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**Committee on Anti-Dumping Practices
Committee on Subsidies and Countervailing Measures**

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REPLIES TO QUESTIONS POSED BY THE UNITED STATES² CONCERNING THE NOTIFICATION OF MEXICAN LAWS AND REGULATIONS³

The following communication, dated 15 September 1995, has been received from the Permanent Mission of Mexico.

REPLIES TO QUESTIONS POSED BY THE UNITED STATES OF AMERICA CONCERNING MEXICAN LEGISLATION ON UNFAIR INTERNATIONAL TRADE PRACTICES

Reply to question 1

Article 133 of the Political Constitution of the United Mexican States establishes that the Constitution and the laws enacted by the Congress of the Union, together with treaties in keeping therewith, concluded by the President of the Republic, with the approval of the Senate, will be the Supreme Law of the whole of the Union.

In Mexico, treaties are directly applicable, in other words, they do not stand in need of a legislative act after they have been promulgated in order for them to apply; they are directly incorporated in the domestic legal system and, accordingly, the A-D Agreement 1994, which fulfils the requirements indicated in the previous paragraph, now forms part of our legislation on unfair practices; it has the same status as the Foreign Trade Act. In the event of a contradiction between the two, the A-D Agreement takes precedence, for Article 2 of the Act states that "the provisions of this Act are a matter of public policy and applicable throughout the Republic, without prejudice to the provisions of the international treaties or agreements to which Mexico is a party". Accordingly, in the event of any discrepancy between the GATT 1994 Agreements and the Foreign Trade Act, or if the latter were silent, the provisions of the Agreement would prevail. The Regulations under the Foreign Trade Act are lower in status than the GATT 1994 Agreements, for which reason the provisions of the Agreements take precedence over those contained in the Regulations.

¹This document cancels and replaces the document dated 25 October 1995

²G/ADP/W/2-G/SCM/W/10 and G/ADP/W/2/Suppl.1-G/SCM/W/10/Suppl.1.

³G/ADP/N/1/MEX/1 and G/SCM/N/1/MEX/1.

Reply to question 2

After approval by the Senate of the Republic, the A-D and SCM Agreements form part of Mexico's legal system and Mexican law does not require a legislative act to implement them. The Foreign Trade Act itself, in Article 2, resolves the problem of inconsistency between the GATT Agreements and the Foreign Trade Act by stating that the provisions contained in international treaties to which Mexico is a party prevail over the provisions contained in the Act, and therefore, no panel could require the Mexican Government to amend the Foreign Trade Act or the Regulations thereto. In the event of direct contradictions or conflicts between the GATT Agreements and the Foreign Trade Act, a panel or tribunal, for the reasons already explained, will have to observe the terms of the GATT Agreements.

Reply to question 3

Both the Act and the Regulations state that the profit from imports and distribution must be deducted. Neither of these two provisions specifies the method for calculating the profit margins. However, Article 46.XI sets out several methods for estimating the profit margin, which would be applicable in this case. In particular, in line with past experience these margins are likely to be calculated, respectively, on the corporate information of the importer and the distributor, in conformity with the method described in the fourth paragraph of Article 46.XI (the average profit margin for each enterprise).

Reply to question 4

This is no more than seeming discretion and it is circumscribed by the Regulations. Under Article 39 of the Regulations, the margin of dumping must be calculated in such a way that the normal value and the export price are for comparable goods. Specifically, in the case of physically different products this provision requires the margin of dumping to be estimated by the type of goods, which are defined by product codes. This rule makes sure that each margin is determined on the basis of strictly comparable data.

Again, the second paragraph of Article 56 of the Regulations explicitly indicates that, when the goods sold on the domestic market are not physically identical to the exported goods, the prices of the former must be brought into line with the prices of the latter by adjusting the difference in the variable costs between both types of goods.

Reply to question 5

The idea behind this rule on representativeness is clear: the very concept of normal value is tied in with the prices at which the exporter normally, commonly or generally sells. By definition, a price cannot be described as the one normally charged unless it is for a substantial amount of transactions. In turn, the latter cannot be defined in terms of the importing country's market, but in line with the total market. This is true simply because the exporting country's market may be, and frequently is, tiny.

