

**GENERAL AGREEMENT  
ON TARIFFS AND TRADE**

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Committee on Anti-Dumping Practices

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REPLIES TO THE QUESTIONS SUBMITTED BY THE UNITED STATES<sup>1</sup> ON THE  
REGULATIONS UNDER THE MEXICAN FOREIGN TRADE ACT  
(ADP/1/Add.27/Rev.2)

Question

1. Article 46.I.A refers to "The cost of indirect materials and components". What might these costs be other than energy, fuels and equipment, which are covered by Articles 46.I.C.D? What is covered by Article 46.I.E that is not covered by Articles 46.I.A-D?

Answer

"Indirect materials and components" are those which must be used in the production process but which are not incorporated in the good or end product, that is, are used in manufacturing a particular good but never form part of it. In general, these materials and components may be of different kinds, depending on the production process involved. Some examples are: materials for repair and maintenance, low-value (non-activable) tools, and factory office materials and supplies.

Article 46.I.E means that, at the time of computing the value of a particular good, those factors or elements which involve some type of indirect expenditure in the manufacture of the product and are not included under the previous heads (46.I.A-D) can be taken into account in estimating the normal value, that is, may be added to the production costs already expressly provided for by the legislation. These additional costs are not easy to determine, since they may be numerous and very varied, depending on the production system used in each case. It is therefore difficult to list all of these possibilities, since it would be necessary to determine them for each investigation of unfair international trade practices.

Question

2. Please explain why Article 46.II refers to "research and development and depreciation of assets not related to production" (emphasis added).

Answer

Expenditure on research and development is regarded as an overhead since it is incurred in order to improve the quality or efficiency of product manufacture or to develop new products. Consequently, this expenditure is not treated as production costs, since it is not incurred for the purpose of mass-producing the product. As regards the depreciation of assets not related to production (buildings, furniture, administrative office equipment, etc.), it is treated as an overhead, since these are not assets used in the manufacture of a product or in the management of the production plants.

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<sup>1</sup>ADP/W/363

Question

**3. Article 59 states "In conformity with the civil legislation, the investigating authority shall under no circumstances determine the existence of injury". What authority makes injury determinations? What does the relevant civil legislation say?**

Answer

There is a mistake in the English translation of this provision, since the Spanish text of Article 59 actually says: "Under no circumstances shall the investigating authority determine the existence of injury in conformity with the civil legislation". Thus, the investigating authority, which is the International Trade Practices Unit of the Ministry of Trade and Industrial Development, may determine the existence of injury due to some unfair international trade practice on the basis of the foreign trade legislation, but not the civil legislation.

Basically, civil injury is loss or damage, material or non-material, suffered by persons subject to civil or general law. This may be the result of an unlawful act or the non-fulfilment of a civil obligation. Anyone causing injury in terms of the civil legislation incurs a liability involving the payment of compensation.

The provisions relating to civil injury are mainly to be found in Articles 1910 to 1934 and 2104 to 2118 of the Civil Code for the Federal District, in local matters, and for the Republic as a whole, in federal matters.

Question

**4. Article 75 states that a request or petition for compensatory duties must satisfy the requirements prescribed by Article 50 of the Act. Article 50 of the Act refers to arguments (by petitioners) that must be presented in writing and under oath to the competent authorities. Please describe the nature of this oath. Are there sanctions of any kind in cases where this oath is violated?**

Answer

In conformity with Article 247 of the Penal Code for the Federal District, in matters of local jurisdiction, and for the Republic as a whole, in matters of federal jurisdiction, making a false statement or giving false information to an authority constitutes an offence. Accordingly, whenever a person makes a statement or furnishes any type of information to an authority, he is required to take an oath ("protesta de ley") to the effect that he "declares himself expressly and under oath to be telling the truth".

Under the Mexican legal system, the form and content of this oath constitute a legal practice whose *raison d'être* follows from Article 247 of the above-mentioned Penal Code itself, since if the person making the statement or petitioner, after using these words, were to falsify any particular in his statement or in the information furnished, the above-mentioned provision of the Penal Code would indisputably apply, that is, if the oath and the fact of falsifying information coexist, then without any doubt an offence will have been committed.

A person finding himself in this situation would be liable to a penalty consisting of a term of imprisonment ranging from two months to two years or the payment of a fine of from 60 to 270 times the daily minimum wage in force.

Question

**5. In addition to the Article 50 requirement described above, does SECOFI also verify the accuracy of information and documents that support petitioner's allegations? If SECOFI does conduct such verifications, does SECOFI check petitioner's allegations with respect to both dumping (subsidization) and injury?**

Answer

If the question relates to the searches for the purpose of verification mentioned in Article 83 of the Foreign Trade Act, the Ministry verifies the information submitted by the petitioner. In conducting these verifications, the Ministry checks only the information relating to injury.

Question

**6. Does Article 76 refer to the consecutive six-month period immediately preceding commencement of the investigation, or does Article 76 refer to any six month period preceding commencement of the investigation?**

Answer

The article in question refers, as a minimum, to the six months closest to the commencement of the investigation from which the information can reasonably be obtained.

