

**GENERAL AGREEMENT ON
TARIFFS AND TRADE**

RESTRICTED

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Committee on Anti-Dumping Practices

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**INFORMATION ON IMPLEMENTATION AND
ADMINISTRATION OF THE AGREEMENT**

Legislation of Mexico

The following communication, dated 24 May 1988, has been received from the Permanent Mission of Mexico.

On the instructions of the Mexican Government, I have the honour to inform you that on 21 April 1988 there was published in the Diario Oficial de la Federación (Federal Official Gazette) the decree of promulgation in respect of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, adopted in Geneva, Switzerland, on 12 April 1979, whereby that Agreement has become mandatory legislation for the entire Mexican territory, in accordance with the relevant provisions of the Constitution.

Accordingly, and in pursuance of the provisions of Article 16:6 of that Agreement, I am forwarding herewith, for the information of interested contracting parties, the following documents:

- one copy of the Foreign Trade Regulatory Act Implementing Article 131 of the Constitution of the United Mexican States (Diario Oficial de la Federación of 13 January 1986);
- one copy of the Regulations Against Unfair International Trade Practices (Diario Oficial de la Federación of 25 November 1986).

SECRETARIAT OF TRADE AND INDUSTRIAL DEVELOPMENT

Foreign Trade Regulatory Act
Implementing Article 131 of the
Constitution of the United Mexican States

CHAPTER I

General Provisions

ARTICLE 1: The provisions of this Act govern matters of public law and general interest. Their purpose is to regulate and foster foreign trade, the economy of the country and the stability of national production and to effect any other similar purpose in benefit of foreign trade. To those ends, the Federal Executive is empowered, pursuant to Article 131 of the Constitution:

I. To increase, decrease or abolish the customs duties incorporated in the import and export tariffs and institute others. Duties other than the general duties may not be imposed except when international agreements exist justifying such action.

II. To institute such measures for the regulation or restriction of export or import operations as:

- (a) Prior authorization for the temporary or final export or import of goods, including those leaving the country's free-trade areas.
- (b) Maximum export or import quotas when made necessary by production surpluses, market conditions or international agreements and conventions.
- (c) Countervailing duties, whether provisional or final, on the import of goods in circumstances involving unfair international trade practices, such duties to be applicable independently of the tariff to which the particular category of goods is subject.
- (d) Prohibitions on import or export of goods.

III. To restrict movement within or transit through the national territory of goods coming from or destined abroad, whether for reasons of national security, public health, plant and animal health, or conservation or exploitation of plant and animal species.

The Federal Executive, on sending the Budget to Congress each year, shall submit for the latter's approval a report on the use it has made of the powers vested in it by this Act.

ARTICLE 2: The powers referred to in the preceding Article shall be exercised as follows:

I. Those indicated in paragraph I, by Decrees of the Federal Executive, which shall be published in the Diario Oficial de la Federación.

II. The restrictions referred to in paragraph II and the countervailing duties specified in sub-paragraph (c) thereof, by resolutions issued by the Secretariat of Trade and Industrial Development, also to be published in the Diario Oficial de la Federación.

Before fixing final countervailing duties or prohibiting the import or export of goods, the Secretariat shall first consider the opinion of the Commission on Tariffs and Trade.

In the case of measures introduced in the interests of national security, public health, plant and animal health, or the exploitation or conservation of plant and animal species, the Secretariat of Trade and Industrial Development may also prohibit the import or export of goods on a petition from the competent authority.

III. Restrictions on movement within or transit through the national territory of goods coming from or destined abroad may be ordered by the appropriate department of the Federal Executive in accordance with the laws in force when exigencies of national security, public health, plant and animal health, or conservation or exploitation of plant and animal species so require.

ARTICLE 3: The Commission on Tariffs and Trade is hereby created as a consultative organ of the Federal Executive, its purpose being to study, formulate and propose general criteria and such modifications as may be in order necessary in connection with external trade. The Commission shall also participate in implementing the provisions of this Act as prescribed herein.

