

# WORLD TRADE ORGANIZATION

RESTRICTED

**G/ADP/W/68**

**G/SCM/W/77**

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

Original: Spanish

## REPLIES TO QUESTIONS POSED BY CANADA<sup>1</sup> CONCERNING THE NOTIFICATION OF MEXICAN LAWS AND REGULATIONS<sup>2</sup>

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

## REPLIES TO QUESTIONS BY CANADA CONCERNING MEXICAN LEGISLATION ON UNFAIR FOREIGN TRADE PRACTICES

**1. Mexico has noted that its laws respecting unfair foreign trade include, *inter alia*, the Agreement on Implementation of Article VI and the Agreement on Subsidies and Countervailing Measures of the GATT 1994. Could Mexico clarify whether its intention is to revert to the Agreements where its other laws are silent, or in cases where other laws may be interpreted in conflict with provisions of the Agreements?**

### Reply

This is so, for 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 into the domestic legal system and, accordingly, the Agreement on Implementation of Article VI and the SCM Agreement 1994, which fulfil the requirements indicated in the previous paragraph, now form part of our legislation on unfair practices; they have the same status as the Foreign Trade Act and their provisions must be observed by the Mexican authorities.

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<sup>1</sup>G/ADP/W/29-G/SCM/W/36.

<sup>2</sup>G/ADP/N/1/MEX/1 and G/SCM/N/1/MEX/1.

Conflicts between both systems are resolved by the Foreign Trade Act itself, which stipulates in Article 2 that its provisions are a matter of public policy and applicable throughout the Republic, without prejudice to provisions of treaties to which Mexico is a party. Accordingly, in the event of any discrepancy between the Agreements of the GATT 1994 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.

**2. What is the legal mechanism in Mexican law for the implementation of decisions rendered by the WTO?**

Reply

In the case of a WTO decision which, pursuant to the provisions of the respective agreements must be observed by Mexico, the investigating authority will issue a resolution incorporating the WTO decision so that it takes effect in Mexico.

**3. Is there any means by which domestic interests could use Mexican laws or the Mexican Constitution, including the practice of AMPARO, to challenge or prevent the government from implementing a WTO Dispute Settlement Body (DSB) panel decision?**

Reply

The only way would be an action for which would be filed if the implementation of a panel order was in breach of the guarantees provided for in the Constitution.

Standing

**1. Mexican law and regulations do not appear to contain references to the manner in which "an examination to determine the degree of support" (SCM Article 11.4; Agreement on Implementation of Article VI, Article 5.4) for a complaint will be made. How will the Mexican authorities determine whether a complaint is expressly supported by domestic producers.**

Reply

Pursuant to Article 60 of the Regulations under the Foreign Trade Act, applicants are required to demonstrate that they represent at least 25 per cent of the domestic production. The investigating authority verifies whether an applicant accounts for such a percentage of the domestic production, comparing its information with various statistical sources, and it will then notify the representatives of the rest of the domestic industry in order for them to express their interest in or opposition to the initiation of an investigation.

**2. With respect to Article 75.VI of the Regulations, and for the purposes of determining whether the required level of industry support exists, where the complainant is a member of an industry organization (sic), is it assumed that the other members of the industry organization also support the request for initiation of an investigation?**

Reply

No. When the applicant is a member of an organization and it is he who submits the application, it is assumed that it has been presented on his own behalf; conversely, when the application is submitted on behalf of an organization, it is then regarded as having the support [of the majority] of its members.

**Injury**

**1. Article 29 of the Foreign Trade Act provides that "evidence of injury or threat of injury be required whenever the country of origin or source of the goods in question observes reciprocity". Could Mexico please clarify the meaning of this qualification as it relates to the requirement in the Agreements that material injury be demonstrated to be caused by subsidized or dumped imports before any duty may be imposed?**

**Reply**

There is no inconsistency whatsoever between the terms of Article 29 of the Foreign Trade Act and the WTO Anti-Dumping and Subsidies Agreements, since any country, by signing and accepting the Agreements, is bound to evaluate injury before imposing countervailing duties on imports of products from Mexico by another Member State, thereby acting in conformity with the reciprocity required by the Foreign Trade Act. In other words, Mexico provides WTO Member countries with evidence of injury or threat of injury to those countries.

**2. Does the expression "not significant" in Article 67 of the Regulations mean "*de minimis*"? Similarly, is the phrase "identifiable adverse effects on domestic production" intended to mean "negligible"?**

**Reply**

No, the expression "not significant" and "do not have any identifiable adverse effect on domestic production" relate to "negligible".