In investigations initiated after the adoption of the Agreement, representativeness has to be evaluated according to the rule in footnote 2 of Article 2.2 of the A-D Agreement. This is because all the provisions of the Agreement form part of our legislation. However, the text of the rule in question does permit exceptions by acknowledging that the figure of 5 per cent of sales to the importing country shall only be applied normally. Consequently, in keeping with footnote 2 it is clear that, in special situations, the representative percentage may be fixed at a figure different from 5 per cent.

Reply to question 6

Article 36 of the Foreign Trade Act specifies that price adjustments shall be "the necessary" adjustments. For its part, Article 2.4 of the Code states that "due allowance shall be made in each case, on its merits, for differences which affect price comparability". It will be seen that both phrases are similar. Furthermore, the rules to permit adjustments are set out in detail in Articles 54 (adjustments for differences in conditions of sale), 55 (differences in quantity), 56 (differences in physical characteristics) and 57 (differences in tax charges).

Reply to question 7

The Regulations and the A-D Agreement are consistent, since the terms of Article 2.4.1 of the A-D Agreement complement the provisions of Article 58 of the Regulations. The two of them are consistent in regard to the general rule that the rate of exchange to be used is the rate on the date of the transaction. However, Article 58 of the Regulations does not include the other provisions relating to the rate of exchange contained in Article 2.4.1 of the A-D Agreement. For the reason set out in the replies to questions 1 and 2, the SCM Agreement is part of our legislation and, therefore, its provisions will be observed by the investigating authority.

Reply to question 8

Under Article 40 of the Regulations, generally speaking both the normal value and the export price must be calculated with weighted average figures. This provision applies both to ordinary investigations and to administrative reviews.

Reply to question 9

This percentage is similar to the "second 10" of the "10/90/10" United States practice before the Uruguay Round A-D Agreement. In fact, the Mexican rule might be called "0/70/30"; in other words, in the event of an argument of above-costs sales, all sales made under this condition - not only those from a certain base level - are excluded and the exclusions (of sales at a loss) must account for less than 70 per cent of total volume if the normal value is to continue to be determined on the basis of prices. Nevertheless, for the reasons explained in paragraph 1, in anti-dumping cases initiated after Mexico's adoption of the Uruguay Round instruments, the administrative authority has to bring its practice into line with footnote 2 of Article 2.2 of the AD Agreement.

Reply to question 10

There is no inconsistency whatsoever between Article 2.2.2 of the A-D Agreement and Article 46.XI of the Regulations. All methods to estimate profit established in Article 46 of the Regulations relate to the actual data of the exporter himself. Any of the methods used by the Ministry is consistent with Article 2.2.2 of the Agreement.

Reply to question 11

First of all, the reference to Article 47 of the Regulations is incorrect. The rule contained in that Article is that the "*costo de adquisición*" (in English "purchase cost" and not "buying cost") of trading enterprises is the price in the ordinary course of trade, provided it is higher than the sum of the production cost plus the overheads (selling, administrative, financial and other costs) of the suppliers.

Trading enterprises, generally speaking, sell not on the domestic market but only on export markets. If a trading enterprise only buys products below cost (clearance sales, for example or remainders) its resale prices to foreign markets would tend to be the same; otherwise the difference between one export price and another would be negligible. This means that, if the normal value of such enterprises is fixed according to an export price to a third country, this normal value would tend to be very similar to the export price to the Mexican market, which would make the dumping margins very close to zero or even negative. This result, however, would be illogical, because all the goods in question would have been sold originally under loss conditions.

Under the rule described above, the normal value cannot be fixed on the basis of the resale prices of products purchased below cost. This position is perfectly consistent with Article 2.2.1.1 of the A-D Agreement, which states that the costs involved in determining the normal value "shall normally be calculated on the basis of records kept by the exporter ... provided that such records ... reasonably reflect the costs associated with the production and sale of the product under consideration".

