

**Committee on Anti-Dumping Practices
Ad-Hoc Group on Implementation**

Original: Spanish

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Paper by Mexico

The following communication, dated 28 September 1998, has been received from the Permanent Mission of Mexico.

A. CONFIDENTIAL INFORMATION

(a) List of information deemed confidential by nature

The list of information Mexico deems confidential, together with the different classifications which can be given to such information, according to its nature, under Mexican law was submitted to the Ad-Hoc Group beforehand and circulated to Members in document G/ADP/AHG/W/15.

However, in order to help clarify the replies provided below, Mexico would like to repeat the following:

Like other countries using the system, Mexico has created a mechanism whereby certain persons (in particular the legal representatives of the parties) have access to particular categories of confidential information subject to certain requirements and to authorization by the Ministry.

Thus, there are certain categories within the classification of confidential information *lato sensu* which are defined in document G/ADP/AHG/W/15.

The main category is the so-called confidential information *stricto sensu* to which duly accredited representatives of the parties may have access. The second category of information, for the exclusive use of the investigating authority, consists of restricted commercial information and confidential government information, to which (as in other systems) no party may have access.

(b) Information regarding the practice of Members: replies to questions

1. How should confidential information be submitted to the investigating authorities?

*See document G/ADP/W/401 for descriptions of the topics.

The interested parties must duly bring to the notice of the investigating authority in their requests, answers, replies or in any form of appearance, any confidential information *stricto sensu* or restricted commercial information, and must provide justification for such designation. Likewise, they must provide a public summary of that information.

2. How should the non-confidential version of the confidential information be submitted?

The interested parties that classify their information and documents as confidential *stricto sensu* or as restricted commercial information must provide the investigating authority with a public summary thereof in writing, which must be sufficiently detailed to allow anyone consulting it to have a comprehensive understanding of the subject.

3. What are the criteria applied by the investigating authorities in deciding whether to accept or reject a request for confidential treatment?

Interested parties taking part in the procedure have the right to require the investigating authority to treat their information as confidential *stricto sensu* or as restricted commercial information. For that purpose, they must comply with the following requirements:

- (i) The request must be submitted in writing;
- (ii) they must explain why the information should be considered confidential *stricto sensu*;
- (iii) they must present a public summary of the information or, where applicable, an explanation of the reasons why it cannot be summarized.

Once the above requirements have been met, the authority may accept or reject the request depending on the classification which by its nature the information submitted warrants in accordance with the criteria set forth in document G/ADP/AHG/W/15, which Mexico submitted to the Ad-Hoc Group in advance.

4. How is confidential information handled by the investigating authority?

Under Mexican law, the investigating authority grants the interested parties timely access to all of the public information in the administrative file so that they may prepare their arguments. Confidential information in the broad sense of the term is handled by the administrative authority according to the classification assigned to it under the relevant legal provisions, i.e. confidential *stricto sensu*, restricted commercial information or confidential government information. Access to restricted commercial information and confidential government information is limited exclusively to the authorities, and only confidential information *stricto sensu* is made available to the accredited legal representatives of the interested parties in the administrative investigation, provided they comply, to the satisfaction of the authority, with the requirements and precautionary procedures set forth below:

For the investigating authority to consider a legal representative as duly accredited, and thus authorized to have access to confidential information *stricto sensu*, he must fulfil the following requirements:

- (i) He must submit to the investigating authority a request in writing stating the need to examine the confidential information *stricto sensu*.
- (ii) He must submit official documents accrediting the requesting party as a lawyer entitled to exercise his profession in the national territory under the applicable laws.

- (iii) The request to which the above subparagraph refers may also be submitted by any other person provided that he meets the requirements established to that end, with the exception of the provision of the previous paragraph, and is assisted by a lawyer.
- (iv) He must present the original document or certified copy thereof certifying him as a representative.
- (v) He must present the official document or certified copy thereof certifying the name and authority of the official of the enterprise granting the power of representation.
- (vi) He must be resident in Mexico.
- (vii) He must assume and submit the commitment to confidentiality under the terms laid down by the investigating authority in conformity with the Foreign Trade Act and the Regulations thereto.
- (viii) He must state in writing that he is aware of the liabilities and sanctions to which he exposes himself if he violates the confidentiality of the information entrusted to him.
- (ix) He must state in writing the reasons why the confidential information he is requesting to examine is relevant to the defence of his case. In such a situation, the investigating authority may specify under what conditions it is considered the confidential information *stricto sensu* might be useful to the defence of the case.
- (x) He must undertake before the investigating authority to return the original versions of any notes or summaries he has made during his examination of the confidential information *stricto sensu*, within ten days following the issue of the final resolution.

