UNITED STATES – ANTI-DUMPING MEASURES ON OIL COUNTRY TUBULAR GOODS FROM MEXICO
(DS282)

Answers of the United States of America
to Questions from Mexico
in Connection with the Second Substantive Meeting

September 13, 2004

Q1. Suppose that an investigating authority completes an antidumping duty investigation at a time after 18 months of initiation of the investigation, the investigating authority offers no explanation for the delay, and an antidumping duty is imposed in month 19.

a. Would the United States consider there to be a violation of Article 5.10 of the Antidumping Agreement in these circumstances?

b. If so, how does the United States consider that a Member could bring its measure into conformity with its WTO obligations?

1. Mexico's questions introduce a hypothetical situation involving neither legal issues nor facts present in this dispute. Also, Mexico has not made a claim based on Article 5 generally or Article 5.10 specifically in this dispute and therefore, any such claim at this time would not be within the Panel's terms of reference.

Q2. In DRAMs from Korea (DS 99), Korea challenged, both as such and as applied, 19 CFR section 353.25(a)(2) of the Department's regulations as inconsistent with U.S. obligations under Article 11.2 of the Antidumping Agreement

a. Does the United States dispute that that provision (section 353.25(a)(2)) is the predecessor provision of the revocation regulation, 19 CFR section 351.222(b)(2), under which both TAMSA and Hylsa sought revocation in this case?

2. No.

b. Following the ruling of the Panel in DS 99, DRAMS from Korea, what actions did the United States takes to bring the challenged measure into conformity with U.S. WTO obligations?

3. As the United States stated in its second written submission, the question of whether company-specific revocation reviews are required by Article 11.2 was not directly before the panel in *DRAMS from Korea*.[1] The United States further noted that the issue of whether company-specific reviews are subject to Article 11.2 is a question of treaty interpretation and not whether a member emphasized a particular argument in a previous dispute.[2]

c. Did the United States submit to the WTO a written status report of U.S. progress in the implementation of the recommendations or rulings of the DSB made in DS 99? If so, please identify any such report(s).

4. It is not clear to the United States the relevance of this question, unless Mexico is attempting to have the United States include in the record a document Mexico sought to introduce, in contravention of paragraph 14 of the *Working Procedures for the Panel*, at the second substantive meeting of the Panel.

Q3. Are there any cases in which the Department revoked an entire antidumping duty order on the basis of a request submitted under 19 CFR section 351.222(b)(2)? If so, does the Department always know that the exporter or exporters requesting revocation account for all of the exports from the country?

5. There are no cases in which the Department revoked an entire order on the basis of a request submitted under 19 CFR section 351.222(b)(2).

Q4. What happens if U.S. importers or customers will not buy subject imports once an antidumping duty order is imposed? How does the Department take into account that exporters do not have complete control over whether post-order import volumes will be equal to those prior to the imposition of the order?

6. Nothing in the Department's statute and regulations requires exporters to have "complete control" over the volumes in which they sell into a given market. Further, the question implies that the United States requires post-order import volumes to be equal to pre-order volumes, which is erroneous, as the United States has demonstrated.[3]

Q5. Does the United States accept that "injury" in Article 11.3 means "material injury of a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry" as defined in footnote 9?

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[1] U.S. Second Written Submission, para. 52.
[2] U.S. Second Written Submission, para. 53.
[3] *See*, *e.g.*, U.S. Second Written Submission, para. 59 and cases cited therein.

a. If no, what does "injury" mean in Article 11.3?

b. If yes, what is the basis for not giving meaning to the second clause of footnote 9 that "the term injury… shall be interpreted in accordance with the provisions of" Article 3.

7. The United States has provided its views on this issue in response to Questions 32 and 33 posed by the Panel after the first substantive meeting. The United States refers Mexico to the responses filed by the United States on June 18, 2004.

Q6. During the sunset review, did the United States consider that TAMSA requested that there was "good cause" for the Department to consider information apart from the statutorily required factors of import volumes and historical dumping margins?