Reply to question 12

Article 46.IX of the Regulations relates to costs such as restructuring expenses. These are recognized in a particular year and therefore, from a purely accounting standpoint, form part of the total production cost for that year. However, from a purely economic standpoint, including "once-for-all" restructuring expenses in costs produces distortions. Firstly, the resulting costs are so high that all domestic sales seem to be made at a loss. Secondly, the constructed values obtained by cumulation of such costs are so high that all export operations seem to be dumped. The fact is that producers cannot set sufficiently high selling prices to absorb total restructuring expenses because, if they did so, they would be priced out of the market.

The above rule allows restructuring expenses to be allocated over time, like depreciation, so that the POI ends up by absorbing only the amortization for that year. (For example, 1/15 of total restructuring expenses, when the period of amortization is 15 years.) However, if only the restructuring expenses incurred in the POI are taken into account, the above rule would always benefit the exporter: the restructuring expenses related to the POI would be allocated between that period and the subsequent periods, thereby invariably reducing the estimated total cost of production for the POI.

To make sure that the effects of applying the rule in question are neutral, restructuring expenses incurred before the POI are also taken into consideration. For example, the POI may end up by absorbing 1/15 of the recognized restructuring expenses in that period, 1/15 of the restructuring expenses recognized five years earlier and 1/15 for 10 years back. It will be seen that it is a rule intended to ensure impartial treatment of the parties involved in the proceedings.

This rule is definitely consistent with Article 2.2.1.1 of the A-D Agreement which states that "costs shall be adjusted appropriately for those non-recurring items of cost which benefit future and/or current protection".

Reply to question 13

In investigations initiated after the entry into force of the AD Agreement, the investigating authority must accept information that is in conformity with the GAAP in the exporting country, provided the principles reasonably reflect the costs associated with the production and sale of the product under consideration, for the reasons explained in paragraph 1.

Reply to question 14

The relevant provision is Article 48 of the Regulations. Under this Article, the substitute country must be similar to the exporting country and the similarity between the two must be defined in a reasonable manner. The Article in question explicitly states that the substitute country must be selected on the basis of economic criteria. The criteria are not listed, but examples are given by means of the criterion of factor intensiveness. The idea behind this criterion is that the exporting country has a comparative advantage with regard to the product under investigation and this comparative advantage consists of the fact that that country has relatively low costs for the factor(s) used intensively in producing the product. From this standpoint, a country is an appropriate substitute country to the extent that it is shown to have the same comparative advantage as the exporting country.

Accordingly, the parties involved in an investigation of this type find they are normally involved in a series of technical debates about the two points: (1) What is the factor intensiveness of the product under investigation? (assuming that the factor intensiveness is the same, regardless of whether it is the exporting country or the substitute country) and (2) Does the substitute country have relatively low costs for the factor(s) used intensively in producing the product in question? Obviously, the physical similarity between the product of the substitute country and product of the exporting country is also relevant matter of discussion (to resolve this point, the investigating authority often resorts to technical expertise). In any event, it should be noted that, since use of the factor intensiveness criterion is not compulsory, the parties are free to adduce their arguments about similarity on the basis of any other economic criterion which is reasonable for such purposes.

Reply to question 15

As explained in the reply to question 1, the investigating authority will observe the provisions of Article 1 of the SCM Agreement.

Reply to question 16

As explained in the reply to question 1, the investigating authority will observe the terms of Article 2 of the SCM Agreement and, especially the concept of specificity in contained in Article 2, which takes precedence over the definition of subsidy contained in Article 37 of the Act.

Reply to question 17

Pursuant to the express provisions of Article 62 of the Foreign Trade Act and Article 90 of the Regulations, in no case may the authority decide on duties higher than the margin of subsidy determined in the course of the administrative investigation. Therefore, in implementing Article 19.4 of the SCM Agreement in Mexico, the authority itself will continue to follow its customary practice.

Reply to question 18

The method for calculating the benefit conferred on the recipient of a subsidy is being worked out by the investigating authority to include it in the changes being prepared for the Foreign Trade Act and the Regulations, which must comply with the provisions of the SCM Agreement.

