

REPLIES TO QUESTIONS POSED BY THE EUROPEAN COMMUNITIES¹
CONCERNING THE NOTIFICATION OF LAWS AND REGULATIONS
OF MEXICO² UNDER ARTICLE 12.6 OF THE AGREEMENT

The following communication, dated 9 February 1996, has been received from the Permanent Mission of Mexico.

A. PRELIMINARY OBSERVATIONS

The notified texts are sometimes difficult to interpret: a distinction has to be made between the provisions referring to safeguard measures and those referring exclusively to unfair practices, and this distinction is often not clearly apparent, as in the chapter on penalties (Foreign Trade Act: Title IX, Chapter I).

The structure of the Foreign Trade Act, in the form of titles, chapters and sections, makes a clear distinction between the provisions which apply to unfair international trade practices and to safeguard measures. Thus, Title V relates to unfair international trade practices, Title VI to safeguard measures, and Title VII to procedures applicable to both of these matters. Chapter I of the latter contains provisions common to both of these matters, Chapter II relates to unfair practices, Chapter III to safeguard measures, and Chapter IV to both of these matters.

In the case of administrative infringements and penalties as contained in Chapter I of Title IX of the Act, Article 93(III) and (IV) set forth the provisions relating to countervailing duties and safeguard measures. Article 93(V) relates only to countervailing duties and, lastly, paragraph (VI) relates to both matters.

Both from the aspect of the proper implementation of the Agreement on Safeguards in national legislation and for the purposes of the transparency required by the code and the legal security of economic operators, the Community does not consider sufficient the declarations of a general nature according to which, in the application of certain provisions, Mexico will comply with the international treaties and bilateral conventions concerned. See, for example, Foreign Trade Act: Article 78, Title VII, Chapter III, Section 2; Articles 132 and 134, Annex II, Title VII, Chapter V; Article 147, Annex II, Title VIII, Chapter III.

¹G/SG/W/90.

²G/SG/N/1/MEX/1.

The Mexican legislation on safeguard measures does not reflect some fundamental provisions of the Agreement on Safeguards concerning the maximum duration of measures, their extension, the interval to be observed between two measures, methods for fixing quantitative quotas, progressive liberalization of safeguard measures and review of those measures.

B. INTERESTED PARTIES: FOREIGN TRADE ACT; ANNEX II, TITLE VIII, CHAPTERS I AND II

Can the Mexican authorities indicate if the representatives of third countries can be informed, as interested parties, of information gathered during the investigation?

In the case of safeguards regulated by the WTO Agreement, all exporters from the signatory countries are entitled to be informed by the investigating authority of the course of the investigation.

C. FOREIGN TRADE ACT: ANNEX I, TITLE VI, CHAPTER III, SECTION I, ARTICLE 77

Article 7, paragraph 2, of the Agreement on Safeguards stipulates that the duration of measures cannot exceed four years.

Can the Mexican authorities explain the disparity between Article 77 of their national legislation and Article 4, paragraph 2, of the Agreement on Safeguards?

Article 77 of the Foreign Trade Act states that safeguard measures may be extended but does not specify for how long. However, since the Safeguards Agreement is a legal instrument which forms part of Mexican law and which must be applied to complement the Act, the investigating authority will have to observe the provisions of Articles 7.3 and 9.2 of the Agreement since, under Article 133 of the Constitution, international agreements are deemed the highest law in the Union. This is in conformity with the Safeguards Agreement.

D. ARTICLE 128, ANNEX II, TITLE VII, CHAPTER IV, SAFEGUARD MEASURES

Can the Mexican authorities explain the relationship between this Article 128 and Article 78 of Chapter III, Section II?

In Mexico, ordinary laws such as the Foreign Trade Act contain legal provisions which govern specific matters in general terms, while regulations, such as the Foreign Trade Regulations, develop in detail and in concrete terms the provisions contained in the laws. Accordingly, under Article 78 of the Act, the Federal Executive is empowered to determine provisional safeguard measures in the case of critical circumstances and of evidence that the increased imports cause or threaten to cause serious injury. This is further developed in Article 128 of the Regulations under the Foreign Trade Act, setting out the conditions relating to the increase and specifying the sector of the Mexican economy in which safeguard measures may be applied.

Can they indicate, in particular, the maximum duration of the measures indicated in Article 128, the type of measures applied, whether these measures must be confirmed on the basis of an investigation and the means of remedying these measures if, following the investigation, they prove unjustified?

Under the terms of Article 2 of the Foreign Trade Act and Article 70 of the Regulations, international treaties or conventions to which Mexico is a signatory, as well as the Act and the Regulations, must be complied with in the case of provisional safeguard measures. Consequently,

while Article 128 establishes no maximum duration for such measures, Article 6 of the Safeguards Agreement does establish a maximum period (200 days). This applies for Mexico.

E. ARTICLE 93, TITLE IX, CHAPTER I, INFRINGEMENTS AND PENALTIES

Subject to the conformity of this article with the provisions of GATT 1994, can the Mexican authorities confirm that paragraphs V and VI of this Article do not apply in the case of safeguard measures?

Article 93(V) does not apply in the case of safeguard measures. By contrast, paragraph (VI) does apply, since Article 80, referred to in that paragraph is in the chapter on "Other Common Provisions relating to the Proceedings", i.e. on both countervailing duties and safeguard measures.