8. Yes. TAMSA stated that the dumping rate calculated in the original investigation was inapplicable for a sunset review because it was based, in part, on a severe devaluation of the peso. See TAMSA Substantive Response at 5, 8 (Exhibit MEX-16); and *Preliminary Issues and Decision Memorandum* at 4 (Exhibit US-13). Commerce considered this argument. Further, Commerce found that dumping was eliminated during the two most recently completed administrative reviews. However, Commerce's likelihood determination was ultimately based on the significant decline in imports of OCTG from Mexico since the imposition of the order. See *Preliminary Issues and Decision Memorandum* at 6 (Exhibit US-13). (TAMSA argued that the reduction in import volumes was part of TAMSA's "necessary business strategy" in response to the deposit rate for OCTG from Mexico. Commerce addressed TAMSA's import volume arguments in the *Issues and Decision Memorandum* for the final sunset determination. See *Issues & Decision Memorandum* at 5, 8 (Exhibit MEX-19).)

a. As MEX-16 shows, TAMSA submitted evidence (in the form of its financial statements) to show that its exposure to currency devaluation has been significantly reduced, and that this information constituted positive evidence that dumping was not likely. Where in the Issues and Decision Memorandum did the Department consider this evidence?

9. Commerce addressed this argument in the *Issues and Decision Memorandum*. See *Issues & Decision Memorandum* at 6 (Exhibit MEX-19).

Q7. What was the positive evidence developed by the Commission for the sunset review (apart from information from the original investigation) that imports from other countries subject to the review were likely to be simultaneously present in the U.S. market? When did the Commission believed that this was likely to recur?

10. As an initial matter, the United States reiterates that there is nothing in the Agreement requiring investigating authorities to apply the criteria set out in Article 3.3 to an Article 11.3 review. Moreover, even the Article 3.3 "conditions of competition" requirement for cumulation in an original investigation does not require a finding of simultaneous presence.

11. As the United States has explained in its previous submissions, the U.S. statute nonetheless allows the ITC to conduct a cumulative analysis in a sunset review only if, *inter alia*, the imports from each subject country would be likely to compete with one another and with the domestic like product in the United States market.[4] Among the various factors the Commission looked to in order to address this question was whether the imports are or are likely to be simultaneously present in the market.[5]

12. The evidence in this review demonstrated the past, present, and likely future simultaneous presence of imports of casing and tubing from each of the subject countries. As Mexico appears to acknowledge in its question, positive evidence in the record relied on by the ITC in this review showed that imports from each of the subject countries were simultaneously present in the market during the last period in which they were in the market without restraints (*i.e.,* in each of the three years of the original investigation).[6] Moreover, imports of casing and tubing from each of the subject countries continued to be present in the U.S. market after the orders were imposed and throughout the sunset period of review, albeit at lower levels than those prior to entry of the order.[7] Mexico's question as to when simultaneous presence was "likely to recur" seems to presume a different factual situation than the one at hand.

Q8. Did the Commission make a determination that injury would likely continue, or did the Commission make a determination that injury would likely recur?

13. The United States has already answered the same question posed by Mexico in connection with the first substantive meeting. The United States refers Mexico to the response to Mexico question 15 in the *Answers of the United States of America to Questions from Mexico in Connection with the First Substantive Meeting* filed on June 18, 2004.

Q9. In paragraph 3 of its closing statement, the U.S. tells the Panel that "Without a commercial quantities requirement, companies could easily have antidumping orders eliminated and then simply resume dumping." Given that Mexico is only challenging the Article 11.2 decision "as applied" (as opposed to an "as such" claim), could the U.S. explain the

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[4] Section 752(a)(7) of the Act; 19 U.S.C. § 1675a(a)(7) (Exhibit MEX-24). *See* United States Second Written Submission, para. 28.

[5] *See Oil Country Tubular Goods from Argentina, Italy, Japan, Korea, and Mexico*, USITC Pub. 3434, Inv. Nos. 701-TA-364, 731-TA-711, and 713-716 (June 2001) (Exhibit MEX-20) ("ITC Report"), pp. 7, n.33 and 13-14.

[6] ITC Report, p. 14 (Exhibit MEX-20).

[7] ITC Report, p. 14, n.82; PR at Table IV-1 (Exhibit MEX-20).

relevance of this general comment to its decision in this case? Specifically,

a. Was the rationale expressed in paragraph 3 applicable to the requests for revocation made in this case?

b. If so, what is the factual basis for this concern with respect to the two Mexican exporters that requested revocation in this case?

c. If so, could the U.S. explain the procedures completed by the Department to arrive at its decisions in the second, third and fourth reviews of TAMSA and Hylsa? Specifically, does the volume of U.S. sales affect in any way the scope of the Department's review?

14. The comment was an effort to be responsive the Panel's interest in the commercial quantities requirement. The Panel's line of questioning has not been limited to the application of that requirement in this determination.