Reply to question 19

As explained previously in the reply to question 1, the A-D Agreement is part of our domestic legislation and, therefore, the investigating authority must observe the exemptions set out in Article 8.2.

Reply to question 20

The expression "domestic industry" in Article 40 of the Foreign Trade Act should be construed as complying with the requirements of the SCM Agreement. Accordingly, the authorities, mindful of footnote 46 of the Agreement, comply with this provision, which requires the expression "like product" to be taken to mean a product which is identical, or in the absence of such a product, another product which has characteristics closely resembling those of the product under consideration. It is possible that, in the immediately preceding stage in the line of production of certain products, there are in fact domestic producers of goods with "... characteristics closely resembling those of the product under consideration", thereby complying with the likeness standard stipulated in the GATT 1994 Codes. This provision would apply solely in true cases of exceptions.

As to support by domestic producers for the application, in this case, the investigating authority will observe the provisions of the GATT 1994 Agreements.

Reply to question 21

The current Foreign Trade Act does not include an obligation to notify the government of the exporting country that an application has been submitted, before proceeding to initiate the investigation. However, for the reasons set out in the reply to question 1, the investigating authority is obliged to provide such notice.

Reply to question 22

Article 53 of the Foreign Trade Act is consistent with Article 6.1 of the A-D Agreement and Article 12.1 of the SCM Agreement. Mexican legislation would appear to grant a lower period for submitting the reply to questionnaires, but in reality the period is longer, because the Foreign Trade Act stipulates in Article 3 that, for the purpose of calculating such periods, the days shall be working days, whereas in the case of the A-D Agreement and the SCM Agreement, they are calendar days.

Reply to question 23

Admittedly, the Regulations under the Foreign Trade Act do not state that only in exceptional circumstances will an interested party be relieved of the obligation to submit a public summary of a document. However, as stated in the reply to question 1, the investigating authority will observe the provisions of Article 6.5.1 of the A-D Agreement and 12.4.1 of the SCM Agreement.

Reply to question 24

The investigating authority, on the basis of Article 6.4 of the A-D Agreement of the Tokyo Round, has rejected confidential information which was unwarranted and which the supplier of the information was unwilling to make it public or to authorize its disclosure in generalized or summary form. This obligation is also found in the A-D Agreement and the SCM Agreement of GATT 1994, and on the basis thereof the investigating authority is obliged to comply with the relevant rules.

Reply to question 25

The Foreign Trade Act and the Regulations provide for the imposition of "countervailing duties", a term that is applied both to duties imposed in anti-dumping investigations and in subsidies investigations. It is not a problem of translation but a problem of terminology (in referring to "countervailing duties" the Foreign Trade Act refers without distinction to anti-dumping and

countervailing duties). The time-limits for the investigations were explained in the documents notified and apply both to anti-dumping and to subsidies investigations. It is clear from them that the investigating authority fully complies with the maximum period for completing investigations provided for in Article 5.10 of the A-D Agreement.

Reply to question 26

It is only a seeming contradiction between Article 57 of the Act and Article 17.3 of the A-D Agreement, for the following reason. It should be remembered that the Act itself, in Article 3, stipulates that periods established in days must be taken as working days, whereas the periods established in the Agreement are in calendar days. Accordingly, these periods are in reality very similar and, in fact, the period under Mexican legislation is longer than the period established in the Agreement; both legislations are therefore perfectly compatible.

Again, although the Act and the Regulations do not establish any time-limit for the duration of provisional countervailing measures, the provisions of the Agreement must be observed.

Reply to question 27

It is only a seeming contradiction between Article 57 of the Act and Article 17.3 of the A-D Agreement, for the following reasons. It should be remembered that the Act itself, in Article 3, stipulates that periods established in days must be taken as working days, whereas the periods established in the Agreement are in calendar days. Accordingly, these periods are in reality very similar and, in fact, the period under Mexican legislation is longer than the period established in the Agreement; both legislations are therefore perfectly compatible.