**3. In addition, how will the Mexican authorities implement the requirement to "examine any known factors other than the dumped/subsidized imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped/subsidized imports" (SCM Agreement, Article 15.5; Agreement on Implementation of Article VI, Article 3.5)?**

**Reply**

Article 69 of the Regulations sets out the obligation on the investigating authority to examine other factors known to it, other than the imports being investigated, which are simultaneously affecting domestic production, in order to determine whether the alleged injury or threat of injury is directly caused by such imports. In addition, the Article includes the factors that may be evaluated, namely:

- I. The volume and prices of imports which are not subject to price discrimination or subsidy;
- II. Contraction of demand or changes in patterns of consumption;
- III. Trade-restrictive practices of foreign and domestic producers, and competition between them; and
- IV. Technological developments, productivity and export performance.

**4. What types of "other elements" would the Ministry "deem appropriate" in its consideration of the question of injury under Article 41.IV?**

Reply

Any element in support of the evaluation of the economic variables mentioned in the Act, for example, the situation of the domestic, international and export markets, business cycles, competition factors, development of new technologies, etc.

**5. The last paragraph of Article 42 requires the Ministry to take into account all factors "... which make it possible to conclude ..." that future imports will cause injury. Will Mexico also consider factors that do not indicate injury?**

Reply

In determining the existence of a threat of injury, the investigating authority will take into account all the factors enumerated in Article 42 which enable it to conclude whether further imports in unfair conditions would be imminent and whether, unless countervailing duties were applied, injury would occur. It follows that only factors indicating the existence of a threat of injury are taken into account.

**Procedural time-limits**

**Clarification would be appreciated with respect to the specific procedural time-limits under Mexican law and regulations for the rendering of preliminary and final resolutions and respecting the implementation and duration of provisional duties. Of specific interest is Article 57.1 of Mexico's Foreign Trade Act, which appears to allow for the fixing of a provisional duty 45 days following the publication of the resolution to initiate an investigation, rather than the 60 days called for in Article 7.3 of the Agreement on Implementation of Article VI and Article 17.3 of the SCM Agreement.**

Reply

The Foreign Trade Act itself establishes in Article 3, that the periods specified in days shall be taken to mean working days, whereas the periods under the Agreement are in calendar days. Accordingly, both periods are in reality similar and, in fact, the time-limit established in Mexican legislation is longer than the one specified in the Agreements, for which reason both are perfectly compatible.

The preliminary resolution must, pursuant to Article 57 of the Foreign Trade Act, be issued within a period of 130 working days from the day following publication in the Diario Oficial de la Federación of the resolution to initiate investigation, but not before 45 working days if a provisional countervailing duty is fixed, as provided in paragraph I of the Article. The period is equivalent to 60 calendar days, as provided for in Article 7.3 of the AD Agreement and Article 17.3 of the SCM Agreement. For that reason, there is no inconsistency.

Article 59 of the Act states that the final resolution shall be issued within a period of 260 working days from the day following publication in the Diario Oficial de la Federación of the resolution initiating the investigation.

### **Sunset provisions**

**1. In regard to Article 109 of the Regulations, is the intent that the declaration of elimination can only be made after interested parties have been notified? If so, should not that notification be made before the time-limit elapses, and not after, as is stated?**

#### **Reply**

The declaration of elimination may be issued and published only after notification to the interested parties that the legal time-limit has elapsed. The intention of this Article is not to warn the parties interested in the investigation that the period of five years for the elimination of the countervailing duty is drawing to a close, but simply to notify them that the period has elapsed and that the countervailing duty imposed will be eliminated.

**2. Can Mexico clarify whether undertakings will be subject to the same sunset provisions as duties?**

#### **Reply**

Article 109 of the Regulations relates solely to the elimination of countervailing duties. However, under Article 11.5 of the AD Agreement and Article 21.5 of the SCM Agreement, price undertakings will be subject to these provisions, since, as pointed out in the reply to question 1, these provisions must be observed by the relevant authority.

### **Anti-circumvention**

**In light of the specific obligation in Article 18.1 of the Agreement not to take actions against the dumping of exports from another Member except in accordance with the provisions of GATT 1994 as interpreted by the Agreement, could Mexico indicate the basis in the Agreements for the de facto anti-circumvention provisions in Article 71?**

#### **Reply**

While there is no provision on the instruments that form part of the Final Act embodying the results of the Uruguay Round of Multilateral Trade Negotiations, there is no provision contradicting or prohibiting the terms of Article 71 of the Act and Article 96 of the Regulations. It should be pointed out that regulation of this matter is still pending in the World Trade Organization, for in keeping with the Decision on Anti-Circumvention, it was referred to the Committee on Anti-Dumping Practices for resolution. Accordingly, once the solution is reached, Mexico will abide by it, as it has done with all the other precepts of the World Trade Organization.

