

**REVIEW BEFORE A BINATIONAL PANEL  
PURSUANT TO ARTICLE 1904  
OF THE NORTH AMERICAN FREE TRADE AGREEMENT**

IN THE CASE:

PRELIMINARY RESOLUTION BY WHICH THE ANTIDUMPING INVESTIGATION (FINAL RESOLUTION) REGARDING THE IMPORTATION OF PORK LEGS, MERCHANDISE CLASSIFIED UNDER TARIFF SCHEDULES OF THE LAW OF GENERAL TAXES OF IMPORT AND EXPORT, ORIGINATING IN THE UNITED STATES OF AMERICA, IRRESPECTIVE OF THE COUNTRY OF SHIPMENT, IS CONCLUDED.

FILE OF THE SECRETARIAT:  
MEX-USA-2006-1904-01.

**PANELISTS:**

Elizabeth Anderson  
Howard Fenton  
Leonard Santos  
Jorge Miranda  
Héctor Cuadra y Moreno. President.

## **PARTICIPANTS:**

- Consejo Mexicano de Porcicultura, A.C., represented by Laura Hernández.
- Grupo Porcícola Mexicano, S.A. de C.V., represented by Silvestre Vite Bandala.
- Cargill Meat Solution, Corp., represented by Gustavo Uruchurtu.
- Seaboard Farms, Inc., represented by Raymundo E. Enríquez Sánchez.
- Smithfield Packing Co., Farmland Foods, Inc., Gwaltney of Smithfield, Ltd. and John Morrell & Co., represented by Héctor Vázquez Tercero.
- American Meat Institute, American Pork Trading, Co., National Pork Producers Council, and U.S. Meat Export Federation, represented by Mauricio Gómez Violante and Miguel Angel Velázquez Elizarrarás.
- Swift Pork Co., represented by Mario Jorge Yañez Vega and Francisco Torres Landa.
- Sigma Alimentos Importaciones, S.A. de C.V., and Frigoríficos del Bajío, S.A. de C.V. (FRIBASA), represented by Isidro Manuel González.
- Sigma Alimentos International, Inc., represented by Raúl Riquelme Cacho.
- Consejo Mexicano de la Carne, A.C., represented by Eugenio Salinas Morales.
- Office of International Commercial Practices of the Mexican Secretariat of the Economy, represented by Jimena Valverde, Hugo Pérez Cano and Natividad Martínez.

## DECISION OF THE BINATIONAL PANEL

### I. INTRODUCTION

This panel has been formed pursuant to Article 1904.2 of the North American Free Trade Agreement (hereafter, “NAFTA”) and is charged with the review the “Preliminary Resolution for which the Antidumping Investigation regarding the Importation of Pork Legs, merchandise classified under tariff schedules 0203.12.01 and 0203.22.01 of the *Ley del Impuesto General sobre Importaciones y Exportaciones* (Law of General Taxation regarding Imports and Exports), originating in the United States of America, irrespective of the country of shipment, is concluded” (hereafter, “the Final Resolution”)<sup>1</sup> issued by the *Unidad de Prácticas Comerciales Internacionales* (Office of International Commercial Practices) of the *Secretaría de Economía* (Mexican Secretariat of the Economy) (hereto forth, Investigating Authority) on December 19, 2005, and published in the *Diario Oficial de la Federación* (Official Gazette of the Federation) of the United Mexican States (hereafter, “DOF”) on December 21, 2005. That Final Resolution ended the investigation without imposing antidumping duties on said imports and the administrative record of that investigation is 08/04.

In this proceeding, those participating, other than the Investigating Authority, are the Consejo Mexicano de Porcicultura, A.C., Grupo Porcícola Mexicano, S.A. de C.V., Cargill Meat Solution, Corp., Seaboard Farms, Inc., Smithfield Packing Co., Farmland Foods, Inc., Gwaltney of Smithfield, Ltd., John Morrell & Co., American Meat Institute, American Pork Trading, Co., National Pork Producers Council, U.S. Meat Export Federation, Swift Pork Co., Sigma Alimentos Importaciones, S.A. de C.V., Frigoríficos del Bajío, S.A. de C.V. (FRIBASA), Sigma Alimentos International, Inc., and the Consejo Mexicano de la Carne, A.C.