Again, although the Act and the Regulations do not establish any time-limit for the duration of provisional countervailing measures, the provisions of the Agreement must be observed.

Reply to question 28

It would be the lack of elements constituting an unfair international trade practice, in other words, no proof of the existence of price discrimination or of a subsidy, no demonstration of injury to the domestic industry or no demonstration of a causal link.

Reply to question 29

Since, as pointed out in the reply to question 1, the A-D and SCM Agreements have been incorporated in domestic legislation on this matter, application of Agreements is mandatory for the investigating authority, for which reason Mexico must comply with the terms of the Agreements in regard to price undertakings.

Reply to question 30

Article 72 of the Act establishes that, in examining a price undertaking, the investigating authority must determine whether the undertaking eliminates the injurious effect of the unfair practice. From the interpretation of this Article it is easy to see that, before accepting an undertaking, it must first be determined whether or not an unfair practice causing injurious effects to the domestic industry exists; otherwise, the undertaking could not be accepted, because it has no *raison d'être*.

In addition, it should not be forgotten that, at the present time, the provisions of the A-D Agreement and the SCM Agreement of GATT 1994 must be observed by the investigating authority, as indicated in the reply to question 1.

Reply to question 31

The investigating authority, at the request of the interested party and in application of the relevant articles of the A-D Agreement or the SCM Agreement, may continue with the administrative investigation and, in the event of a negative determination of the existence of an unfair practice, cancel the relevant price undertaking, because it has no *raison d'être*.

In addition, as stated in the reply to question 1, the provisions of the A-D Agreement and the SCM Agreement must be observed by the investigating authority.

Reply to question 32

The investigating authority, on the basis of Article 18.2 of the SCM Agreement, cannot accept any price undertaking from an exporter if the exporter does not have the consent of the exporting Member.

This is based on the A-D Agreement itself, for as stated in the reply to question 1, the provisions of Agreement must be observed by the investigating authority.

Reply to question 33

Pursuant to Article 53, the Ministry sends to the interested parties known to it, on the day following publication of the initiation resolution, the notification of the initiation of investigation together with official investigation forms (investigation questionnaires) indicating the information required for the case in question, and the format in which the information is to be presented.

In this notification, the investigating authority notifies the parties of the form in which all the information they supply must be presented and the period for so doing, with due clarification of the consequences of failing to fulfil these formalities.

Again, Mexican legislation does require the investigating authority to give notice of the time-limit for submitting information; in fact, any request by the authority must, in order for it to be valid, specify the period granted; otherwise, the requested party would be left defenceless.

In addition, as indicated in the reply to question 1, it should not be forgotten that, at the present time, the provisions of the GATT 1994 A-D and SCM Agreements must be observed by the investigating authority.

Reply to question 34

For the reasons explained in the reply to question 1, the investigating authority must observe the rules contained in Annex II of the A-D Agreement.

Reply to question 35

For the reasons explained in the reply to question 1, the investigating authority must observe the rules contained in Annex II of the A-D Agreement.

Reply to question 36

Although Mexican legislation does not set out any principle on the use of the best available information, from the date of entry into force of the A-D Agreement it has to be ensured that, whenever use is made of this kind of information, all the requirements of Annex II, paragraph 7 of the Code will be fulfilled, for the reasons explained in the reply to question 1.

Reply to question 37

Although it is not new for Mexico to have recourse to alternative sources of information, for it is a routine practice of investigating authority, it is new to use alternative sources when having recourse to the best available information; these sources are not usually on the administrative file because they have not been supplied by the interested parties. However, the authority will have to follow Annex II of the A-D Agreement, for the reasons explained in the reply to question 1.

Reply to question 38

The investigating authority, for the reasons explained in the reply to question 1, must observe the rules contained in Annex II of the A-D Agreement.

Reply to question 39

The interpretation of the provisions of Article 100 of the Regulations is not correct. On the one hand, the article setting out the subsidies and procedural rules applicable to reviews, made both *ex officio* and on request, is Article 99 of the Regulations, not Article 100.