### **Definition of subsidy**

**How will the definition of subsidy contained in Article 37 of the Foreign Trade Act operate in conjunction with Articles 1 and 2 of the SCM Agreement?**

#### **Reply**

As stated earlier, the SCM Agreement forms part of Mexican legislation and the definition of a subsidy contained in Article 1 and the requirement concerning specificity set out in Article 2 will be observed by the investigating authority, for the reasons explained in the reply to question 1.

**Reference is made to the Ministry issuing a list of export subsidies. Has this been done, and if so, will Mexico notify this list to the Committee? If not, on what basis will the list be prepared (i.e. Annex I, the Illustrative List of Export Subsidies)?**

Reply

As stated, since the SCM Agreement forms part of Mexican legislation, the Illustrative List of Export Subsidies contained in Annex I to the Agreement is the illustrative list referred to in the second paragraph of Article 37 of the Act, which was published in the Diario Oficial de la Federación on 30 December 1994.

**Non-actionable subsidies**

**Is the reference to "except where such practices are regarded as internationally acceptable" (in Article 37) intended to cover non-actionable subsidies within the meaning of the SCM Agreement?**

Reply

Yes.

**Are non-actionable subsidies deducted from calculation of the amount of subsidy for the purposes of countervailing duty investigations and enforcement of determinations?**

Reply

Yes.

**Calculation of the amount of subsidy**

**There do not appear to be any specific guidelines in Mexican law or regulations with respect to the methodology for calculating the amount of subsidy. How will the Mexican authorities do this calculation?**

Reply

The method for calculating the benefit conferred on the recipient of a subsidy has already been duly worked out by the investigating authority, and in administrative practice it has been used in various proceedings. Basically, the benefit consists of a transfer of resources under conditions different from market conditions. Consequently, the benefit is measured as the difference between the market price and the price actually paid multiplied by the quantity of the subsidized good concerned (water, electricity, etc. with regard to subsidies on inputs). See for example, the preliminary resolutions on flat-rolled steel published in the Diario Oficial de la Federación on 14, 17 and 18 April 1995. However, this method has not yet been incorporated into Mexican legislation. The amendments and additions to the Foreign Trade Act and the Regulations now being prepared include incorporation of this methodology, which must be perfectly consistent with the provisions of the SCM Agreement.

**Developing-country Members**

**How will the Mexican authorities treat the exports of developing country Members in a countervailing duty investigation?**

**Reply**

In a subsidies investigation, the Mexican authorities will pay due regard to Article 27 of the SMC Agreement and will respect the exemptions and privileges granted thereunder to developing country Members and to the least-developed country Members.

**Massive imports of subsidized goods**

**There appears to be no explicit requirement under Mexican law or regulations that implements the requirement of Article 20.6 that, in cases of massive imports of subsidized goods, countervailing duties may only be applied retroactively against prohibited subsidies. How will Mexico administer this requirement?**

**Reply**

Before responding to this question, it must be pointed out that Article 93.V of the Foreign Trade Act covers the circumstances set out in Article 20.6 of the SCM Agreement.

Since no express distinction is drawn, under Mexican law countervailing duties and anti-dumping duties are regarded as the same, for which reason the provisions of Article 93.V of the Foreign Trade Act apply in such circumstances.

**Specific questions regarding Annex I: the Foreign Trade Act**

**1. Is the reference to "general costs" in, among other places, Article 31, subparagraph II, intended to mean administrative, selling and general costs as set out in Article 2.2.2 of the Agreement on Implementation of Article VI? If this is not the case, could Mexico explain what is meant by the term "general costs"?**

**Reply**

In speaking of general costs, Article 31.II of the Foreign Trade Act refers to general administrative and selling costs and all other corporate-type costs. This is clear from Article 46.II of the Regulations, which specifically states that general costs are administration and sales, financial and other not directly distributable costs, including costs of research and development and depreciation of assets not intended for production.

**2. Could Mexico indicate what the possible outcome of a conciliation meeting would be, and what basis there is in the Agreements for the process provided for in Article 61?**

**Reply**

The outcome of a conciliation meeting could be to achieve formulas for an amicable settlement and termination of the investigation, which, if appropriate, will be incorporated in the resolution that will be final. Conciliation meetings are not provided for in the GATT Agreements. However, holding them does not in any way violate the Agreements. Furthermore, conciliation meetings are a very important mechanism whereby the interested parties in the investigation can arrive at a mutually

satisfactory agreement that will avoid disputes later on. It is worth noting that Article 5 of the Understanding on Rules and Procedures Governing the Settlement of Disputes is on good offices, conciliation and mediation. Accordingly, they are mechanisms provided for and recommended by the GATT Agreements for the purposes of settling disputes.

