon instruction from my authorities and pursuant to Article 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article XXII.1 of the General Agreement on Tariffs and Trade 1994 (GATT 1994), and Article 17.3 of the Agreement on Implementation of Article VI of GATT 1994 (Anti-Dumping Agreement), I hereby wish to convey the request of the Government of Brazil for consultations with Mexico regarding Mexico's 17 July 2000 provisional anti-dumping measure on electric transformers having a power of more than 10,000 KVA, classified under tariff line 8504.23.01 of the General Import Law, exported from Brazil ("Resolución preliminar de la investigación antidumping sobre las importaciones de transformadores eléctricos de potencia superiores a 10,000 KVA, mercancía clasificada en la fracción arancelaria 8504.23.01 de la tarifa de la Ley del Impuesto General de Importación, originarias de la República de Brasil").

Brazil considers that the above-referenced determination and the resulting provisional measures are inconsistent with Mexico's obligations under the Anti-Dumping Agreement and the General Agreement on Tariffs and Trade 1994 for the following reasons:

1. Mexico violated Articles 5.2, 5.3 and 5.8 of the Anti-Dumping Agreement because it initiated the anti-dumping investigation without evidence of dumping as defined under Article 2 of the Anti-Dumping Agreement, of injury as defined under Article 3 of the Anti-Dumping Agreement, and of causation of injury. In particular, the petitioner did not provide evidence of firm offers, sales or of imports of the subject merchandise during the period of investigation. Without such evidence, SECOFI did not have factual grounds to find that there was "sufficient evidence" of dumping and injury "to justify the initiation of an investigation".
2. Mexico violated Article 5.8 of the Anti-Dumping Agreement because it did not terminate the investigation "promptly" when presented with evidence that it was factually impossible to find dumping or injury during the period of investigation because there were neither firm offers, nor sales, nor imports of the subject merchandise.
3. Mexico violated Article 6.8 and Annex II of the Anti-Dumping Agreement by using "best information available" in a manner inconsistent with the requirements established in those provisions.

4. Mexico violated Article 7.1(i) of the Anti-Dumping Agreement because it imposed provisional measures pursuant to an investigation that was not initiated in accordance with Article 5 of the Anti-Dumping Agreement.
5. Mexico violated Article 7.1(ii) of the Anti-Dumping Agreement because it imposed provisional measures without a valid preliminary determination of dumping, as defined in Article 2 of the Anti-Dumping Agreement. First, Mexico ignored evidence that there were neither firm offers nor sales of the subject merchandise during the period of investigation. Without firm offers or sales of the subject merchandise, it is impossible to analyze and find dumping. Second, Mexico disregarded cost information submitted by the respondents for use as normal value without meeting the condition set out in Article 6.8 of the Anti-Dumping Agreement for using "best information available" that an "interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation". Furthermore, having disregarded the respondents' information, Mexico did not comply with Annex II, paragraph 7, of the Anti-Dumping Agreement in using information presented by the petitioner as the "best information available". Mexico made no attempt to "check the information from other independent sources at their disposal" to ensure its accuracy and relevance.
6. Mexico violated Article 7.1(ii) of the Anti-Dumping Agreement because it imposed provisional measures without a valid preliminary determination of injury, as defined under Articles 3.4 and 3.7 of the Anti-Dumping Agreement. First, Mexico ignored evidence presented by the respondents and other interested parties that the subject merchandise was not imported into, nor sold to, Mexico during the period of investigation. Second, Mexico did not properly consider evidence presented regarding the factors set forth in Article 3.7 of the Anti-Dumping Agreement, but simply assumed that evidence was false without meeting the condition established in Article 6.8 of the Anti-Dumping Agreement for using "best information available". Furthermore, Mexico accepted information presented by the petitioner as the "best information available" without meeting the conditions established in Annex II, paragraph 7, of the Anti-Dumping Agreement.

In light of the DSU provisions governing this matter, including Article 4.3 thereof, as well as Article 17 of the Anti-Dumping Agreement, my authorities look forward to receiving in due course the reply of Mexico to this request. Brazil is ready to consider with Mexico mutually convenient dates to commence consultations in Geneva.

The Government of Brazil reserves the right to raise additional factual or legal points related to the aforementioned measure during the course of the consultations.

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