The Federal Executive shall determine what departments, agencies and public entities are to be represented on the Commission and shall issue regulations governing its functioning and operations.

CHAPTER II

Export and Import Restrictions

ARTICLE 4: Measures regulating or restricting the export of goods as referred to in Article 1(II)(a), (b) and (d) of this Act shall be instituted in the following cases:

I. To ensure adequate supplies of basic consumer products for the population and of raw materials for industry and to regulate or control non-renewable natural resources in accordance with domestic market needs and conditions prevailing on the international market.

III. To allow compliance with international treaties or conventions entered into by Mexico.

III. To ensure that international trade operations are carried out in accordance with the export procedures instituted by Act of Congress or by the Federal Executive.

IV. To protect fauna and flora at risk or in danger of extinction and to facilitate the conservation or exploitation of plant and animal species.

V. To protect assets of historical, artistic or archeological importance or which are of value for any other reason.

VI. To allow compliance with provisions governing national security, public health and plant and animal health, or with any other provision or requirement of public law.

ARTICLE 5: Measures regulating or restricting the import of goods as referred to in Article 1(II)(a), (b) and (d) shall be instituted in the following cases:

I. When required as a temporary measure to rectify disequilibria in the trade balance or the balance of payments.

II. When required by domestic economic conditions or provisions affecting matters of public law and social interest.

III. In order to allow compliance with international treaties or conventions entered into by Mexico.

IV. As a response to restrictions on Mexican exports imposed unilaterally by third-party countries, except as provided for in treaties or conventions entered into by Mexico.

V. When necessary to counteract competition on the domestic market from goods entering the country in circumstances involving unfair international trade practices.

VI. When imports of a particular category of goods grow at such a rate or take place under such conditions as to cause or threaten to cause serious injury to domestic manufacturers of similar goods.

VII. When necessary to ensure compliance with provisions affecting national security, public health, plant and animal health or any other requirement of public law.

ARTICLE 6: Permits issued for the export or import of goods shall indicate the formalities, conditions and duration governing them, as well as the quantity or volume of the goods to be exported or imported, their value and such other particulars or requirements as may be necessary.

ARTICLE 7: For purposes of this Act, the following shall be considered as unfair international trade practices:

I. Importation of goods at less than the comparable price of identical or similar goods intended for consumption in the country of origin or provenance.

When no comparable price can be established, or if the comparable price is not representative, unfair trade practices shall be considered to be in play when the goods in question are imported at any of the following prices:

- (a) less than the highest comparable export price of identical or similar goods dispatched from the country of origin or provenance to other countries; or
- (b) less than the price obtained by totaling production cost in the country of origin, a reasonable profit margin, and shipment and selling costs.

In determining comparable price as referred to in throughout this paragraph, the standard used shall be the prices prevailing in the ordinary course of trade.

II. Importation of goods which in the country of origin or provenance have been the subject, directly or indirectly, of export inducements, incentives, premiums, subsidies or other types of assistance, except where such practices are internationally acceptable.

ARTICLE 8: Individuals or bodies corporate bringing goods into the national territory in circumstances involving unfair international trade practices shall be required to pay a countervailing duty so as not to affect the stability of domestic production or hinder either the establishment of new industries or the development of those already in existence.

The countervailing duty shall be equivalent to:

I. The difference between the lesser price and the comparable price in the exporting country, as per Article 7(I).

II. The amount of the benefits referred to in Article 7(II).

III. Where there is a combination of unfair international trade practices, then the sum of the amounts specified in paragraphs I and II above.

ARTICLE 9: Except in the cases specified in Article 14 hereof, when the Secretariat of Trade and Industrial Development shall on its own initiative fix the countervailing duty payable according to the terms of Article 8 and shall publish its resolution to that effect in the Diario Oficial de la Federación.

ARTICLE 10: Individuals or bodies corporate producing goods identical or similar to those being imported or which it is proposed to import in circumstances involving unfair international trade practices, provided they are responsible either separately or as a group, for at least 25 per cent domestic production of such goods, or, alternatively, legally constituted organizations of producers of such goods, may inform the Secretariat of Trade and Industrial Development of the facts which call for fixing of the countervailing duty under the terms of this Act. The report setting out such information shall take the form of a sworn statement in writing which provides the following particulars:

I. Name and address of the complainant and, where applicable, that of the individual who acts as appointed representative.