**3. Why does the second paragraph of Article 62 of the Foreign Trade Act use the phrase "provided they are sufficient to discourage the import of goods" when referring to a duty less than the full margin of dumping or amount of subsidy rather than the wording "... if such lesser duty would be adequate to remove the injury to the domestic industry", as contained in Article 9.1 of the Agreement on Implementation of Article VI and Article 19.2 of the SCM Agreement?**

Reply

Although Article 62 of the Foreign Trade Act contains language different from that of the GATT Agreements, Article 90 of the Regulations does employ the same language. Accordingly, the alleged inconsistency does not in fact exist. However, if there were a discrepancy between the text of Article 62 of the Foreign Trade Act and the text of Article 9.1 of the AD Agreement and Article 19.2 of the SMC Agreement, for the reasons explained repeatedly, the GATT Agreements take precedence.

**4. Article 66 requires an importer to prove that like goods are from a non-subject Member in order to be not assessed a countervailing duty. Could Mexico clarify whether an importer would have to do anything in addition to the requirements set out in the normal Mexican Rules of Origin procedures'?**

Reply

An importer is only required to demonstrate, pursuant to the normal rules of origin procedure established in Mexican legislation, that the country of origin is different from the country whose goods are subject to payment of countervailing duties.

**5. Could Mexico reconcile the apparent quantitative restriction on exporters in Article 72, where the exporter voluntarily agrees to "cease exports", with Article 8.1 of the Agreement on Implementation of Article VI, which only allows for the exporter to "cease imports to the area in question at dumped prices"? Canada is concerned that an undertaking that restricts exports is a de facto voluntary export restraint, as prohibited by Article 11 of the WTO Agreement on Safeguards.**

Reply

Owing to the express prohibition under the WTO Agreement on Safeguards, on accepting undertakings by exporters who restrict their exports to Mexico, the Secretariat will cease to apply the corresponding parts of Article 72 of the Foreign Trade Act, in order to be consistent with the WTO Agreements.

**6. Could Mexico provide the text of Article 6 of its Foreign Trade Act, which is referred to in Article 73 of that Act?**

Reply

The appropriate part of the text of Article 6 of the Foreign Trade Act, referred to in Article 73 of the Act, is as follows "... This Commission shall be responsible for issuing opinions on foreign trade matters in conformity with the provisions of this Act ...".



**7. Could Mexico provide a detailed explanation of the difference between "confidential information" and "restricted commercial information" and any text to determine whether information qualifies as restricted commercial information", as noted in Article 80, and include examples of each type of information? Do the Mexican authorities intend to allow for the release of both types of information if the party presenting the information so allows?**

Reply

In conformity with Articles 149 and 150 of the Regulations, "confidential information" is taken to mean any specific information about the enterprise concerned whose disclosure or dissemination to the public might cause injury to its competitive position, such as production processes and costs, terms and conditions of sale, distribution costs, specification of components and the other items listed in Article 149 itself. "Restricted commercial information" is taken to mean, under the terms of Article 150 of the Regulations, information whose disclosure may result in substantial and irreversible financial harm to the net worth of the owner of the information and may include, among other things, secret formulas or processes which have a commercial value, are not patented and are known exclusively to a small group of people who use them in the production of a commercial product.

However, if an enterprise authorizes disclosure to the other interested parties of information that it has provided in the course of an investigation and which has deemed confidential or restricted commercial information, the authority will grant such access to it.

**8. Could Mexico indicate whether there are any specific time-limits on the public hearings noted in Article 81?**

Reply

The Foreign Trade Act and the Regulations do not stipulate any time-limit for completion of public hearings. In practice, the Secretariat, after a meeting held with the representatives of the interested parties, grants a maximum period for the oral pleadings of each one.

**9. Could Mexico indicate why interested parties are prohibited from providing statements by authorities as noted in Article 82? Could Mexico include in its explanation which authorities are being referred to and possible examples of such prohibited statements?**

Reply

It is prohibited to offer a confession (confesión) by the authorities as evidence. This prohibition is based on the legal principles that apply in Mexican law, since confession relates to acts committed by oneself (by a person in particular), whereas an authority is an impersonal body. However, this prohibition does not prevent the investigating authority, where necessary, from issuing its reports in writing.