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<sup>1</sup> In conformity with Article 57, subsection III, the Investigating Authority can conclude an investigation in its preliminary phase when there does not exist sufficient evidence of price discrimination or subsidies, of material injury, or of the causal relationship between both. In this case, the Preliminary Resolution is a Final Resolution.

This Panel issues its decision pursuant to Article 1904.8 of NAFTA and Part VII of the Rules of Procedure of Article 1904 of NAFTA providing for Reviews before Binational Panels (hereafter, "Rules of Procedure").

## **II. HISTORY**

### **A. The administrative investigation**

On May 31, 2004, the Investigating Authority issued its Notice of Initiation of the Antidumping Investigation regarding the importation of pork legs, originating in the United States of America, irrespective of the country of shipment, creating administrative record number 08/04.

The Investigating Authority determined January 1<sup>st</sup> to December 31<sup>st</sup> of 2003 to be the period of investigation, and January 1<sup>st</sup> to December 31<sup>st</sup> of 2003 as the analyzed period.

In conformity with Article 53 of the *Ley de Comercio Exterior* (Foreign Trade Law), 164 of the *Reglamento de la Ley de Comercio Exterior* (RLCE), and Article 6.1 of the 1994 Agreement on the Application of Article VI of the General Agreement on Tariffs and Trade (hereafter "Antidumping Agreement"), the Investigating Authority provided all interested parties twenty-eight days from the date of publication of the Notice of Initiation of the Investigation to enter their appearance before the Secretariat.

On December 21, 2005, the Final Resolution was published in the DOF, concluding that:

"With respect to the analysis of price discrimination [...], the analysis of material injury and causation described in points 259 to 281 of this resolution, as well as the analysis of the arguments and the evidence presented by the interested parties, together with the information that the investigating authority had at its disposal during the course of the investigation, which are described in the in resolution, the Secretary concluded that even when margins of price discrimination were found during the period of investigation, there do

not exist sufficient elements to conclude that the imports of pork meat cause material injury to the domestic industry.”<sup>2</sup>

## **B. Review Procedures before this Panel**

On January 20, 2006, the Consejo Mexicano de Porcicultura, A.C. (CMP) presented its Complaint for review of the Final Resolution before a Binational Panel created pursuant to Article 1904 of NAFTA.

On February 20, 2006, the Consejo Mexicano de Porcicultura, A.C., Cargill Meat Solution, Corp., Seaboard Farms, Inc., Smithfield Packing Co., Farmland Foods, Inc., Gwaltney of Smithfield, Ltd., and John Morrell & Co., filed their briefs in response to the Request.

On March 3, 2006, the Grupo Porcícola Mexicano, S.A. de C.V., presented its Notice of Appearance in support of the Petitioner Consejo Mexicano de Porcicultura, A.C.

On March 6, 2006 the companies Swift Pork Co., Sigma Alimentos Importaciones, S.A. de C.V., Frigoríficos del Bajío, S.A. de C.V. (FRIBASA), Sigma Alimentos International, Inc., and the Consejo Mexicano de la Carne, A.C. presented their Notice of Appearance in support of the Investigating Authority.

On March 10, 2006, the Consejo Mexicano de Porcicultura, A.C. filed an amended Request, without first obtaining permission to do so by this Panel, as required by Rule 39.5 and 6 of the Rules of Procedure of Article 1904 of NAFTA.

On May 22, 2006 the Consejo Mexicano de Porcicultura, A.C., Cargill Meat Solution, Corp., Seaboard Farms, Inc., Smithfield Packing Co., Farmland Foods, Inc., Gwaltney of Smithfield, Ltd., and John Morrell & Co., filed their respective Briefs.

On July 20, 2006 the companies Swift Pork Co., Sigma Alimentos Importaciones, S.A. de C.V., Frigoríficos del Bajío, S.A. de C.V. (FRIBASA), Sigma Alimentos International, Inc., and the Consejo Mexicano de la Carne, A.C., filed their respective Briefs in response to the Claimants.