Q10. In accordance with the U.S. legislation, the Commission "may" rely on the "margin of dumping to prevail" reported by the Department. On the other hand, in the ITC's Determination such margin is mentioned twice, one in footnote 51, the other in Part V ("Pricing and related information, Characteristics of likely dumping"). In Part V it is also indicated that "Commerce likely margins of dumping are the same as the original orders…" In light of these elements,

a. Could the U.S. indicate if there is any guideline, document or criteria that is or may be used to guide the Commission when deciding whether or not to rely on the "margin of dumping to prevail" reported by the Department. If yes, please explain and, if possible, attach a copy of it?

15. No, there is no guideline for this purpose.

b. Is there any internal guideline within the Commission that is or may be used directly or indirectly by the Commission as a whole or by the Commissioners individually to decide when the Commission should rely on the "margin of dumping to prevail" reported by the Department and when not to rely on such margin? If yes, please explain and, if possible, attach a copy of it?

16. No, there is no guideline for this purpose.

c. If the answer to a) and b) above is negative, could the US please explain how the Commission ensures on a case by case basis that its decisions concerning whether or not to rely on the "margin of dumping to prevail" reported by the Department is not, and cannot be perceived, as arbitrary and unreasonable?

17. This question has no bearing on this dispute. Mexico's claim in this regard was limited to the ITC's determination in this sunset review and was not an "as such" challenge. Therefore, this question pertains to matters beyond the terms of reference of this dispute. Further, the United States notes that the Antidumping Agreement does not provide for findings based on "perceptions."

d. What has the Commission decided in the OCTG case under dispute? Has the Commission relied or not on the "margin of dumping to prevail" reported by the Department. Please, if possible, answer yes or no and then explain.

18. The United States has already answered the same question posed by Mexico in connection with the first substantive meeting. The United States refers Mexico to the response to Mexico questions 10 and 11 in the *Answers of the United States of America to Questions from Mexico in Connection with the First Substantive Meeting* filed on June 18, 2004.

e. If the Commission decided not to rely on the "margin of dumping to prevail" reported by the Department, please explain if the Commission relied on any other margin or not. If it relied on another margin, please indicate which one and on what basis and its relationship with the ITC statement in Part V that "Commerce likely margins of dumping are the same as the original orders…".

19. See above response.

f. If the Commission decided not to rely on the "margin of dumping to prevail" reported by the Department, please explain if the Commission did not rely on such margin just for Mexico or with respect to all cumulated countries? If the answer is only Mexico, please explain why only Mexico and why not the others.

20. The Commission did not rely on margins of dumping with respect to all cumulated countries.

g. If the Commission did not rely on any margin of dumping, actual or potential, with respect to any cumulated country, please explain the compatibility of such procedure with the causation obligation contained in Article VI of GATT94 and the WTO Antidumping Agreement, excluding Article 3.5. Is the US position that sunset reviews are exempted from the causation? If yes, please explain why and what is the legal basis that supports it?

21. The United States fails to see the connection that Mexico is making between reliance on the margin of dumping and causation requirements. Even Article 3 does not require *reliance* on a margin of dumping, and indeed, only requires an *evaluation* of the actual margin of dumping for the purposes of an original investigation (not a sunset review) under Article 3.4.

Q11. In paragraph 15 of its 2nd Opening Statement, the United States asserted that "an agreement regarding reinstatement of the order" is "always" required, under section 351.222 of the Department's regulations, whenever an exporter requests revocation only with respect to itself. However, Section 351.222(b)(2)(B) of the Department's regulations explicitly provides that an agreement regarding reinstatement is only required from an exporter "that the Secretary previously has determined to have sold the subject merchandise at less than normal value. There is nothing in the Department's regulations that requires an exporter that has not previously been found to have "sold at less than normal value" to submit an agreement regarding reinstatement when it requests revocation with respect only to itself. (Thus, for example, Hylsa was not required to submit an agreement regarding reinstatement of the order when it requested revocation with respect to itself in the fourth administrative review.). Could the US explain this mischaracterization of its laws?

22. The United States has not made any "mischaracterizations" of U.S. law in its submissions to the Panel in this dispute. Mexico has failed to support its overly limited reading of the regulation by providing any evidence that Commerce has ever denied a (b)(1) revocation because it was sought by one exporter rather than all. Nor can it provide such evidence, as this has never occurred. Moreover, this discussion is not relevant to the outcome of this dispute because a company can also seek order-wide revocation through a changed circumstances review.