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## **DOMINICAN REPUBLIC – ANTI-DUMPING MEASURES ON CORRUGATED STEEL BARS**

### **REQUEST FOR THE ESTABLISHMENT OF A PANEL BY COSTA RICA**

The following communication, dated 15 November 2021, from the delegation of Costa Rica to the Chairperson of the Dispute Settlement Body, is circulated pursuant to Article 6.2 of the DSU.

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On 23 July 2021, Costa Rica requested consultations with the Dominican Republic under Articles 1 and 4 of the Understanding on Rules and Procedures Governing the Settlement of Disputes (DSU), Article 17 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-Dumping Agreement), and Article XXII of the General Agreement on Tariffs and Trade 1994 (GATT 1994), with respect to measures imposing anti-dumping duties on imports of corrugated or deformed steel rods and bars for concrete reinforcement originating in the Republic of Costa Rica.

The consultations between the two countries were held on 20 September 2021. However, these consultations failed to settle the dispute. Accordingly, Costa Rica respectfully requests the establishment of a panel pursuant to Articles 4.7 and 6 of the DSU, Article 17.4 of the Anti-Dumping Agreement, and Article XXIII of the GATT 1994, in order to examine the matter.

The anti-dumping investigation was initiated on 30 July 2018 in response to an application that had been submitted by a Dominican producer and that, in Costa Rica's opinion, did not meet the minimum requirements of the Anti-Dumping Agreement. Following an investigation containing innumerable flaws, on 27 December 2019, the Regulatory Commission on Unfair Trade Practices and Safeguard Measures of the Dominican Republic (CDC) issued a final determination providing for the application of definitive anti-dumping measures despite the fact that, in Costa Rica's view, there was no evidence of dumping, injury or causation. Costa Rica considers this determination and the application of definitive duties to be inconsistent with the Dominican Republic's obligations under the Anti-Dumping Agreement and the GATT 1994.

#### **I. Measures at issue**

The measures at issue are the anti-dumping measures imposed on imports of corrugated or deformed steel rods and bars for concrete reinforcement originating in the Republic of Costa Rica. The measures at issue include and are reflected in, inter alia, the following documents:

- Resolution No. CDC-RD-AD-001-2020 of 17 March 2020 ruling on the appeal for reconsideration filed against Resolution No. CDC-RD-AD-007-2019 of 27 December 2019;
- Resolution No. CDC-RD-AD-007-2019 of 27 December 2019 providing for the application of definitive anti-dumping duties on imports of corrugated or deformed steel rods and bars for concrete reinforcement originating in the Republic of Costa Rica;
- Final Technical Report of 20 December 2019;
- Essential Facts Report of 30 October 2019;

- Resolution No. CDC-AD-001-2018 of 30 July 2018 providing for the initiation of the investigation into the alleged existence of dumping practices in respect of exports of corrugated or deformed steel rods and bars for concrete reinforcement originating in the Republic of Costa Rica;
- Initial Technical Report of 20 July 2018; and
- any other resolution, instrument, report or determination issued in the anti-dumping investigation or in relation thereto.

This request covers, in addition to the aforementioned measures, any other measure that prolongs, replaces, amends, implements, extends or applies, or otherwise maintains, the measures described above.

## **II. Brief summary of the legal basis of the complaint**

The measures described in Section I of this request are inconsistent with the following obligations assumed by the Dominican Republic under the WTO covered agreements:

1. Articles 2.1 and 2.4 of the Anti-Dumping Agreement because, among other reasons, the investigating authority, in its dumping determination, failed to rely on the correct export prices and included transactions made outside the period of investigation in the dumping margin calculation.
2. Article 2.1 of the Anti-Dumping Agreement because, among other reasons, the investigating authority, in its dumping determination, excluded transactions made in the ordinary course of trade for the like product when destined for consumption in the exporting country.
3. Article 2.2.1 of the Anti-Dumping Agreement because, *inter alia*, the investigating authority excluded sales of the like product in the domestic market of the exporting country allegedly made below cost, without first having properly determined that those sales were made within an extended period of time in substantial quantities and at prices which did not provide for the recovery of all costs within a reasonable period of time.
4. Article 2.2.1 of the Anti-Dumping Agreement because, among other reasons, the investigating authority excluded sales of the like product in the domestic market of the exporting country without having properly considered whether prices were below per unit costs at the time of sale.
5. Articles 2.1, 2.2 and 2.2.1 of the Anti-Dumping Agreement because, among other reasons, the investigating authority improperly considered financing expenses in the analysis of below-cost sales for the purposes of identifying sales allegedly not made in the ordinary course of trade.
6. Article 2.4 of the Anti-Dumping Agreement because, among other reasons, the investigating authority failed to make a fair comparison between the export price and the normal value, including failing to make a comparison in respect of sales made at as nearly as possible the same time.
7. Articles 3.1 and 3.2 of the Anti-Dumping Agreement because, *inter alia*, the investigating authority's analysis of the volume of the dumped imports was not based on an objective examination on the basis of positive evidence or an examination of all relevant evidence before the authorities.
8. Articles 3.1 and 3.2 of the Anti-Dumping Agreement because, *inter alia*, the investigating authority's analysis of the effects of the imports under investigation on prices in the domestic market for like products was not based on an objective examination on the basis of positive evidence or an examination of all relevant evidence before the authorities.
9. Articles 3.1 and 3.4 of the Anti-Dumping Agreement because, *inter alia*, the investigating authority failed to properly evaluate all relevant economic factors and indices that had a bearing on the state of the domestic industry and to conduct an objective examination, on the basis of positive evidence, of the impact of the dumped imports on the domestic industry.
10. Articles 3.1 and 3.5 of the Anti-Dumping Agreement because, *inter alia*, the investigating authority failed to properly determine a genuine and substantial relationship of cause and effect between the allegedly dumped imports and the threat of injury to the domestic