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<sup>2</sup> Paragraph 282 of the Final Resolution. *Diario Oficial de la Federación*. December 21, 2005.

On July 21, 2006 the Consejo Mexicano de la Carne, Smithfield Packing Co., Cargill Meat Solution, Corp., American Meat Institute, American Pork Trading Co., National Pork Producers Council and el U.S. Meat Export Federation filed their respective Briefs.

On the same date, the Investigating Authority filed its Brief *Ad Cautelam* in opposition to the Claimants.

On August 7, 2006, the parties filed their Brief in Response to the Brief of the Investigating Authority.

On December 3, 2008 the Panel issued a request for information from the parties to this Review.

In conformity with Rules 65 and 67 of the Rules of Procedure of Article 1904 of NAFTA, this Binational Panel conducted a public hearing on April 1, 2008. At that hearing, the parties had the opportunity to argue the issues they raised in their briefs.

### **III. STANDARD OF REVIEW**

Article 1904.3 and Annex 1911 establish that in the case of the United Mexican States, the Binational Panel formed pursuant to Article 1904 should apply the Standard of Review noted in Annex 1911 of Chapter 19, which, in the case of the United Mexican States, is Article 238 of the *Código Fiscal de la Federación* (CFF), or whatever law replaces it.

We note that Article 238 of the CFF has been replaced by Article 51 of the *Ley Federal del Procedimiento Contencioso y Administrativo (LFPCA)*, published in the DOF on December 1, 2005, and effective January 1, 2006.<sup>3</sup>

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<sup>3</sup> Article 51 - An administrative resolution will be declared illegal based one of the following deficiencies :

I. Incompetence of the official that has prescribed, ordered, or handled the procedure from which said resolution derives.

The application of the Standard of Review should be limited to the administrative record generated during the administrative proceeding that resulted in the final resolution submitted for review before this Binational Panel, or, in other words, Record number 08/04, and in the general principles of the law that in a tribunal of the importing Party would apply to review a resolution of the competent investigating authority.

With respect to the general principles of the law, Article 1911 of NAFTA refers to principles such as standing, due process, rules of legal interpretations, questions without legal merit, and the exhaustion of administrative remedies.

It is important to note that, the claims alleging violation of Constitutional Articles 14 and 16, may not be resolved by Binational Panels, as such allegations are beyond their jurisdiction and are within the exclusive jurisdiction of the Judicial Power of the Federation and the *Tribunal de Justicia Fiscal y Administrativa* (Federal Tribunal of Fiscal and Administrative Justice), which is the Tribunal for which this Binational Panel is substituted.

#### **IV. ISSUES IN DISPUTE.**

This review arises from two different claims: the one presented by the Consejo Mexicano de Porcicultura (CMP) and the claims presented by the exporting companies that participated in the administrative investigation that gave rise to the Final Resolution, - Cargill Meat Solutions Corp., Seabord Farms, Inc., The

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II. Omission of the formal requirements demanded by the laws that affect the defenses of the private party and have an effect on the impact of the challenged resolution, including the absence of a basis or rationale as the case may be.

III. Errors in the proceeding that affect the defenses of the private party and have an effect on the meaning of the challenged resolution.

IV. If the facts that gave rise to the cause of action did not occur, were different from or evaluated wrongly, or if an order was made in breach of the rules applied or there was a failure to apply the rules that should have been applied.

*[...] Arbitral bodies or bodies otherwise derived from alternative dispute settlement mechanisms involving unfair trade practices, contained in international treaties and conventions to which Mexico is a party, may not revise the deficiencies listed in this article without a previous complaint from an interested party.*

Smithfield Packing Company, Inc., Farmland Foods, Inc., Gwaltney of Smithfield, Ltd. and John Morell & Co. (hereafter, the complainant exporting companies).

#### **A. Arguments presented by the Consejo Mexicano de la Carne (CMP)**

Before conducting the analysis of the points in controversy presented by the CMP in its Complaint, Briefs, and the Public Hearing, this Binational Panel must first determine if the CMP has standing to appear before the present review in light of the fact that CMP did not participate in the administrative investigation that gave rise to the challenged resolution.

