

MEXICO – ANTI-DUMPING MEASURES ON RICE¹

(DS295)

| PARTIES | | AGREEMENT | TIMELINE OF THE DISPUTE | |
|-------------|---------------|--|-----------------------------|------------------|
| Complainant | United States | ADA Arts. 3, 5.8, 6, 9, 11 12 and 17; | Establishment of Panel | 7 November 2003 |
| | | | Circulation of Panel Report | 6 June 2005 |
| Respondent | Mexico | | Circulation of AB Report | 29 November 2005 |
| | | | Adoption | 20 December 2005 |

1. MEASURE AND PRODUCT AT ISSUE

- Measure at issue: Mexico's definitive anti-dumping duties; several provisions of Mexico's Foreign Trade Act; and the Federal Code of Civil Procedure.
- Product at issue: Long-grain white rice from the United States.

2. SUMMARY OF KEY PANEL/AB FINDINGS

Injury determination (ADA Arts. 3.1, 3.2, 3.4 and 3.5)

- Period for the injury investigation: The Appellate Body upheld the Panel's finding that Mexico violated Art. 3.1, 3.2, 3.4 and 3.5, as it based its determination of injury on a period of investigation which ended more than 15 months before the initiation of the investigation, and thus it had failed to make an injury determination based on positive evidence, and involving an objective examination of the volume and price effects of the alleged dumped imports or the impact of the imports on domestic producers at the time measures were imposed under Art. 3.
- Use of data from part of the investigation period: The Appellate Body upheld the Panel's finding that the investigating authority's injury analysis was inconsistent with Art. 3.1 because it examined only part of the data from the investigation period and the choice of the limited period of investigation reflected the highest import penetration, which therefore was not the data of "an unbiased and objective" investigating authority.
- Evidence on price effects and volumes: Having agreed with the Panel that important assumptions relied upon by Mexico's investigating authority were "unsubstantiated" and hence not based on positive evidence, the Appellate Body upheld the Panel's finding that the investigating authority's injury analysis with regard to the volume and price effects of dumped imports was inconsistent with Art. 3.1 and 3.2.

Adverse facts available (ADA Art. 6.8 and Annex II(7))

- The Panel found that the Mexican investigating authority's reliance on facts available for the dumping margin determination was inconsistent with Art. 6.8, read in light of Annex II(7), as it found no basis to consider that the authority undertook the evaluative, comparative assessment that would have enabled it to gauge whether the information provided by the applicant was the best available or that it used the information with "special circumspection" as required by Annex II(7).

Notification (Art. 6.1 and 12.1)

- Having found that the notification requirements under Arts. 6.1 and 12.1 apply only to interested parties for which the investigating authority had *actual knowledge* (not those for which it could have obtained knowledge), the Appellate Body reversed the Panel finding that Mexico's authority violated Art. 6.1 and 12.1 by not notifying all interested parties of the investigation initiation and of the information required of them. However, the Appellate Body agreed with the Panel that, pursuant to ADA Art. 6.8 and Annex II, the dumping margin for an exporter could not be calculated on the basis of adverse facts available from the petition where that firm did not receive notice of the information required by the investigating authority.

Termination of investigation (Art. 5.8)

- Upholding the Panel's finding that the investigation in respect of the individual exporter for which a zero or de minimis dumping margin is found should be immediately terminated under Art. 5.8, second sentence, the Appellate Body concluded that Mexico violated Art. 5.8 "by not terminating the investigation in respect of two US exporters in such a situation".

¹ Mexico – Definitive Anti-Dumping Measures on Beef and Rice, Complaint with Respect to Rice