

# GENERAL AGREEMENT ON

RESTRICTED

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# TARIFFS AND TRADE

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Committee on Anti-Dumping Practices

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FOLLOW-UP QUESTIONS RAISED BY THE UNITED STATES  
ON THE LEGISLATION OF MEXICO  
(ADP/1/Add.27 and Suppl.1)

Article 7.I of the Regulatory Act --

What criteria would be used or factors considered in determining that the comparable price of identical or similar goods intended for consumption in the country of origin is not "representative"?

Article 8.III of the Regulatory Act --

GATT Article VI:5 states that "no product .... shall be subject to both anti-dumping and countervailing duties to compensate for the same situation of dumping or export subsidization." (emphasis added). By contrast, Article 8 of the Regulatory Act states in pertinent part that "[t]he countervailing duty shall be equivalent to: ...III. Where there is a combination of unfair international trade practices, then the sum of the amounts specified in paragraphs I [relating to dumping] and II [relating to subsidies] above." (emphasis added).

In reply to a question posed by the United States, Mexico claimed "[t]here is no contradiction ... [because] where an unfair practice is found to combine a dumping ingredient and a subsidy ingredient, the remedy is a countervailing duty which counters the dumping ingredient (anti-dumping measure) and also counters the dumping ingredient (anti-subsidy measure)." The United States notes that Mexico failed to respond to the real source of concern, i.e., that the sum of the margin of dumping and the margin of subsidy would equal the amount of countervailing duty. Insofar as this apparently means that the amount representative of dumping would not be adjusted to account for the amount of any export subsidies also found, the United States continues to believe that this article is inconsistent with Article VI:5 of the General Agreement. Could the Mexican authorities provide further clarification or comment?

Article 11 of the Regulatory Act --

1. What would be the "appropriate" conditions under which the Mexican authorities would establish a countervailing duty within five working days of acknowledging a complaint?
2. What type of "information in the possession of the Secretariat" would be used to establish such a duty? Information contained in the complaint? Other information? If so, from what possible sources?

3. If information in the complaint is relied upon in whole or in part to establish the duty, would the Mexican authorities require a higher standard in terms of the quality and/or quantity of information provided than they would in a normal case where no such provisional duty was established?

Article 14 of the Regulatory Act --

In response to the EC's question concerning this article, Mexico replied that "it applies the injury test to all parties to the Code without any need for the conclusion of a bilateral agreement... It should be recalled that the Code is an integral part of Mexican legislation, and that under the Code all its parties must apply the injury test among themselves."

1. Do the Mexican authorities consider the General Agreement also to be an agreement within the meaning of Article 14 of the Regulatory Act? That is, would a Contracting Party also automatically receive an injury test under Mexico's legislation, regardless of whether it is a signatory to the Code or a bilateral agreement with Mexico?

2. If that is not the case, how would Mexico reconcile the compatibility of its interpretation with the requirements of Article VI:6(a) of the General Agreement, particularly insofar as the Code serves to interpret the provisions of Article VI on anti-dumping duties and to lay down rules for their application?

Article 19 of the Regulatory Act --

This article begins by stating "[a] countervailing duty shall remain in force until the unfair international trade practices that gave rise to it are declared to have ceased." In reply to the United States' question concerning this article, Mexico stated "[s]ince, for the application of the countervailing duty, one of the elements to be considered is the existence of injury, the disappearance of the injury removes one of the reasons for continuing to impose the duties."

1. Mexico's reply suggests that, even if injury were no longer found to exist, the duty would remain in effect insofar as there continued to be dumped sales. Is this correct?

2. If so, how does this practice comport with Article VI:6(a) of the General Agreement and Article 9:1 of the Code?

Article 15 of the Regulations --

With respect to the initiation of ex officio investigations, Mexico's reply to a question posed by the EC states that the 15 day period allowed for interested parties to file written representations was a "minimum period." In actuality, the text of the article submitted for the Committee's review states "[t]he notice ... shall allow a period not exceeding fifteen working days for filing of the written representations of interested parties." (emphasis added).

1. Could Mexico clarify whether the 15 day period is, in fact a minimum or maximum period allowed?
2. How does this period relate to the 30 day period in which the Secretariat must reach its second provisional resolution on the basis of "the matters on which it based its provisional resolution and any supplementary information furnished by the producers, importers and exporters affected," as stipulated in Article 20 of the Regulations?
3. (a) How do the Mexican authorities consider such abbreviated time periods (including the 5 days allowed between acceptance of a complaint and the possible imposition of a provisional duty) to be anywhere sufficient to allow exporters an "ample opportunity to present in writing all evidence that they consider useful" (Code Article 6:1), not to speak of the impossibility for the Mexican authorities of adequately analyzing any information that might be able to be presented within such time frames?
  - (b) Have these time periods, in practice, been realistic ones for either the investigating authorities or the interested parties?
  - (c) If they have not been, would Mexico consider amending its legislation or regulations so to allow more realistic and predictable deadlines for the submission of information and issuance of resolutions?

Article 32 of the Regulations --

What would the Mexican authorities consider to be "justified causes" for reviewing a final resolution, both in terms of a requested and an ex officio review?