The legal representatives of the interested parties having access to the confidential information *stricto sensu* may not use such information to their personal advantage nor disseminate it, subject to the penalties provided for in the Foreign Trade Act, imposed independently of such civil and penal sanctions as may be applied under Mexican law.

In addition to the above provisions, the legal representative must comply with the following requirements, failing which he shall not be authorized to examine the confidential information *stricto sensu*.

- (i) He must not have been convicted of a deliberate offence or administrative breach of law.
- (ii) He must be of good personal and professional standing.
- (iii) He must not have been a partner, a director or acted as a salaried agent or representative of the enterprise which he proposes to represent, nor of any of the other interested or additional parties in the proceedings in question, during the previous year.
- (iv) He must provide some kind of security for the amount fixed by the investigating authority in accordance with the Federal Tax Code against the commission of the unlawful acts described in subparagraph VI of Article 93 of the Foreign Trade Act. The security may be cancelled following the publication of the resolution in question.

5. In the event that a Member provides access to confidential information, how should the confidential information be accessed?

Assuming that the information is classified as confidential *stricto sensu* and that the requirements and precautionary procedures mentioned above have been complied with, the investigating authority will consider the legal representative to be accredited and, where appropriate, will send the document in question within a period of ten days following the submission of the request.

The examination of the confidential information *stricto sensu* takes place in the premises of the investigating authority and in the presence of one of its officials. The investigating authority must allow a reasonable amount of time for the legal representative to examine the information, during which he may take notes or make a summary provided that he undertakes before the investigating authority to return the original versions thereof within ten days following the issue of a final resolution.

B. SAMPLING METHOD

Mexico has never conducted an anti-dumping procedure in which the margin of dumping has been determined through a selection of interested parties or types of products as specified in Article 6.10 of the Anti-Dumping Agreement. However, Mexico does provide a number of guidelines in that respect.

Questions raised by Brazil

1. At what point in time do other Members make the selection of producers, exporters, importers or types of products with a view to calculating the margin of dumping by applying the sampling method?

Mexico considers that the selection of the sample may be made on the basis of the reply to the official investigation form submitted by the importers and exporters.

2. How do you define a sample and what circumstances would justify a modification?

A sample is a selection that is statistically valid in relation to the total export volume. The sample may be modified for any of the following reasons:

- (i) Lack of cooperation by one or several of the enterprises selected;
- (ii) receipt of new replies from exporters, producers or importers for the final stage of the investigation;
- (iii) revaluation of the selection of one of the enterprises that has been cooperative, provided it does not represent a considerable additional cost.

3. If the samples need to be modified, should there be new consultations with the interested parties?

Mexico considers that in accordance with the spirit and letter of Article 6.10 of the Anti-Dumping Agreement it would be preferable to hold consultations with the interested parties in case of any modification of the selected sample.

Question raised by India

1. What are the criteria applied by the investigating authorities in determining, in a particular investigation, whether to base that investigation on a statistically valid sample, or the largest percentage of the volume of exports from the country in question which can be reasonably investigated?

The criteria for establishing the sample are based on a statistically valid share of the total volume of exports to Mexico. In cases where the number of exporters (producers and marketers) is exceptionally large, the sample selected will include those exporters whose sales volume is statistically valid with respect to the total volume of exports to Mexico in accordance with the information available at the time of selection. For exporting producers and for importers, the same criteria are applied as for exporters.

When the types of product require sampling, the products selected in the sample must represent a significant share of the total volume of products exported to Mexico.

Question by the Chairman

1. Application and implementation of the last part of Article 6.10.2 of the Agreement

Although Mexico has never conducted an anti-dumping procedure in conformity with Article 6.10 of the Anti-Dumping Agreement, it considers that if an exporter, although not initially selected, is cooperative and submits data on a voluntary basis, the investigating authority should consider the data with a view to revaluing its selection and deciding whether it is possible to include the said exporter in the sample, subject to the following criteria:

- (i) The sample must remain statistically representative once the exporting firm has been included;
- (ii) the costs of including the new information in the sample must not be too high.

C. SPECIAL CIRCUMSTANCES

(a) Examples of circumstances that would be considered insufficient to constitute "special circumstances" in the context of Article 5.6 of the Anti-Dumping Agreement

Mexico does not have any such examples.