**10. Could Mexico indicate whether all interested parties would be notified of the proceeding instituted in accordance with the second paragraph of Article 82 such that they would have adequate time to prepare and participate in such proceedings should they so desire? Could Mexico provide examples of such proceedings and the applicable procedures?**

Reply

If the investigating authority decides to institute, repeat or extend any proceedings to discover evidence, it will notify the parties with an interest therein, for the purpose of procedural equity, but only if the completion of a formality so requires. The authority is not under an obligation to notify all of the parties.

Examples of such proceedings are a visual inspection of the production plant of the applicants or requests for additional information from any of the parties.

**11. The second paragraph of Article 83 indicates that, in the absence of an exporter allowing verification to take place, the Ministry "shall assume that the requesting party's claims are true, unless there exist elements which indicate otherwise". Could Mexico indicate whether the statement means that, in the event of non-cooperation, the Ministry will use the best information available as required by Article 6.8 and Annex II of the Agreement on Implementation of Article VI?**

Reply

Yes.

**12. Could Mexico provide the text of those portions of the Mexican Federal Tax Code applicable to the administrative proceedings referred to in Article 85?**

Reply

Since application of the Federal Tax Code is on a supplementary basis, anything connected with administrative proceedings that is not specifically regulated by the Foreign Trade Act or the Regulations thereto will be regulated in conformity with the Code, except for notifications and searches, as stipulated in Article 85 of the Act. Regardless of the supplementary character of the Code, clearly it applies only to procedural matters in connection with which there are lacunae, provided the meaning of the substantive rule is not affected.

Attached to these replies are the provisions of the Mexican Federal Tax Code concerning administrative proceedings which are applied on a supplementary basis.

In practice, application on a supplementary basis should be evaluated in specific cases, for which reason it would be restrictive to enumerate portions of the Tax Code.

**13. Could Mexico indicate how it would take into account the interests of other production processes and consumers as contemplated by Article 88?**

Reply

The investigating authority, in making its evaluation, verifies the possible effects of injury to other production processes as well as to consumers. This is done by evaluating the effects of countervailing duties and other factors under certain market conditions.

This can mean, as stipulated in Article 90 of the Regulations, that the countervailing duty may be less than the margin of price discrimination and the amount of subsidies, provided that it is sufficient to eliminate the injury or threat of injury caused.

**14. In respect of Articles 87 and 89, would Mexico characterize its proposed system for the collection of duties as prospective in nature?**

Reply

Yes.

**15. Article 93.III and 93.IV provide for fines as a result of the provision of false information or the failure to provide information. Could Mexico indicate whether such fines are applicable to nationals or corporations of other Members and/or governments of other Members? If yes, under what WTO authority does Mexico base this provision?**

Reply

The fines referred to in Article 93.III and Article 93.IV of the Foreign Trade Act apply both to nationals and to foreigners, including the governments of other Members. However, GATT 1994 and the Agreements are silent on the determination of unlawful acts and the relevant sanctions, and leave it to the sovereign will of Members to penalize acts which, under domestic legislation, are unlawful, (e.g. violation of confidentiality undertakings).

**16. In regard to the retroactive application of final measures as provided for in Article 93.V, could Mexico explain why it used a three-month time restriction rather than the 90-day maximum in Article 10.6 of the Agreement on Implementation of Article VI and Article 20.6 of the SCM Agreement?**

Reply

The difference between the provisions of the AD Agreement and the Subsidies Agreement with regard to the Foreign Trade Act is that the Act defines calculation of the amount of the fine in months, and the Agreement in calendar days. However, the intention is the same, since three months are approximately equivalent to 90 days.

Nevertheless, in view of the difference between the two methods, the investigating authority will apply the GATT Agreements in the case of Members, as indicated in the reply to question 1.

**17. In respect of the last paragraph in Article 93, could Mexico indicate whether foreign nationals would be subject to penal and civil sanctions and what such penal and civil sanctions may be, including examples where appropriate?**

Reply

In the case of foreigners who commit criminal or civil offences among the infringements referred to in Article 93, regardless of the terms of applicable international treaties and agreements, they will be liable to the penalties set out in the relevant legislation.

Examples of criminal offences, under the terms of Article 93 of the Foreign Trade Act, include, among others, falsification of documents in general (Articles 243-245, Penal Code for the Federal District and for Other States in Federal Matters; damage and injury (Articles 2080, 2104, 2106, 2107 and others relating to the Civil Code for the Federal District).

**18. Regarding the appeal of final countervailing measures noted in Article 94, could Mexico indicate the relationship between the "Ministry" and the Ministry of Finance and Public Credit?**

Reply

The relationship between the Ministry of Trade and Industrial Development (the "Ministry") and the Ministry of Finance and Public Credit in connection with countervailing duties lies in the fact that it is the Ministry of Trade which determines the amount of the countervailing duties, whether final or provisional, in the corresponding resolutions, whereas it is the Ministry of Finance which collects the amount thereof and carries out the acts to apply the duties.

