MEXICO – ANTI-DUMPING DUTIES ON STEEL PIPES AND TUBES FROM GUATEMALA

(WT/DS331)

Oral Statement of the United States at the Third Party Session with the Panel

Introduction

1. Thank you, Mr. Chairman, and members of the Panel. It is a pleasure to appear before you today to present the views of the United States in this proceeding. The purpose of this oral statement is to highlight certain aspects of the U.S. third-party submission and to comment on points raised by other third parties in their submissions.

Information In Application

2. Guatemala questions the sufficiency of the application and the Mexican Investigating Authority's decision to initiate based upon the information in the application. Article 5.2 of the Antidumping Agreement sets forth the evidence an application "shall include," which includes "information on prices."

3. Guatemala maintains that an application supported by one invoice for galvanized tubing and a quotation for light-walled tubing is insufficient. Whether this information was sufficient to establish the home-market price component of evidence of dumping for purposes of initiation is a case- and fact-specific inquiry. We note, however, that Article 5.2 provides that an application contain such information "as is reasonably available" to the applicant. The phrase "reasonably available" is not defined in the Agreement. Moreover, pricing, cost of production, and profitability information pertaining to foreign producers or domestic competitors is likely difficult to obtain and, thus, may not normally be "reasonably available" to an applicant.

4. Article 5.2(iii) also does not prescribe the precise form of the information or evidence

that must be submitted. Nor does Article 5.2 specify the quantum of evidence that must be submitted.[1] Rather, the plain language of Article 5.2(iii) simply requires the application to contain "information on prices" at which the product in question is sold when destined for consumption in the domestic market of the country of origin or export. We therefore disagree with Guatemala's argument that one invoice and quotation are *necessarily* insufficient to initiate an investigation, or that an application must contain pricing information for a particular exporter.

Product Under Consideration

5. In addition to questioning the sufficiency of the application and the decision to initiate an investigation, Guatemala contests the various changes to the definition of the "product under consideration." Mexico does not dispute that the definition was changed, but maintains that, as a factual matter, the changes were insignificant.

6. The United States generally agrees with Japan's observation in its third-party submission that the Antidumping Agreement permits changes to the definition of the product under consideration, but the investigating authority must be cognizant of the broad implications of such changes.[2] For instance, the definition of the product under consideration implicates the requisite threshold for industry support set forth in Article 5.4. This threshold could be rendered meaningless if an applicant could unilaterally and significantly alter the definition of the product. That is, one could imagine an applicant first narrowly defining the product under consideration so that, at initiation, the applicant would account for a sufficiently large percentage of the

[1] *United States – Final Dumping Determination on Softwood Lumber from Canada*, Panel Report, WT/DS264/R, adopted 31 Aug. 2004, para. 7.101 (applicant need not submit "all" information reasonably available).

[2] *Third Party Submission of Japan* at para. 5.

domestic industry to justify initiation. Subsequently, the applicant could alter that product definition such that, if industry support were re-examined subsequent to initiation, the applicant would no longer account for a significant percentage of the domestic industry.

7. The European Communities also recognizes that under certain situations, the definition of the product under consideration may change in minor and necessary ways.[3] A change to the definition of the product under consideration announced in a final determination is not necessarily inconsistent with Article 6.9 of the Antidumping Agreement. Article 6.9 requires that interested parties be informed of the essential facts *under consideration* and not necessarily the conclusion an authority may ultimately draw from those facts. That said, in order to provide parties a full opportunity "for the defence of their interests" under Article 6.2, they must be made aware of proposals for changes to the product under consideration and be afforded an opportunity to advocate their position on such proposals.

8. As noted in Japan's third-party submission, Guatemala and Mexico agree that the definition of the product under consideration changed, but disagree as to the significance of the changes.[4] In the view of the United States, the appropriate time for definitively identifying the product under consideration will depend upon the circumstances of the case. The parties should, however, be afforded a reasonable opportunity to address proposed significant changes.[5]

Conclusion

9. This concludes our presentation to the Panel. Thank you for your attention.

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[3] *Third Party Submission of the European Community* at para. 10.
[4] *Third Party Submission of Japan* at para. 7.
[5] *See, e.g.,* Antidumping Agreement, Articles 6.1, 6.2, and 6.4.