CMP has asked this Panel to determine its legal interest to request this review based upon its participation in an administrative investigation that is separate from the investigation that gave rise to the Final Resolution under review, as well as this Binational Panel Hearing.<sup>4</sup>

The CMP's only argument in support of its right to participate as a Claimant in this review is the assertion that this Panel should order the inclusion in the administrative record of this Final Resolution, the administrative record of a different case, 27/02. This Panel will address this assertion after first examining the legal standards that determine whether CMP is an interested party in this review.

The CMP also asserts that this Panel should rely on the participation of another party, the Confederación de Porcicultores Mexicanos, A.C..<sup>5</sup>, in the administrative record of this case, as the basis for CMP's standing in this review.

#### ***1. Interested Persons in the administrative record of this investigation.***

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<sup>4</sup> See the transcript of the Public Hearing. Oral argument of the legal representative of the CMP defending its standing to participate in this review on a different administrative investigation, which administrative record is 27/02. Spanish Version. Pages 44 to 66.

<sup>5</sup> See brief of the CMP. Pages 14 to 16. May 22, 2006.



The right to file a Complaint in a review based on Article 1904 of NAFTA is defined in Mexican legislation. It is necessary to refer to Mexican law because Rule 3 of the Rules of Procedure of Article 1904 of NAFTA incorporates the definition of “interested person” the definition that is found in Mexican law:

**“Interested person** means a person who, pursuant to the laws of the country in which a final determination was made, would be entitled to appear and be represented in a judicial review of that final determination;” *Emphasis Added.*

Rule 39.3 of the Rules of Procedure of Article 1904 of NAFTA, indicates that the right to present a Complaint is limited to “interested persons”:

Only an interested person who would otherwise be entitled to commence proceedings for judicial review of the final determination may file a Complaint. *Emphasis Added.*

Throughout the Rules of Procedure, it is clear that interested persons are those that have a judicial interest in the result of the challenged resolution and, as such, have the right to appear before National tribunals, those for which Binational Panels substitute.

In this sense, Rule 39(1), which regulates the presentation of the claims, also makes reference to “interested person” in accordance with that defined in Rule 39.3, discussed above.

“(1) [A]ny interested person that intends to make allegations of errors of fact or law, including challenges to the jurisdiction of the investigating authority, with respect to a final determination, shall file a Complaint with the responsible Secretariat. [...] Nothing in this subsection shall be read to contradict the rule of subsection 3.

(2) Every Complaint referred to in subsection (1) shall:

[...]

(c) Contain an explanation of the right of the interested person to file a Complaint under this rule;<sup>6</sup>

In this same vein, Article 1904.5 of NAFTA states that:

An involved Party on its own initiative may request review of a final determination by a panel and shall, on request of a person who would otherwise be entitled under the law of the importing Party to commence domestic procedures for judicial review of that final determination, request such review. Emphasis Added.

CMP decided, of its own volition, not to participate in the administrative investigation, thereby waiving its opportunity to represent its interests. The Investigating Authority gave the CMP, as well as other National producing companies, the opportunity to offer evidence and to present their case.<sup>7</sup> In the administrative record presented before this Panel as a basis for its review there is no information that bears on the interest of CMP.

The LCE is clear in defining what an interested person is.

“Interested parties include the petitioning producers, importers, and exporters of the merchandise that is the subject of the investigation, as well as the foreign persons that have a direct interest in the investigation and those that have that character in the international trade treaties or conventions.”<sup>8</sup>

It is appropriate to note that the LCE refers to “petitioning producers” because even when investigations are initiated by the Investigating Authority, the analysis of whether there has been material injury to a domestic industry requires the participation of domestic producers of the product under investigation. Those domestic producers are parties to this appeal, but CMP decided, voluntarily, not

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<sup>6</sup> Emphasis added.

<sup>7</sup> See Notification of the Initiation of the Administrative Investigation to the CMP. Points 35 and 36 of the registry of the record. May 31, 2004. No. UPCI30041742, Vol. 1 of the Non-confidential version and Vol. 1 of the confidential version.