Accordingly, it is possible to contest the resolutions of the Ministry of Trade and Industrial Development, which establish the countervailing duties, or the determinations of the Ministry of Finance, concerning collection of the duties.

**19. Could Mexico provide the text of Article 239 bis of the Mexican Federal Tax Code noted in Article 95, and explain the "deadline" referred to in the last paragraph and the related process?**

Reply

Article 239 bis of the Mexican Federal Tax Code states:

"The Upper Chamber of the Federal Tax Court, *ex officio* or on a substantiated request by the Regional Chamber for the Ministry of Finance and Public Credit, may rule on actions which, because of their special characteristics, so deserve. Such characteristics are:

- (i) The business value must be one hundred times higher than the general minimum wage for the geographical area of the Federal District, for the year in question.
- (ii) For purposes of the ruling, it is necessary to establish, for the first time, the direct interpretation of a law or to establish the scope of the constituent elements of a tax.

If the Upper Chamber decides, *ex officio*, to exercise its powers under this Article, it shall so inform the Regional Chamber before the latter admits the challenge to the claim.

The request by the above-mentioned Ministry may be submitted before such admission is decided, in written form, addressed to the Upper Chamber through the respective Regional Chamber and accompanied by the requisite documentary evidence.

When the Regional Chamber proposes that a matter should be resolved by the Upper Chamber, it shall forward the request to the Upper Chamber in the document admitting the challenge to the claim.

Decisions by the Upper Chamber to admit the request or decide *ex officio* to rule on the action will be notified in person to the parties by the Regional Chamber. When the notification is made, they shall be asked to give their domicile for the purpose of receiving notifications at the Upper Chamber and also to designate someone authorized to receive them or, in the case of the authorities, to appoint their representative for the Chamber, with notice to the parties that, otherwise, the resolution by the Upper Chamber will be posted up.

Once preparation of the action has been completed, the Regional Chamber shall forward the original file to the Upper Chamber. On receipt, the President of the Upper Chamber shall appoint the magistrate."

The deadline referred to in the last paragraph of Article 95 of the Foreign Trade Acts determined in Article 121 of the Federal Tax Code, which stipulates that the document of appeal shall be submitted to the authority which ordered (Ministry of Trade and Industrial Development) or carried out (Ministry of Finance and Public Credit) the contested act, within 45 days following the date on which it has taken effect.

**Specific Questions Regarding Annex II: Regulations under the Foreign Trade Act**

**1. Could Mexico explain what is intended in the second sentence of Article 43 by the reference to "... factors of a transitory nature of the economic situation" and provide examples of such factors or such an economic situation?**

Reply

The translation is completely wrong. The provision in question should state in English "due to situations which are transitory or circumstantial in nature". This rule recognizes that, over the short term, sales at a loss may be perfectly normal. For example, in the case of supply shocks due to natural phenomena, such as frosts or droughts, production costs per unit shoot up. Obviously, sales in this context are necessarily made at a loss, since producers are not in a position to establish sufficiently high prices to absorb such costs, for if they did so they would be outside the market. In this case, the costs could be calculated over a longer period than the period of investigation, something which would make them more representative for the purposes of comparison with sale prices. This rule is analogous to the rule in the last sentence in Article 2.2.1 of the AD Agreement.

**2. Could Mexico explain the use of the phrase "materials and components" in respect of indirect manufacturing costs in Article 46.1.A.**

Reply

Indirect materials and components are inputs which cannot be assigned by line of production (for example, wadding, oil and lubricants). Another example are tools that do not form part of fixed assets.

**3. Article 46.I notes that production costs are to be determined based on the weighted average cost incurred in all the factories of each exporter whereas Article 2.2.1.1 of the Agreement on Implementation of Article VI provides that such costs shall normally be based on records kept by the producer or exporter in accordance with the generally accepted accounting principles in the country of export as long as such records reasonably reflect those costs. As these costing methodologies may not yield the same result, could Mexico reconcile the difference in its regulations and the Agreement?**

Reply

The Regulations are consistent with Article 2.2.1.1 of the AD Agreement, as explained below. The production costs used as evidence of sales at a loss and in forming the constructed price are the same. In conformity with the penultimate paragraph of Article 46.I of the Regulations, these costs must be calculated on the basis of information relating to all of an exporter's factories, which precludes information specifically applicable to the plant or plants manufacturing the exported product. This is because evidence of sales at a loss involves a comparison of domestic costs with the domestic prices, whereas the constructed value entails construction of domestic prices by accumulation of domestic costs. Consequently, neither one nor the other should be established on the basis of the particular costs of the exported products. This rule does not contravene any provision of the AD Agreement.