Question

**7. Please explain what Article 82.II means.**

Answer

The situation to which Article 82.II refers arises when the Ministry issues a preliminary resolution without there having been any change in the reasoning or premises on the basis of which the administrative investigation was initiated, so that the continuation of the investigation is justified. In other words, Article 82.II refers to the situation where the evidence upon which the authority relied at the time of initiating the investigation remains unchanged or where, although new information has been gathered, it does not invalidate the original grounds for initiating the procedure. Accordingly, the authority continues to pursue the investigation under the same conditions as when it was initiated.

Question

**8. Article 85 refers to "the administrative records of the case". Is there more than one administrative record?**

Answer

The question reflects an error in the English version of the Regulations in as much as the Spanish text of the article actually refers to "the administrative record of the case". The word is not used in the plural, only in the singular.

Question

**9. Article 89 states, "Countervailing duties applied to imports from foreign exporters who, after having being granted the opportunity to defend themselves, have not participated in the investigation, shall be fixed according to the margins of price discrimination known to the Ministry". Please describe the set of "margins of price discrimination known to the Ministry".**

Answer

Firstly, neither the Foreign Trade Act nor its Regulations use the terms "anti-dumping duties" ("derechos anti-dumping") and "countervailing duties" ("derechos compensatorios"). Instead, they uniformly employ the expression "countervailing assessments" ("cuotas compensatorias") for unfair international trade practices in both their dumping and subsidy forms.

Secondly, the general rule for determining the assessments to be applied to exporters who, having had the opportunity to defend themselves, have not participated in the investigation is to use the best information available upon which the Ministry can rely. This could be that submitted by another exporter or other exporters who have participated in the investigation or, if no other exporter has participated, that provided by the petitioner. The above is consistent with Article 6.8 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (Anti-Dumping Code).

Question

**10. Article 92 contains a reference to "a surcharge". Is this surcharge accrued interest? If not, what is it?**

Answer

The "surcharge" referred to in Article 92 is not accrued interest. It means the compensation received by the tax authority for having collected the countervailing assessment not at the time it became payable, but only when it was confirmed by a final resolution issued by the Ministry of Trade and Industrial Development making effective the payment of the security.

Under the fiscal legislation accrued interest arises when the taxpayer pays his taxes in instalments, with the prior authorization of the tax authority, each payment including, in addition to the principal, the corresponding interest.

It should be noted that the rates imposed in these two cases, surcharges and accrued interest, are different, being higher for the former, since the latter is an arrangement approved by the tax authority for the purpose of enabling the taxpayer to meet his fiscal obligations.

Question

**11. Article 93.III refers to "... any document that it deems necessary to resolve the matter" (emphasis added). Are Article 93 requests in the nature of administrative appeals? If not, please describe the nature of Article 93 requests.**

Answer

No, since Article 93.III provides for a clarification procedure and not for one for the purpose of attacking the legality of the imposition of countervailing assessments.

Question

**12. Do Articles 166 and 168 permit parties to cross-examine one another? If so, what is the nature of this cross-examination and what limits, if any, are imposed?**

Answer

Yes, these articles permit the parties to cross-examine one another and orally express their points of view regarding the information, data and evidence submitted in the course of the investigation.

The limits of a public hearing and the form it should take are determined by the Foreign Trade Act, its Regulations and the rules previously established by the investigating authority with the agreement of the interested parties.

The confidentiality provisions of the Foreign Trade Act, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade and the Foreign Trade Act Regulations must be observed in the hearing. Similarly, the hearing will be confined to the analysis and discussion of the evidence and arguments which the interested parties and the joint parties have submitted in the course of the investigation.

Question

**13. Article 172 refers to "a period of pleading during which the interested parties may submit in writing their conclusions on the substance or the matters arising in the course of the proceedings". Why is there a reference to more than one proceeding? Are parties permitted in this period of pleading to present evidence or make arguments not previously seen or made during the proceeding?**

Answer

With regard to the first question, the Spanish text uses the term "proceeding" in the singular, not "proceedings" in the plural. There is no question of more than one proceeding.

With the regard to the second question, it is not permitted to submit evidence or arguments not previously presented or made during the said proceeding, since Article 172 refers only to "conclusions", stating that the parties may: "submit in writing their conclusions on the substance of the matters arising in the course of the proceeding".

Question

**14. Article 173.VIII refers to verification and search reports that the foreign producer (or exporter or legal counsel) must sign. Why is the foreign producer's signature needed? What are the consequences, if any, if a foreign producer does not sign the reports?**

Answer

The signature of the exporter or his representative is required in order to show that he is aware of the content of the report.

Moreover, the fact that the producer signs the report means that he accepts the acts and omissions contained therein, unless it is noted in the report, at the request of the producer himself, that the latter is in total or partial disagreement with the content of the report, in which case his signature is

indispensable to confirm his dissent; or unless, within five days from the conclusion of the report the producer presents to the Ministry his opinions or objections to the content of the said report.

If the exporter or his representative refuses to sign the report, then, in accordance with Article 173.VIII of the Regulations under the Foreign Trade Act, the visiting officials shall note this fact in the report itself without its validity and value as evidence being affected thereby. This does not necessarily signify non-approval of the content of the report, since if the exporter or his representative does not indicate his dissent within the next five days the acts and omissions contained in the document will be held to be accepted.