

COURTESY TRANSLATION

IN THE MATTER OF: Review of the Final Antidumping Duty Determination in the matter of Flat Coated Steel Products from the United States of America.

FILE: MEX-94-1904-01.

Binational Panel Decision on the Second Determination on Remand of the Investigating Authority

BACKGROUND

1. On September 15, 1997, the Panel issued its decision on the Investigating Authority's first Remand Report. The decision affirmed the Authority's methodology for allocating the raw material costs of New Process Steel Corporation ("New Process") products, which it held not to be unreasonable. Nevertheless, the Panel ordered the Investigating Authority to comply with the following measures within 120 days:

- a) to fully inform New Process about all the missing information and all the clarifications necessary regarding its proposed cost calculations for labor, overhead expenses, profits, credit expenses, as well as regarding the exclusion of products for New Process;
- b) to grant New Process an opportunity to provide additional information and to make clarifications regarding its proposed cost calculations for labor, overhead expenses, profits, credit expense, as well as regarding the exclusion of products for New Process;
- c) based on the above, to calculate a new dumping margin for New Process and Inland Steel Company ("Inland").

2. On January 13, 1998, the Investigating Authority submitted its second Remand Report to the Panel and the interested parties. The Report confirmed the dumping margin the Investigating Authority had determined for New Process and Inland in its first Remand Report. The Investigating Authority claims it was itself forced to confirm the dumping margin instead of calculating a new one, because it did not receive any additional information by New Process, despite having repeatedly requested it and having granted New Process two extensions of time.

3. On February 2, 1998, New Process, through its legal counsel, filed a challenge to the Investigating Authority's second Remand Report. In its challenge, New Process essentially claims the following:

- a) that it did not have a sufficient opportunity to provide the information requested by the Investigating Authority, because of the age of the data and the fact that the only person at New Process capable of dealing with this time-consuming task is one of the most senior officials in the Company, charged with many other pressing responsibilities;
- b) that it did not receive an opportunity to answer the new arguments and information which the Investigating Authority submitted to the Panel on June 16, 1997, in its response to New Process's challenge to the first Remand Report.

4. New Process claims it has a right to respond to these arguments and information under Rule 73 (3)(a) of the Rules of Procedure of Article 1904 of the NAFTA ("Rules of Procedure"), considering also that the Panel rejected its incidental petition of September 25, 1997. Therefore, New Process challenges again the Investigating Authority's methodology for allocating raw material costs, because it considers the Investigating Authority relied on incorrect information and arguments which were otherwise inconsistent with its own administrative practice and other available information.

5. As a consequence, New Process requests this Panel to order:

- a) that the Investigating Authority be required to use New Process' cost allocation

method; or, should the Panel uphold any aspect of the Investigating Authority's method,

- b) that the Investigating Authority, at a minimum, be required to calculate material costs for secondary products using only New Process' secondary product acquisition costs, which are part of the administrative record;
- c) that the Investigating Authority be ordered to calculate separate dumping margins for prime and secondary products by virtue of the fact that their costs and market prices are totally different, and
- d) if the issue of New Process raw material cost allocation is resolved so the Investigating Authority will not use a method that generates damaging dumping margins, that New Process be given an additional 45 day extension of time for providing information about all the other cost-related issues indicated by the Panel in its decision dated September 15, 1997.

6. The Investigating Authority filed its response to New Process's challenge on February 24, 1998. In its response, the Investigating Authority requests the Panel to dismiss New Process's challenge, as it concerns mainly issues already decided by the Panel and not its compliance with the Panel's order of September 15, 1997. It also requests that the extension of time requested by New Process be denied and its second Remand Report affirmed.

LEGAL FOUNDATIONS

7. After a careful consideration of the second Remand Report, of New Process' challenge and the Investigating Authority's response, the Panel has decided to deny this challenge and to affirm the second Remand Report, based on the following considerations:

8. This Panel does not agree with New Process's assertion that the Investigating Authority submitted new arguments and information in its response dated June 16, 1997 in support of its methodology for allocating raw material costs. The Panel

considers that the Investigating Authority offered only examples and arguments in response to New Process's arguments in its first challenge and, therefore, that it did not raise *new contentious issues* on which New Process did not have an earlier opportunity to be heard. Thus, if New Process did not have an opportunity to counter the Investigating Authority's response of June 16, 1997, this does not mean, as it now claims, that the Rules of Procedure have left it without defense and that for this reason it is appropriate to submit such a response in its current challenge to the Remand Report. On the contrary, New Process had sufficient opportunity in its submission of May 29, 1997 to attack the methodology and information submitted by the Investigating Authority, and in fact it did so. This Panel rejected New Process's arguments because it considered that New Process had not proven sufficiently that the Investigating Authority's methodology had been unreasonable, and not because of any new arguments or information the Investigating Authority had allegedly submitted.

9. The Panel does not share New Process's interpretation that the main reason why the Panel denied its incidental petition of September 25, 1997 was that New Process had not followed the proper procedures. On the contrary, the principal consideration that led this Panel to deny that petition was the belief that Rule 76 of the Rules of Procedure gives the Panel the power to review a prior decision only if there has incurred an accidental oversight, inaccuracy or omission, which the Panel considered not to be the case.

10. On the other hand, as it has held with respect to Rule 76, in the Panel's view, Rule 73 (3)(a) of the Rules of Procedure does not have the purpose of granting the interested parties a basis under which the Panel may review a prior decision, and neither does it open the possibility of presenting new evidence, arguments or precedents which should have been submitted before.

11. The Panel does not accept the reasons given by New Process for justifying its failure to provide the information requested by the Investigating Authority in compliance with the Panel's order of September 15, 1997. The Panel notes that, as

indicated by the Investigating Authority in its response, it is the Authority's compliance with the Panel's order on remand which is at issue here, and New Process has not proven that the Investigating Authority's actions are illegal.

In view of the above, the Panel issues the following:

ORDER

ONE.- We hereby deny New Process's challenge to the Investigating Authority's second Remand Report dated January 13, 1998 and affirm the second Remand Report in all its parts.

Issued on April 13, 1998.

Signed in the original by:

April 9, 1998.
Date.

Gustavo Vega Cánovas.
Gustavo Vega Cánovas.
Chairman.

April 13, 1998.
Date.

Eduardo Magallón Gómez.
Eduardo Magallón Gómez.

April 9, 1998.
Date.

Michael D. Sandler.
Michael D. Sandler.

April 13, 1998.
Date.

José Luis Soberanes Fernández.
José Luis Soberanes Fernández.

April 8, 1998.
Date.

David A. Gantz.
David A. Gantz.