(b) Information concerning the number of investigations (if any) that have been self-initiated and the circumstances in each case which were considered sufficient to constitute "special circumstances" within the meaning of 5.6 of the Anti-Dumping Agreement

Mexico does not have any contribution to make on this subject.

D. NOTIFICATION TO THE EXPORTING MEMBER

- (a) Identity and address of the contact points for notification under Article 5.5 of the Anti-Dumping Agreement

The notifications to Mexico under Article 5.5 of the Anti-Dumping Agreement should be sent to:

Secretaría de Comercio y Fomento Industrial
Unidad de Prácticas Comerciales Internacionales
Insurgentes Sur # 1940, Piso 11, Col. Florida, C.P. 01030
Mexico City, D.F. MEXICO

Tel: (52-5) 229-6152 and 53, and Fax: (52-5) 229-6502 and 03

and to the Mexican Embassies and Consulates in the various Member countries.

- (b) Observations on the appropriate contents of the notification under Article 5.5 of the Anti-Dumping Agreement, including the question of whether the names of exporters or producers that might be the object of an investigation, should one be initiated, should be included or not

In Mexico's view, the purpose of the Article 5.5 notification is simply to inform the government of the exporting Member of the decision by another Member to initiate an investigation regarding imports from the exporting Member following the receipt of a duly documented application, and not to provide further details concerning the investigation to be initiated.

Accordingly, before formally initiating an investigation, Mexico notifies the exporting Member that the resolution for the initiation of an investigation is imminent, but does not name the parties to the procedure. It is impossible to achieve any uniformity at the multilateral level (unless it is negotiated) regarding the question of how far in advance the said notification should be made. The public version of the application for an investigation together with the names of the interested parties are made available to the public with the publication of the resolution for the initiation of the investigation in the Official Journal (Diario Oficial de la Federación).

E. HEARINGS

- (a) If they have not already done so, Members are asked to provide information on their procedures and practices concerning hearings

Mexico presented its information on procedures and practices concerning hearings to the Ad-Hoc Group in advance and circulated it to Members in document G/ADP/AHG/W/16.

F. ESSENTIAL FACTS

- (a) What are the minimum facts that must be described as "essential facts"?

In Mexico, the document by which the parties are informed of the essential facts referred to in Article 6.9 of the Anti-Dumping Agreement is called the preliminary resolution, which is published in the Official Journal within 130 working days following the publication of the initiation. This resolution must contain at least the following elements:

- (i) The normal value and the export price obtained;
- (ii) a description of the methodology used to determine the normal value, the export price and the margin of dumping;
- (iii) the margin of dumping;
- (iv) a description of the injury ¹caused or that could be caused to the national industry;
- (v) the information considered in reaching the above conclusions;
- (vi) the time-limit within which the parties must supply additional information and comments;
- (vii) where appropriate, whether the authority is examining the possibility of applying a duty less than the margin;
- (viii) whatever information the investigating authority considers relevant to the investigation.

As you can see, the purpose of this document is to inform the parties involved in the investigation of the elements that will be taken into account by the investigating authority in issuing its final resolution and of the time-period of 30 days during which the parties may submit their comments in that respect, which will be taken into consideration by the investigating authorities. Thus, the essential facts must be disclosed sufficiently in advance of the issue of the final resolution for the above purposes to be fulfilled. In Mexico, these resolutions are highly detailed, specifying in full the elements referred to above.

G. PUBLIC NOTICES

- (a) Website and Internet address

To access the Internet page of the International Trade Practices Unit (investigating authority) of the Ministry of Trade and Industrial Development (SECOFI), the following path must be followed:

<http://www.secofi-siem.gob.mx>



Sistemas de Promoción



Comercio Exterior



Prácticas Comerciales Internacionales

¹The word "injury" is to be understood as defined in footnote 9 to the Anti-Dumping Agreement.

SECOFI also offers individuals the possibility to consult and send replies through its e-mail address: upci@secofi.gob.mx.

- (b) Information concerning Mexico's practice regarding Article 12 public notices, with specific reference to how public notices are issued (in what official document or newspaper, or other form) and what the contents of the various public notices are

In Mexico, the public notices referred to in Article 12 of the Anti-Dumping Agreement are published in the Official Journal. Indeed, Mexico considers that the official newspaper, journal or gazette of the issuing Member is the only clear and reliable medium for transmitting public notices to the parties in an anti-dumping investigation.