On the other hand, with the entry into force of the Uruguay Round Agreements, particularly the A-D Agreement, their principles will have to be observed, for the reasons explained in the reply to question 1.

Reply to question 40

In both cases, the standard, found in Article 101 of Regulations, is the same, namely the selling prices have changed in such a way as to warrant a review of the margins of price discrimination to bring them into line with the circumstances on the market, or a change in the amounts of the subsidies granted to exporters that have a direct effect on the possible amounts of the duties.

Reply to question 41

The parties are simply required to show that they have a legal interest in the investigation, in other words, to show that they have been exporters, importers or domestic producers during the period they asked to be reviewed, and in the case of exporters, to supply information on the normal value and export price, so that the investigating authority can proceed to examine the information provided by the enterprise in question and make a preliminary determination as to whether there are sufficient grounds for considering that there is some change in the circumstances that led to the application of the countervailing duty.

Reply to question 42

Since Article 70 of the Act is clear in establishing that countervailing duties last for a period of five years, with no requirement other than a declaration by the investigating authority; if after the

period has elapsed, the authority fails to notify the parties and to publish the corresponding declaration, any interested party may request the authority to declare the elimination of the respective duties and so notify the other parties, in which case the authority must respond as promptly as possible, without any further formalities.

Despite this reply, it should be pointed out that in no circumstance does the investigating authority have an obligation to issue the corresponding notification.

Reply to question 43

Since price undertakings are measures equivalent to the application of countervailing duties, they are subject to the same principles, for which reason the principles contained in Article 70 of the Act and Article 107 of the Regulations apply; accordingly, the principles contained in the GATT A-D Agreement and SCM Agreement must also apply to them.

Reply to question 44

The purpose of subsequent reviews is to make sure that unfair trade practices have actually disappeared; accordingly, if no margins of price discrimination are found in the third consecutive annual review, the duty is annulled. Obviously, since the legislation draws no distinction between anti-dumping and anti-subsidy ("countervailing") duties and refers solely to "cuotas compensatorias", this principle applies to both.

Reply to question 45

The Foreign Trade Act establishes the maximum time-limits for issuing preliminary and final determinations, and they are in accord with the provisions of the A-D Agreement and the SCM Agreement. The Mexican investigating authority is required to respect them and therefore take special care in specifying the periods for any formality to be completed in order to proceed better (arrive at the truth), so as not to exceed the time-limits established in the law and to respect the right of the parties involved to a defence.

Reply to question 46

Throughout the operation of the anti-dumping system in Mexico, the investigating authority has made sure that any information supplied by the parties in the course of an administrative investigation is properly assessed, something which, in the case of exporting enterprises, means in fact calculating, where information so permits, an individual margin of dumping. Consequently, now, with the entry into force of the A-D Agreement, a specific foundation exists and the investigating authority will therefore continue with the administrative practice it has followed up to now, except for the exceptions set out in the A-D Agreement.

Reply to question 47

The investigating authority is preparing the appropriate reforms in its legislation in order to grant new shippers the opportunity for this type of review, as provided for in the A-D Agreement. Meanwhile, and since the Agreement is mandatory in our country, reviews requested by any new shipper shall be carried out in conformity with the provisions of the Agreement, for the reasons set out in the reply to question 1.

Judicial Review:

Reply to question 48

Under Article 238 of the Federal Tax Code, the review standard applicable is the following:

- I. Lack of competence of the official who has issued or ordered or handled the proceeding that produced the determination.
- II. Omission of formal requirements demanded by law, affecting the defences of the individual and exceeding the scope of the contested resolution.
- III. Procedural defects affecting the defences of the individual and exceeding the scope of the contested resolution.
- IV. If the acts that gave rise to the resolution were not carried out, were different or were wrongly assessed, or if the resolution was issued in contravention of the provisions applied or the proper provisions were not applied.
- V. When the administrative resolution issued under discretionary powers is not in keeping with the purposes for which the Act confers such powers.