<sup>8</sup> Article 51 of the LCE.

to participate in the investigation and not to furnish the information necessary to the determination of material injury.<sup>9</sup>

The Antidumping Agreement, which is an integral part of the Mexican legislation, indicates that when the Investigating Authority decides to initiate an administrative investigation, it is required to obtain factual evidence from the domestic industry to determine the existence of material injury and whether such injury bears a causal relationship with discriminatory pricing:

“5.4 An investigation shall not be initiated pursuant to paragraph 1 unless the authorities have determined, on the basis of an examination of the degree of support for, or opposition to, the application, expressed by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry. The application shall be considered to have been made "by or on behalf of the domestic industry" if it is supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25 per cent of total production of the like product produced by the domestic industry.”

“5.6 If, in special circumstances, the authorities concerned decide to initiate an investigation without having received a written application by or on behalf of a domestic industry for the initiation of such investigation, they shall proceed only if they have sufficient evidence of dumping, injury and a causal link, as described in paragraph 2, to justify the initiation of an investigation.”

In accordance with the Antidumping Agreement, it is clear that if the domestic industry of the investigated product have a real and juridical interest in the result of the administrative investigation, whether initiated on their behalf or not, those

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<sup>9</sup> During the public hearing, the legal representative of the CMP argued that the Investigating Authority “told her” that it was not necessary that they participate; however, this Panel cannot base its review on hearsay. See Transcript of the Public Hearing. Spanish Version. Pages 47 and 48.

producers should participate and furnish the necessary evidence for the determination of material injury to that domestic industry. This converts them judicially into interested persons, and as such, they obtain the right to challenge the results of said investigation.

Moreover, Article 117 of the *RLCE* indicates that when the government of Mexico initiates a dispute settlement mechanism in unfair trade practices pursuant to the international treaties or conventions referred to by Article 97 of the LCE, the following rules are observed:

“I. The *interested party* that opts to seek said mechanisms should present a Request in writing that contains the following facts:

[...]

D. Description of the proceeding **in which it intervened** and

E. The violations or grievances that was caused upon them by the final resolution, and

II. Once having presented the Request, the Secretariat should solicit, in conformity with the International treaty or convention, the initiation of the proceeding of dispute resolution.”<sup>10</sup>

It is very clear that the LCE and its RLCE make reference to interested parties as those that have *intervened* in the proceeding.

Finally, Article 1 of the *Código Federal de Procedimientos Civiles* (Federal Code of Civil Procedure), which is supplementary in the subject, indicates that:

“Only those that have interest in having the judicial authority issue a declaration, impose a penalty or establish a right, or, or who have an interest to the contrary, may initiate a judicial proceeding or intervene in one.”

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<sup>10</sup> Emphasis added.

It is clear that the CMP cannot request that this Binational Panel order that the Investigating Authority take action under Article 1 of the CFPF because the opportune procedural moment for this was when the administrative investigation was initiated. It is at that juncture where the CMP should have made an appearance and presented the arguments and evidence that it had. If the result of that investigation had caused CMP prejudice or harm, then it would be entitled to appear before a judicial review, and to solicit an arbitral review before a Binational Panel.

## ***2. Interested Persons in Record 27/02.***

It is because of this fact that the CMP proposes that this Binational Panel review an administrative record generated in another administrative investigation (27/02), completely separate and different to the one which is under review. It is important to note that the CMP had the opportunity to request a Binational Panel review of the final resolution in the administrative investigation regarding the import of diverse pork products that it now promotes misguidedly before this Panel, and chose not to do so.

CMP now asks that this Binational Panel review the Final Resolution before us by reopening the administrative record of the investigation regarding diverse pork products, in which the CMP did participate. In effect, CMP wants this Binational Panel to exceed its authority by conducting a review which relies on an administrative record from a separate and unrelated investigation.

CMP's proposal would undermine the system of review by Binational Panels and contradict general legal principles by allowing a Panel to select administrative records not before them for review.

