

REPLIES TO QUESTIONS POSED BY THE UNITED STATES¹ 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. General

1. What is the status of the Agreement on Safeguards in Mexican law, and how does it relate to the Foreign Trade Act and Regulations thereto? In the event of a conflict, which takes precedence currently, and which will take precedence should the Act or Regulations be amended?

The Agreement on Safeguards has the status of an international agreement, since it was concluded by the President of the Republic and approved by the Senate (see Article 89, paragraph X, and Article 76, paragraph I, of the Constitution). Accordingly, this instrument has the same rank as federal laws.

Consequently, the Agreement on Safeguards and the Foreign Trade Act are complementary. Under the terms of Article 2 of the Act, the latter will apply without prejudice to the provisions in the Agreement.

In the event of a conflict, the provisions in the Agreement take precedence, and this would not need any change in the law.

2. What is the "Commission" referred to in Article 76 of the Act, and what is its role?

This refers to the Foreign Trade Commission (COCEX). This auxiliary body is to be consulted on a mandatory basis by the departments and entities of the Federal Public Administration in matters concerning foreign trade and international trade negotiations. COCEX resolutions are not binding; they are opinions.

COCEX is made up of representatives of the Ministries of Foreign Affairs, Finance and Public Credit, Social Development, Trade and Industrial Promotion, Agriculture, Water Resources and Rural Development, Health, and of the Central Bank and the Federal Competition Commission.

¹G/SG/W/101.

²G/SG/N/1/MEX/1.

COCEX is empowered to carry out regular reviews of measures regulating or restricting foreign trade, for the purposes of recommending, where appropriate, any changes in such measures. COCEX may hold public consultations with the interested parties in order to obtain better information on the matters in question.

The functions of COCEX are outlined in Article 9 of the Regulations under the Foreign Trade Act. Under paragraph IX of this Article, COCEX is competent to issue an opinion on instituting safeguard measures.

B. Procedures

3. Article 53 of the Act provides that interested parties shall be provided a period of 30 days from publication of initiation of the investigation "to prepare their defence and submit the information requested". What is the information requested? Is it the questionnaire response? If so, does this mean the questionnaire is issued on the same day the notice of initiation is published?

In the case of safeguards, no investigation questionnaire is issued to the interested parties. However, should the Ministry of Trade and Industrial Promotion (SECOFI) require information which only the exporters or the governments of the exporting countries can provide, it would make a statement to this effect in the notification of initiation of the investigation. This would be issued on the same day as the initiation resolution is published in the Official Journal.

4. Article 83 of the Act and Chapter VI of the Regulations refer to verifications of information submitted. Are these provisions applicable to safeguards investigations, or only to anti-dumping and countervailing duty investigations? If they are applicable to safeguards investigations, what type of entities might be subject to verification, and for what purpose?

The provisions contained in Article 83 of the Foreign Trade Act apply both to unfair practices and to safeguards, since this Article is placed in Title VII "Procedure in relation to Unfair International Trade Practices and Safeguards Measures", Chapter IV "Other Common Provisions Relating to the Proceedings".

Importers and producers, both located in Mexico, who are interested parties, might be subject to verification for the purpose of verifying whether the information and evidence submitted by them during the procedure conform to the company accounts, collating the documents in the administrative dossier or making the necessary attested copies.

5. What provisions of the Federal Tax Code, referenced in Article 85 of the Act, might be applicable to safeguards investigations?

It would be time-consuming to detail all the tax provisions that would apply on this basis to safeguards procedures. The Federal Tax Code will apply by default in the absence of a provision in the Act, in all matters in keeping with the nature of those procedures. This will not apply in respect of notifications and searches for the purpose of verification.

C. Injury methodology/standards

6. Article 74 of the Regulations refers to data covering a three-year period preceding the request for relief; Article 119 refers to a six-month period of investigation. How do these two provisions relate?