49. This question was not posed: question 48 moves onto question 50.

Reply to question 50

Yes, evidence of injury or threat of injury is regulated by the Foreign Trade Act and the Regulations and an injury test is automatically granted to any Member of the World Trade Organization, thereby fulfilling the terms of the Act, which grants it in conformity with the respective Agreements.

Reply to question 51

"Material loss or impairment" means that there has been a decrease in, harm to or deterioration of one or more of the assets or rights of an enterprise affected by unfair international trade practices.

"Deprivation of any lawful, normal gain" means that the earnings or profits an enterprise should have received as a result of its lawful commercial activities have been affected because of imports under unfair international trade practices.

The definition of "injury" set out in Article 39 of the Foreign Trade Act is consistent with Article 3 of the A-D Agreement and Article 15 of the SCM Agreement, since they mean the same thing.

Reply to question 52

Article 40 of the Foreign Trade Act is supplemented by Article 3 of the A-D Agreement and Article 15 of the SCM Agreement, which, for the reasons explained in the reply to question 1, must be observed by the Mexican investigating authority.

Article 40 of the Foreign Trade Act and Article 60 of the Regulations define what is to be considered as representative of the domestic industry; they do not define what is to be considered

as the domestic industry, for which reason, in the absence of a definition of domestic industry in the Act and the Regulations, the definitions in the GATT 1994 Codes necessarily applies.

Reply to question 53

The meaning of "sector" in the context of Article 41 of the Foreign Trade Act relates to the "industry" or the totality of domestic producers of goods identical or similar to those under investigation. This meaning is consistent with the terms of Article 3.4 of the A-D Agreement and Article 15.4 of the SCM Agreement, which speak of "... relevant economic factors ... having a bearing on the state of the industry ...".

Reply to question 54

Article 41.IV of the Foreign Trade Act is consistent with Article 3.4 of the A-D Agreement and Article 15.4 of the SCM Agreement, since the meaning of the phrase "Any other elements which the Ministry deems appropriate" is the same as the meaning of the articles of the GATT 1994 Agreements, when they state that "The examination of the impact of the dumped imports (A-D Agreement), or of the subsidized imports (SCM Agreement), ... shall include an evaluation of all relevant economic factors and indices ...".

Reply to question 55

Article 42.IV of the Foreign Trade Act is consistent with Article 3.7(iv) of the A-D Agreement and Article 15.7(v) of the SCM Agreement, since the stipulations in paragraph IV are exactly the same.

Reply to question 56

Only one standard is applied regarding consideration of the volume of imports. There is no difference between Article 41.I of the Foreign Trade Act and Article 64.I of the Regulations, since both speak of a considerable increase ("aumento considerable").

Article 41.I of the Foreign Trade Act and Article 64.I of the Regulations are consistent with Article 3.2 of the A-D Agreement and Article 15.2 of the SCM Agreement, since the terms "considerable" and "significant" have the same meaning.

Reply to question 57

The "considerably lower" concept, in the context of Article 41.II of the Foreign Trade Act and Article 64.II.C. of the Regulations, means when the selling price of the imported product, compared with the selling price of the like domestic product, is less to a significant degree, as established in Article 3.2 of the A-D Agreement and Article 15.2 of the SCM Agreement. Article 41.II of the Foreign Trade Act and Article 64.II.C of the Regulations are consistent with Article 3.2 of the A-D Agreement and Article 15.2 of the SCM Agreement, since the term "considerable" has the same meaning as "significant".

Reply to question 58

In the first place, Article 64.II.A of the Regulations only refers to "like products". When the legislation speaks of "imports under investigation" it refers to imports that are the subject of the application, in other words, imports on which evidence of dumping or subsidies was accepted; again, in speaking of other imports not under dumping or subsidization conditions the reference is necessarily

to imports of products similar to those under investigation but from sources different from the sources being investigated. The reason for making a comparison of prices of dumped or subsidized imported products with the prices of non-subject imports (like goods) is perfectly consistent with the terms of Article 3.5 of the A-D Agreement and Article 15.5 of the SCM Agreement, both of them GATT 1994 agreements, which refer to other factors to be taken into account in establishing the causal link between the dumping or subsidy and the injury:

... Factors which may be relevant in this respect include the volume and prices of imports not sold at dumping prices (or non-subsidized imports of the product in question).