The mandate of the Binational Panel is that it conducts its “review, based on the administrative record of a definitive resolution [...] to determine if that resolution was in conformity with the antidumping and countervailing duties laws and

regulations of the importing Party”.<sup>11</sup> Accordingly, this Panel must limit its analysis to the facts and documents that are found in administrative record 08/04, whose final resolution is before us for review, and not in record 27/02, as the CMP asks.

CMP chose not to request a review before a Binational Panel of the resolution regarding pork products (record 27/02) that it now attempts to comingle with the this review of administrative record 08/04, and conversely, chose not to participate in the administrative investigation regarding pork legs, which it now challenges raising issues it failed to raise when it had the opportunity, and obligation, to do so.

Presumably because it is aware of this fact, the CMP has attempted to prove its standing before this Panel, making reference to its participation in other investigations different from the one under review.<sup>12</sup>

As has been noted, this Panel is not permitted to incorporate new evidence in this review, in light of the requirement under Article 1904.2 that it should base its review in the administrative record that was generated during the administrative investigation that resulted in the Final Resolution that is now under review. The Panel is an arbitral body limited to examining whether the Resolution was “in conformity with the judicial dispositions in the subject of antidumping and countervailing duties of the importing Party.”<sup>13</sup>

In conformity with Article 14, Subsection V, Third Paragraph of the LFPCA, “administrative record shall be understood to mean that which contains all of the information related to the proceeding that gave rise to the challenged resolution [...]”<sup>14</sup>

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<sup>11</sup> Article 1904.2 of NAFTA. Emphasis added.

<sup>12</sup> See, for example, referencing its participation in diverse Appellate Hearings during the Public Hearing. Transcript of the Public Hearing. Spanish Version. Pages 47 and 48. Also see the CMP’s Brief in Response to the Investigating Authority’s Brief. Pg. 14, third paragraph. August 7, 2006.

<sup>13</sup> Article 1904.2 of NAFTA.

<sup>14</sup> Article 85 of the LCE notes that the CFF shall supplement the Law in unfair trade practice and safeguard administrative proceedings. The LPFCA has replaced this provision of the CFF.

Moreover, this Panel notes that CMP's briefs are a muddle of arguments which fail to clearly articulate the nature of its grievances. In this regard we cite various decisions issued by the court:

"GRIEVANCES IN THE REVIEW". By grievance is meant a harm to a right resulting from a judicial resolution not having duly applied the law, or neglecting to apply the law that the case requires; as a consequence, in expressing each grievance, the party should specify what is the fact that causes it, cite the violated legal principle, and explain the respect in which it was infringed, any grievance not meeting these requirements not being worthy of consideration.."  
(Emphasis Added)<sup>15</sup>

In light of the proceeding discussion and the fact that CMP did not participate in the pork legs investigation before us on review, the Panel finds no evidence in administrative record 08/04 from which it may determine whether CMP has been aggrieved by the Investigating Authority. Accordingly, we do not address the Final Resolution.

#### **B. ARGUMENTS PRESENTED BY CARGILL, SEABORD, SMITHFIELD, FARMLAND, GWALTNEY, AND JOHN MORRELL.**

CARGILL, SEABORD, SMITHFIELD, FARMLAND, GWALTNEY AND JOHN MORRELL argue that the Investigating Authority violated the law and prejudiced

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<sup>15</sup> SECOND TRIBUNAL OF THE FIFTH CIRCUIT. Precedents. Appeal in review. 254/91.- Clemente Córdoba Hazard.- Feb. 11, 1992.- Unanimous vote.- Ponente Adán Gilberto Villarreal Castro.- Secretario: Arturo Ortégón Garza. Amparo en revisión 148/92.- Francisco Barraza Gutiérrez.- 26 de junio de 1992.- Unanimidad de votos.- Ponente José Nabor González Ruíz.- Secretario Sergio Cruz Carmona. Amparo en revisión 238/92. - Nacional Financiera, S.N.C...- 28 de octubre de 1992. Unanimidad de votos. - Ponente Lucio Antonio Castillo González. - Secretario Ramón Parra López. Amparo en revisión 121/93. Seguros La Provincial, S.A. - 18 de junio de 1993. Unanimidad de votos.