**4. In respect of Article 46.I and in light of Article 54.I, could Mexico indicate whether export packing costs would be included in a constructed cost of production?**

Reply

The constructed value relates to products sold on the domestic market and not to exported products (the domestic price is constructed, not the export price). Consequently, export packing costs are irrelevant for the purposes of the constructed value. However, in the case of packing costs for domestic sales, such costs would be considered part of the production cost. This is explicitly provided for in the last paragraph of Article 46.1 of the Regulations.

**5. Could Mexico explain what is meant in Article 46.II by the inclusion in "overheads" of the depreciation of assets not related to production and provide an explanation of the difference between assets not related to production and assets not in use (see also Article 46.VI)?**

Reply

Article 46. II of the Regulations is clear in that depreciation of assets not intended for production forms part of general costs, but not "overheads". Furthermore, depreciation of assets not intended for production (company buildings, for example) represents a cost to the enterprise and, accordingly, has to be taken into account for the purposes of calculating total costs. Since this is a corporate cost, it is regarded as a general cost.

The term "assets not in use" is self-explanatory. An example of a productive asset "not in use" is of a fishing vessel in harbour because, during the period under investigation, shoals fish were not large enough to require use of the whole fleet.

**6. Could Mexico reconcile its intended use of acquisition costs as a surrogate for the cost of production of goods in Article 47 with the requirements in Article 2.2.1.1 of the Agreement on Implementation of Article VI?**

Reply

There is no conflict whatsoever. Article 2.2.1.1 states that costs shall normally be calculated on the basis of records kept by the exporter under investigation. By definition, trading enterprises do not have a production cost but they have an acquisition cost (the cost at which they buy goods from the manufacturing enterprise). Trading enterprises keep records of their acquisition costs. Therefore, there is nothing to prevent them from providing the Ministry with this information.

**7. Could Mexico explain the reference to the "Ministry for the supplier enterprises" in the second paragraph of Article 47: what this body is and what its relationship would be to an exporter or supplier?**

Reply

The translation is wrong. The text refers to the total cost that the Ministry has determined for enterprises which supply trading enterprises.

**8. The last paragraph of Article 54 denotes a general rule regarding the allocation of expenses of a general character, and Article 56 notes two "general rules" in respect of adjustments required to account for differences in physical characteristics. Are these rules meant to be discretionary or mandatory?**

Reply

The two Articles mentioned are not related to one another and for this reason their provisions are not comparable. Article 54 of the Regulations relates to adjustments for differences in conditions of sale. The point here is that general costs are attributable to all sales and, therefore, cannot be subject to adjustment (all sales would be the same condition). For its part, Article 56 of the Regulations regulates the procedure for making adjustments for physical characteristics. Both Articles are mandatory.

**9. Could Mexico elaborate on the specific methodologies envisioned to adjust for quantitative differences between normal value and export price as noted in Article 55.II and explain the use of the term "model of prices" in Article 55.III B?**

Reply

Article 55 relates to adjustment for quantities. The text is self-explanatory. However, to make for better understanding, the following explanation is provided. Paragraph I of the Article establishes that when there is a pattern of prices that differ depending on the volume of the purchase, the margin of price discrimination should be established by levels (by categories of volume); for example, high-volume normal values compared with high-volume export prices. Paragraph II of the Article indicates that, in cases in which certain domestic sales are not for quantities similar to export quantities, the prices of such sales, must be adjusted to domestic prices that are comparable, in terms of volume, to external sales. For example, if there are no low-volume export sales, the prices of low-volume domestic sales must be adjusted to the prices of high-volume domestic sales (assuming that all export sales are at this level).

Paragraph III of the Article establishes certain rules of control. Paragraph III.A concerns fictitious markets. Under paragraph III.B, the pattern of prices differentiated by volume must apply in a consistent manner; in other words, it has to be shown that the prices of high-volume sales are lower than the prices of low-volume sales. A copy of the final resolution relating to the anti-dumping investigation into bond paper is attached. This case illustrates in full the application of the various provisions contained in Article 55 of the Regulations. Finally, the term "model of prices" does not form part of the text of the Article and, again, is the result of a bad translation.