Article 74 of the Regulations under the Foreign Trade Act states that the parties requesting the safeguard measure will submit information on the relevant factors and indicators and characteristics of the industry covering at least the three years preceding the submission of the request, including the period under investigation, for the purposes of evaluating such information in the context of the economic cycle and the conditions of competition specific to the industry affected. Furthermore, Article 119 of the Regulations provides that the period of investigation, in respect of the presumed existence of imports in quantities and under conditions such as to cause or threaten to cause serious injury to the domestic industry, shall be six months.

7. Article 118 of the Regulations refers to "the sole or principal cause" of injury; Article 128 of the Regulations refers to "substantial cause" of injury; Article 45 of the Act does not use any comparable adjectives but just refers to whether imports "cause" (or threaten) injury. Which of these standards, if any, is applied in determining causal link?

Article 45 of the Foreign Trade Act provides that the safeguard measures will be imposed only when it has been determined that the goods are being imported in such increased quantities and under such conditions as to cause or threaten to cause serious injury to the domestic industry, in other words, "cause" is not qualified. However, Article 70 of the Regulations provides that safeguard measures may be applied only if it is determined on the evidence that the product investigated is being imported in such increased total quantities and under such conditions as to constitute a substantial cause of serious injury or threat of serious injury to the domestic producers of identical, like or directly competitive goods.

Since the Regulations contain the provisions required to clarify, specify and implement the content of the Act, the Regulations will be complied with. On no account will measures incompatible with the provisions of Article 2 of the Agreement on Safeguards be applied.

D. Relief

8. Are there provisions in Mexican law or regulations for applying the limitations on relief found in Articles 5 and 7 of the Agreement on Safeguards, pertaining to quantitative restrictions, degressivity, mid-term reviews, and repeat actions on the same product?

The appropriate provisions, apart from the measures contained in Article 7 of the Agreement on Safeguards, are contained in Articles 133 and 134 of the Regulations under the Foreign Trade Act. As to reviews, Article 133 provides that "Once the appropriate safeguard measure has been imposed, the Ministry shall regularly review the progress of the adjustment programme in order to make sure that it is being duly implemented and, where necessary, shall consider any change of circumstances that may be preventing its implementation, authorizing the appropriate changes and modifications."

At the same time, for the purposes of determining the duration of the measures, Article 134 stipulates that the Ministry will evaluate the implementation of the adjustment programme and, moreover, will comply with the provisions on the duration of the measure contained in the international treaties and conventions to which Mexico is a party. This means that, for all GATT Member States, Article 7 of the Agreement on Safeguards of the GATT 1994 will apply in relation to the "duration and review of safeguard measures".

Again, in view of the fact that the Foreign Trade Act and the Regulations do not contain any specific provisions concerning limitations on quantitative restrictions, progressive liberalization of safeguard measures or the application of safeguard measures to products which have already been subject to such measures, in this regard the provisions contained in the international treaties and conventions to which Mexico is a party, such as the Agreement on Safeguards of the GATT 1994, will be observed.

9. Article 77 of the Act provides that relief may not be applied for more than four years "except in cases where a longer period is justified". Does this exception refer to cases in which relief is extended pursuant to a finding required under Article 7 of the Agreement? If so, what are the procedures and standards applied in making such an extension determination?

Article 77 of the Foreign Trade Act specifies that "Except in cases where a longer period is justified, safeguard measures may not be applied for more than four years". Similarly, Article 134 of the Regulations under the Foreign Trade Act provides that "The safeguard measures shall be applied only for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment ... In any case, the requirements of the international treaties and conventions to which Mexico is a party shall be met."

Notwithstanding the above, where an extension of the application of a safeguard measure is requested, the terms of Articles 7.2, 7.3 and 9.2 of the Agreement on Safeguards will be observed.

10. Articles 78-79 of the Act and Article 130 of the Regulations refer to provisional measures. What types of measures may be applied, and is there a preference for tariff increases over other possible measures?

The provisions contained in Article 6 of the GATT Agreement on Safeguards will apply in relation to provisional measures, i.e. Mexico may only apply tariff measures.