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NAFTA Panel Upholds U.S. Duties Against Mexican Cement Manufacturers

by LADB Staff

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In mid-September, a binational panel formed under the auspices of the North American Free Trade Agreement (NAFTA) voted unanimously to uphold countervailing duties imposed by the US government against imports of Mexican cement. The US Commerce Department originally imposed the countervailing duties of 61.85% on imports of Mexican cement in 1990, after determining that Mexican cement manufacturers were selling their product in the US market at a lower cost than in Mexico. After exhausting their appeals before the US International Trade Commission (ITC) and the Commerce Department, Mexican cement manufacturers CEMEX and Cementos Chihuahua joined Mexico's Trade Secretariat (SECOFI) to request that a special panel be formed under NAFTA to review the matter.

Following its review of the case, the five-member panel composed of two Mexicans and three US citizens has ruled unanimously to uphold the US duties on Mexican cement. As part of the ruling, the panel said the Commerce Department's decision was based on the "best information at its disposal," since CEMEX had refused to provide information on market prices in Mexico. The company defended its decision to withhold this information, since the Commerce request was for information on a type of cement not exported to the US market.

The NAFTA panel's decision drew immediate criticism from Mexico's cement manufacturers chamber (Camara Nacional del Cemento, CANACEM), which charged that the panel had chosen to ignore the rules of fair trade established under the General Agreement on Tariffs and Trade (GATT), which has since been replaced by the World Trade Organization (WTO). According to industry estimates, the countervailing duties have cost Mexican cement companies more than US\$100 million since 1990.

The ruling, which was directed mainly at exports from CEMEX and Cementos Chihuahua, could also have an impact on exports from two other Mexican manufacturers, Cementos Apasco and Cementos Tolteca. Still, Mexico's deputy trade secretary Jaime Zabudovsky acknowledged the difficulties faced by the panel, since the anti-dumping duties were imposed before NAFTA was enacted in January 1994. The panel's decision to base decisions solely on NAFTA-related factors means that the terms of the accord in theory supersede GATT or WTO directives. Technically, the complaint filed by Mexican cement manufacturers and SECOFI was not directly based on the original Commerce decision in 1990, but on one of the US government's annual reviews to determine whether existing duties should be raised or lowered.

The Mexican government still has the option of appealing the ruling, but is expected to seek other remedies because of the unanimous nature of the panel's decision. Shortly after the ruling was handed down, SECOFI's legal director, Hugo Perezcano, told reporters that President Ernesto Zedillo's administration will seek consultations with the US government in an attempt to resolve

the dispute through direct negotiations. In another matter that could test the legality of NAFTA regulations, the ITC has issued a ruling recommending that US tariffs be restored on imports of Mexican straw brooms. The ITC recommended that US President Bill Clinton impose tariffs as high as 40% on those products also known as "corn brooms" - for a period of four years to protect the US broom industry. If President Clinton follows the ITC's recommendation, the reintroduction of tariffs would, in effect, suspend the existing tariff structure for brooms, which was enacted when NAFTA went into effect in 1994.

Under that structure, Mexico is allowed to export 100,000 packages of a dozen brooms to the US duty-free. Once that quota is exceeded, imports of Mexican brooms are charged a tariff of 22.4%. Trade specialist Mark Love of the Washington-based Economic Consulting Services, who is representing the US broom-manufacturing industry, said the ITC decision falls within the parameters of NAFTA rules. Under the "safeguard" provisions in NAFTA, any of the three member countries can temporarily increase tariffs on imports of a certain product if an industry can prove a threat of serious injury from increased imports. According to Love, the elimination of a 32% tariff on Mexican broom imports under NAFTA has caused US manufacturers to lose a high percentage of their market and resulted in the loss of many jobs.

For their part, Mexican broom manufacturers have rejected the argument from their US counterparts, suggesting that the US companies are only attempting protect their market from competition. "US producers had plenty of time to adjust their businesses and to improve productive conditions," said industry representative Jorge Trevino. In still another simmering dispute between the US and Mexico, the US Commerce Department is expected to hand down a preliminary ruling on Oct. 7, responding to a recent preliminary ITC decision on imports of Mexican tomatoes.

The ITC ruling, handed down in mid-May, said there is sufficient reason to believe that imports of Mexican tomatoes could be causing harm to US tomato producers (see SourceMex, 06/05/96). This ITC ruling was based on statistics regarding US production, consumption, and import of tomatoes. The Commerce Department's ruling will merely determine whether the investigation of Mexican tomato imports will be continued. If the ITC decision is upheld, the department must proceed with a full anti-dumping investigation, including setting temporary duties on imports of Mexican tomatoes.

Ironically, the investigation could proceed even though the ITC issued a separate and subsequent decision in early July suggesting that imports of Mexican tomatoes to the US have not caused irreparable harm to US producers (see SourceMex, 07/10/96). Mexican officials are concerned any move by Commerce may be influenced by the US presidential elections on Nov. 5. Indeed, the complaint against Mexican tomato imports is led by producers from California and Florida, two states which are considered crucial for President Clinton's re-election. Responding to these concerns, members of the Clinton administration have said that any decision on tomato imports will be based solely on scientific and economic data and not on political considerations. (Sources: Notimex, 09/09/96; Associated Press-Dow Jones, 09/13/96; Excelsior, 09/10/96, 09/14/96; The News, 09/05/96, 09/17/96)

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