**10. The last paragraph of Article 55 makes reference to "available information". Could Mexico explain why it did not use the phrase "best available information" as used in Article 6.8 and Annex II of the Agreement on Implementation of Article VI?**

Reply

These two concepts do not mean the same thing. The last paragraph of Article 55 states that when the methods of adjustment provided for in paragraphs I and II are not practicable, the adjustment for quantities may be made by any other method on the basis of the information available on file, in this case, the data provided by the exporter concerned. The meaning of the concept of "best available information" referred to in Article 6.8 of the AD Agreement is the opposite, in other words, it relates to information that is not from the exporter under investigation.

**11. Could Mexico elaborate on the Article 58 adjustment for the effects of inflation, and provide the basis in the Agreement for this provision?**

Reply

Cases of constructed value require calculation of costs. In countries with high inflation, costs expressed in current prices are distorted. This effect may be offset by adjustments. The provision in the Agreement permitting this kind of adjustment is Article 2.4, which establishes that "... due allowance shall be made in each case, on its merits, for differences which affect price comparability...".

**12. Article 75.I and Article 80.I would suggest that there are multiple competent administrative authorities which can entertain requests and issue resolutions for the initiation of an investigation. Could Mexico please clarify the meaning of these two provisions?**

Reply

In both cases the reference is to the Ministry of Trade and Industrial Development. However, it should be noted that the Ministry has an administrative unit, the International Trade Practices Unit, which, under applicable legislation, is responsible for handling the investigation in accordance with the terms of Article 75.I.

Furthermore, Article 80.I, in referring to "the authority issuing the resolution", means the Ministry of Trade and Industrial Development, for which reason there is no alleged multiplicity of competent administrative authorities.

**13. What is meant by:**

**(i) The Article 75.VII reference to "the legal basis of the request"**

**and**

**(ii) the Article 75.XV reference to "other regulatory or trade-restrictive measures concerning the product" (i.e. do these include unilateral trade measures to be imposed by the Mexican authorities?)**

Reply

The "legal basis of the request" means all the precepts or articles of the applicable legislation that every applicant must mention in support of his assertions and arguments (i.e. "pursuant to Section... of the Trade Act...").

The "description of requests for other regulatory or trade-restrictive measures concerning the product which is the subject of the request" means an explanation of requests made to the appropriate authorities for other regulatory or restrictive measures, for example, a safeguard request.

**14. Could Mexico provide an explanation of the meaning of "summons" in the context of Article 81.I of the Regulations? Does it refer to a formal instrument which requires the person served (i.e. summoned), to appear before the relevant authority under threat of penalty of law?**



Reply

The summons referred to in Article 81.I refers to a notification of an official character, contained in the publication of the resolution to initiate an investigation. The purpose is to enable parties which regard themselves as interested to take part in the investigation and state the matters they consider relevant. When an interested party does not appear in response to such a summons, he does not participate in the investigation and the authority therefore acts on the best available information.

**15. Do Article 82.I.F and Article 83.I.F mean that Mexico intends to implement a lesser duty rule?**

Reply

Indeed, both Article 82.I(F), and Article 83.I(F) relate to the so-called lesser duty rule. The basis for these Articles lies in Article 62 of the Act and Article 90 of the Regulations, which explain that the countervailing duty may be set below the margin of price discrimination and the amount of the subsidy, provided it is enough to eliminate the injury or threat of injury.

**16. Article 89 allows the Ministry to fix duties for exporters who have been given the opportunity, but did not participate in the investigation. Could Mexico indicate whether such duties will be calculated based on known margins, i.e. weighted average, or set at the highest known margin?**

Reply

Under Article 89 of the Regulations, countervailing duties for exporters who had the opportunity to participate but did not do so are fixed at the highest margin of price discrimination known to the investigating authority.

**17. Article 93 requires the publication of the reply to a request for clarification or explanation of resolutions under which final duties are imposed. In order to clarify the intent of such an explanation, will the request also be published?**

Reply

Article 93 of the Regulations does not require publication of the request by the interested parties; it simply states, in the last paragraph, that the reply to the request shall be published.

**18. Regarding the undertaking provisions in Article 112, could Mexico clarify it is understood that undertakings are subject to the prohibition of an increase in export price greater than an amount necessary to eliminate the margin of dumping or amount of subsidy as provided for in SCM Article 18.1 and the Agreement on Implementation of Article VI, Article 8.1?**

Reply

Since price undertakings are measures on the same footing as the imposition of anti-dumping or countervailing duties and, in keeping with Article 112, the object is to eliminate the injurious effect of dumping or subsidies, they must fulfil the principles set out in Article 18.1 and Article 8.1 of the AD Agreement and the Subsidies Agreement respectively.

**19. In regard to Article 136, does Mexico intend to include union in the list of legally cost constituted organizations able to bring complaints?**

Reply

For the purposes of Law and the Regulations the concept of legally constituted organizations does not include unions.