industry and, in addition, failed to ensure that injury caused by other factors was not attributed to the allegedly dumped imports. Most notably, but not exclusively, the investigating authority failed to adequately examine the volume and prices of imports not sold at dumping prices, developments in technology, and the export performance of the domestic industry.

11. Article 3.7 of the Anti-Dumping Agreement because, *inter alia*, the investigating authority based the determination of a threat of material injury not on facts but merely on allegation, conjecture or remote possibility, and failed to properly determine that the change in circumstances which would create a situation in which the alleged dumping would cause injury was clearly foreseen and imminent. In addition, the investigating authority failed to properly consider:
  - whether there was a significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importation;
  - whether there was sufficient freely disposable capacity indicating the likelihood of an imminent, substantial increase in dumped exports to the Dominican Republic, taking into account the availability of other export markets to absorb any additional exports;
  - whether imports were entering at prices that would have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and
  - whether the totality of the factors considered led to the conclusion that further dumped exports were imminent and that, unless protective action was taken, material injury would occur.
12. Article 5.3 of the Anti-Dumping Agreement because the investigating authority failed to properly examine the accuracy and adequacy of the evidence provided in the application to determine whether there was sufficient evidence of dumping, injury and a causal link between the dumped imports and the alleged injury to justify the initiation of an investigation.
13. Article 5.8 of the Anti-Dumping Agreement because the investigating authority failed to reject the domestic industry's application and did not terminate the investigation promptly as soon as it was satisfied that there was not sufficient evidence of either dumping or of injury to justify proceeding with the case.
14. Article 6.1.3 of the Anti-Dumping Agreement because the investigating authority failed to provide the full text of the written application for the initiation of the investigation to the known exporters as soon as the investigation was initiated.
15. Articles 3.1, 3.4, 3.5, 3.7, 5.1, 5.3, 6.1, 6.2, 6.9 and 12.1.1 of the Anti-Dumping Agreement because, among other reasons, the investigating authority examined and based the final determination on the existence of a threat of injury despite the fact that the domestic industry's application alleged the existence of material injury and that the investigation was initiated on the basis of the alleged existence of material injury.
16. Article 6.4 of the Anti-Dumping Agreement because the investigating authority failed to provide timely opportunities for all interested parties to see all information relevant to the presentation of their cases and to prepare presentations on the basis of that information. The relevant information that the investigating authority failed to provide timely opportunities to see includes, *inter alia*, the domestic industry's application for the initiation of an investigation and the results of the verification visit to the domestic industry.
17. Articles 6.4, 6.5 and 6.5.1 of the Anti-Dumping Agreement because, among other reasons, the investigating authority afforded, without good cause shown, confidential treatment to information provided by the domestic industry. Furthermore, the non-confidential summaries furnished to the interested parties are not in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence.
18. Article 6.7 and Annex I of the Anti-Dumping Agreement because, among other reasons, the investigating authority failed, prior to the visit, to advise the firms concerned of the general nature of the information to be verified and of any further information which needed to be provided.

19. Article VI:2 of the GATT 1994 and Articles 9.1, 9.2, and 9.3 of the Anti-Dumping Agreement because, *inter alia*, the Dominican Republic has imposed anti-dumping duties where all requirements for their imposition have not been fulfilled; has not imposed anti-dumping duties in appropriate amounts; and has imposed anti-dumping duties in excess of the margin of dumping that should have been established under Article 2.
20. Article VI of the GATT 1994 and Article 1 of the Anti-Dumping Agreement, as a consequence of the breaches of the Anti-Dumping Agreement described above.

Given the inconsistencies described above, pursuant to Article 3.8 of the DSU, Costa Rica considers that the measures at issue nullify or impair the advantages accruing to Costa Rica under the various provisions mentioned in this request.

Costa Rica request that, pursuant to Article 6 of the DSU, the Dispute Settlement Body (DSB) establish a panel to examine this matter. Costa Rica also requests that the panel be given the standard terms of reference provided in Article 7.1 of the DSU.

Costa Rica asks that this request for the establishment of a panel be included in the agenda of the DSB meeting planned for 29 November 2021

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