Clearly, if the prices of imported like products not sold at dumping or subsidized prices are lower than those of dumped imports, this fact would be a factor, or at least it would be a sign that, if domestic prices were depressed or contracted, it was due to other imports of like products not imported under dumping conditions.

Reply to question 59

Both Article 41 of the Foreign Trade Act, which relates to the determination of injury, and Article 42, which relates to the determination of the threat of injury, specify the factors to be taken into consideration in such determinations and state that the Ministry must take into account "Any other elements which the Ministry deems appropriate", thereby leaving open the possibility for the Ministry to examine other elements not specified in the Act. For their part, the Regulations, in Article 64.IV and Article 68.VI, also cover the possibility of the Ministry taking into consideration other elements not specifically indicated in the Regulations.

Article 3.4 of the Agreement includes factors which are not expressly mentioned in the Foreign Trade Act or the Regulations, but the investigating authority must consider them, for the reasons set out in the reply to question 1. Accordingly, in such cases, consideration will be given to the magnitude of the dumping margins.

Reply to question 60

The factors mentioned in Article 3.5 of the A-D Agreement and Article 15.5 of the SCM Agreement are also covered by Article 69 of Regulations, for which reason there is no omission in this regard nor is there any conflict with the GATT Agreements.

Reply to question 61

Article 68 of the Regulations under the Foreign Trade Act is wholly compatible with Article 3.7 of the A-D Agreement. The fact that Article 68 of the Regulations speaks of a "well-founded probability" is no great problem; it simply means that the "probability" must be determined on an objective basis.

Furthermore, there is no inconsistency with Article 3.7 of the A-D Agreement and Article 15.7 of the SCM Agreement.

Reply to question 62

When Article 68 of the Regulations speaks of "generally accepted methods" it refers to the accounting, statistical and econometric techniques and methods that are used in general practice.

Reply to question 63

The Foreign Trade Act and the Regulations do not expressly specify what the *de minimis* margins or non-negligible volumes to be observed by the investigating authority are. However, the criteria established in the WTO Agreements must be followed, for the reasons set out in the reply to question 1.

Reply to question 64

In this case, the investigating authority must observe the provisions of the GATT 1994 Codes, for the reasons set out in the reply to question 1.

Reply to question 65

In the administrative procedure, both the Foreign Trade Act and the Regulations specify certain time-limits for each phase. Admittedly, Article 53 of the Act does specify a period of 30 working days to submit evidence and pleadings, but this is for them to be considered for the provisional resolution, for which reason it is not the only opportunity in the procedure for the parties to present their defense; there are other opportunities as provided for in Article 164 of the Regulations, which establishes a period of 30 working days from the publication of the provisional resolution for the interested parties to submit the arguments and evidence they consider relevant. Accordingly, there is no contradiction whatsoever between the terms of the Act and the terms of the A-D and SCM Agreements, since the Agreements state that during the whole of the investigation the parties shall have an opportunity to defend their interests.

Reply to question 66

Article 70 of the Act does not contravene the provisions of the A-D Agreement or the SCM Agreement, in as much as they state that the duties shall be eliminated in a period of five years from their date of entry into force, provided none of the interested parties has requested a review. Since the Codes are incorporated in our legislation, as indicated in the reply to question 1, the Mexican authorities must observe the provisions of Article 12.3 of the A-D Agreement and Article 21.3 of the SCM Agreement, which supplement Article 70 of the Act. Accordingly, there is no contradiction whatsoever between the terms of the Act and the terms of the A-D and SCM Agreements.

Reply to question 67

Article 80.II of the Regulations states that final resolutions, as well as initiation resolutions and preliminary resolutions, shall contain the grounds and reasoning justifying the decisions, and it is there that the reasons for accepting or rejecting the arguments of exporters or importers are set out. Accordingly, there is no contradiction whatsoever between the provisions of the Foreign Trade Act and the provisions of the A-D and SCM Agreements.