them by finding that the investigated imports were dumped, even though no antidumping duties were imposed...<sup>16</sup>

In light of the fact that no antidumping duties were imposed, this Binational Panel finds no grievance to address. Even if an investigation suffers from omissions or violations, such shortcomings must have some impact of harm on the parties. In this same sense, the Court has noted the following:

“ADMINISTRATIVE ACT. ITS VALIDITY AND EFFICACY ARE NOT AFFECTED AS A RESULT OF HARMLESS ERRORS THAT DO NOT TRANSCEND, PREJUDICE THE CASE OR CAUSE GRIEVANCES. If the illegality of the act of the authority does not translate into a prejudice that affects the party, such violation is irrelevant, in as far as that the ends desired was obtained, in other words, to allow the party to offer evidence and present its rights. In consequence, it is evident that the dispositions of illegality referred to in Article 238, Subsection III, of the Tax Code of the Federation, being as the defenses of the party were not affected, because the legal conditions for the efficacy of illegality in comment, turns out to be undue, in the case, to declare a nullity when the LEGISLATIVE INTENT is very clear, in the sense to preserve and to conserve actions of the administrative authority that, although illegal, do not PREJUDICE the individual, and therefore should also be attended to and to pursue the benefit of conducive, collective interests to assure effects such as an adequate and efficient tax collection, the prevention of which is the clear and unconditional meaning of the legislator, in order to safeguard the validity and efficacy of certain actions. And it is thus, that the article 237 of the Tax Code of the Confederation develops the legitimacy presumption principle and conservation of the administrative acts, that includes what in the theory of the administrative right is known AS "not disabling illegalities", regarding which, of course, does not proceed to declare its nullity, but to confirm the validity of the administrative act. Then, it is necessary that such omissions or violations affect the defenses of the individual and that they transcend to the sense of the disputed resolution and that cause an effective damage, because otherwise the concept of annulment used would be insufficient and irrelevant to declare the nullity of the disputed administrative resolution. Emphasis added.<sup>17</sup>

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<sup>16</sup> Brief of Smithfield, Gwaltney, John Morrell and Farmland; Brief of Seaboard; and Brief of Cargill. All from May 22, 2006.

<sup>17</sup> Fourth Tribunal in administrative subject of the first circuit. Amparo directo 44/2004. Mauricio Chavero Blázquez y otros. 28 de abril de 2004. Unanimidad de votos. Ponente: Jean Claude



In conclusion, the claimant exporting companies have not been affected or aggrieved by the result of the Final Resolution issued by the Investigating Authority, even when they have expressed specific arguments against said resolution, because that Resolution did not lead to the imposition of definitive antidumping duties upon their exports". For this reason, the Panel does not address the merits of these contentions.<sup>18</sup>

This Panel has concluded that the CMP has no standing to file its Complaint in this review. Accordingly, the arguments of the exporting companies are in opposition to CMP's Complaint, are moot.

#### **IV. DETERMINATION AND ORDER OF THE PANEL**

In light of this Panel's finding that CMP lacks the standing necessary to file its Complaint, this Panel need not analyze the issues raised by that Complaint.

For the reasons stated above, this Binational Panel terminates this Review without addressing the merits of the Final Resolution.

Date of Issuance: December 5, 2008.

Signed in original by:

Elizabeth Anderson

Elizabeth Anderson

December 3, 2008

Howard Fenton

Howard Fenton

December 3, 2008

Leonard Santos

Leonard Santos

December 2, 2008

Jorge Miranda

Jorge Miranda

December 4, 2008

Héctor Cuadra y Moreno

Héctor Cuadra y Moreno

December 3, 2008

Chairman

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Tron Petit. Secretaria: Claudia Patricia Peraza Espinoza. Véase: Semanario Judicial de la Federación, Octava Época, Tomo VII, marzo de 1991, página 106, Tesis I.2o.a.268 a, de Rubro: "Actos administrativos, vicios leves de los."

<sup>18</sup> See the transcript of the Public Hearing. Pág. 6 and 7.