In Mexico, the following public notices are published in the Official Journal:

- (i) Preliminary and final resolutions for the initiation of an administrative investigation;
- (ii) resolutions announcing the initiation or conclusion of the review of a final countervailing duty;
- (iii) resolutions deriving from the price undertakings made with exporters or with the government in question.

1. General elements

Resolutions for the initiation of an investigation, preliminary or final, including price undertakings and undertakings to review a final countervailing duty, must contain, *inter alia*, the following:

- (i) The name of the authority issuing the resolution;
- (ii) the reasons and justification for the resolution;
- (iii) the name(s) or business name(s) and address(es) of the domestic producer(s);
- (iv) the name(s) or business name(s) and address(es) of the foreign importer(s), exporter(s) or, where applicable, the foreign government bodies or authorities to the extent that they are known;
- (v) the country(s) of origin or provenance of the goods in question;
- (vi) a detailed description of the goods imported or, where appropriate, intended for import, where there is presumption of price discrimination or subsidy, indicating the tariff rate applicable under the schedule of the General Import Taxes Act;
- (vii) A description of the domestic product that is identical or similar to the product which has been imported or is being imported;
- (viii) the period under investigation;
- (ix) any other elements which the investigating authority is considering.

2. Specific content of the resolution for the initiation of an investigation

In addition to the above, the resolution for the initiation of an investigation must contain:

- (i) A summons to the interested parties and, where applicable, to foreign governments, to appear in exercise of their right to make any statement they see fit;
- (ii) the time allowed for presenting evidence;
- (iii) the date, time and place for the public hearing and the pleadings referred to in Articles 81 and 82 of the Foreign Trade Act;
- (iv) analysis of the information and evidence of dumping, injury or threat of injury and causal link submitted by the applicant and by the authority.

3. Specific content of the preliminary resolution

In addition to the general requirements indicated above, the preliminary resolution must contain:

- (i) *In cases where dumping has been established:*
 - (a) The normal value and export price obtained by the Ministry, except in the case of information that an interested party considers to be confidential information or restricted commercial information;
 - (b) a description of the methodology used to determine the normal value and the export price;
 - (c) the margin of price discrimination;
 - (d) a description of the injury caused or that may be caused to the domestic industry;
 - (e) an explanation of the analysis by the investigating authority of each of the factors indicated in Articles 41 and 42 of the Foreign Trade Act and other factors taken into account;
 - (f) where applicable, the export price which would not injure the domestic industry and a description of the procedure for determining that price;
 - (g) the amount of the provisional countervailing duty payable;
 - (h) a statement to the effect that the Ministry of Finance and Public Credit will be notified so that it may duly collect the countervailing duties.
- (ii) *If there has been no change in the grounds for initiating the anti-dumping investigation, a statement that the administrative investigation is continuing without the imposition of the countervailing duties, with the appropriate grounds and justification;*
- (iii) *If it is established that there is no dumping, a statement that the administrative investigation has been terminated without the imposition of countervailing duties.*

4. Specific content of the final resolution

In addition to the general requirements indicated above, the final resolution must contain:

- (i) *If dumping is confirmed:*

- (a) The normal value and export price obtained by the investigating authority, except in the case of information which an interested party considers to be confidential information or restricted commercial information;
 - (b) a description of the methodology used to determine the normal value and the export price;
 - (c) the margin of price discrimination;
 - (d) a description of the injury caused or which may be caused to the domestic industry;
 - (e) an explanation of the analysis by the investigating authority of each of the factors indicated in Articles 41 and 42 of the Foreign Trade Act and other factors taken into account;
 - (f) if applicable, the export price which would not injure the domestic industry and a description of the procedure for determining that price;
 - (g) the amount of the final countervailing duties payable;
 - (h) a statement to the effect that the Ministry Of Finance and Public Credit will be notified so that it may duly collect the countervailing duties; and
- (ii) *If it is established that there is no dumping, a statement that the administrative investigation is terminated without the imposition of countervailing duties, with appropriate grounds and justification.*

In Mexico, these resolutions are highly detailed, specifying in full the various elements referred to.

H. CONTENTS OF PRELIMINARY AFFIRMATIVE DETERMINATIONS

See the reply to the question on public notices (Sections 1 and 3, paragraph I of this document).

I. DUTY ASSESSMENTS

(a) Information concerning the application of a lower margin of dumping

Mexico submitted the information concerning the application of a lower margin of price discrimination to the Ad-Hoc Group in advance and circulated it to Members in document G/ADP/AHG/W/15.