II. Main activity of the complainant and, where applicable, of the members of the complainant organization, their number, and their percentage share in the national output of the type of foods they produce.

III. Description of the imported goods in question, with specifics of their quality compared to that of the equivalent produced in Mexico, other identifying data on them, and indication of the volume/quantity (in the appropriate unit of measurement) it is proposed to import.

IV. Names and addresses of those who propose to import the goods or who have done so and whether one or more operations are involved, unless the complainant is not in possession of this knowledge.

V. Indication of: the country or countries of origin and export, if they are not the same; where applicable, the person or persons who are exporting to Mexico; and the amount of either the difference referred to in Article 7(I) or the benefits referred to in Article 7(II), unless, in the latter instance, the complainant is not in possession of the knowledge.

VI. Such other facts and data as justify a presumption of unfair international trade practices.

VII. Where available, information tending to demonstrate that introduction onto the domestic market of the goods in question causes or threatens to cause injury to domestic production or hinders establishment of an industrial undertaking.

The Secretariat may require the complainant to provide additional evidence or material, to be furnished within the time-limit given, which shall not be less than eight working days. If this information is not forthcoming within the period given, or any extension allowed, the complaint shall be regarded as having lapsed, without prejudice to the Secretariat's proceeding with the investigation on its own initiative and taking whatever steps may be indicated.

ARTICLE 11: Once it acknowledges filing of the complaint referred to in the preceding Article, the Secretariat of Trade and Industrial Development shall, within five working days, and if appropriate, issue a provisional

resolution announcing the countervailing duty payable. It shall then proceed with its own investigation of the unfair international trade practices that have prompted issue of the Resolution, which shall become effective on the day following its publication in the Diario Oficial de la Federación.

Issue of the provisional resolution referred to in the preceding paragraph shall be a function of the information in possession of the Secretariat, in the sense that it tends to indicate the existence of one or more unfair international trade practices as defined in this Act.

If the goods in question have not been imported, the Secretariat of Trade and Industrial Development may authorize import without payment of the countervailing duty provided guarantees of payment are furnished against the possibility that the final resolution may confirm duty thus far fixed on a provisional basis only.

The Secretariat of the Treasury and Public Credit shall immediately proceed, as the case may be, to collect the countervailing duty or to accept the guarantees furnished by the interested parties, which shall comply in all respects with the provisions of the Federal Taxation Code.

ARTICLE 12: Within no more than thirty working days of the date on which the provisional resolution becomes effective, the Secretariat of Trade and Industrial Development shall either confirm, amend or revoke it in light of the material furnished by the parties conducting or intending to conduct the import operation, and the producers or organization of producers referred to in Article 10, as well as the outcome of any investigation carried out by the Secretariat itself.

Should the countervailing duty be revoked or modified, the guarantees furnished shall be cancelled or modified, or, as the case may be, the sums deposited or any difference due, shall be reimbursed. These steps shall be taken prior to publication of the resolution in the Diario Oficial de la Federación.

ARTICLE 13: On conclusion of its own investigation, the Secretariat of Trade and Industrial Development, within six months of the date the provisional resolution takes effect, shall issue the final resolution, basing it on evidence furnished by domestic manufacturers, the importers of the goods in question and information the Secretariat itself may have assembled. This resolution also shall be published in the Diario Oficial de la Federación.

Where appropriate, the Secretariat of the Treasury and Public Credit shall call in the guarantees furnished should the countervailing duty be confirmed. If it is revoked or modified, the provisions set out in the second paragraph of the preceding Article shall apply.

ARTICLE 14: The Federal Executive may agree with the governments of other countries that countervailing duties fixed under the terms of this Act shall be declared final only when complainants can demonstrate that import

of the goods in question causes or threatens to cause injury to domestic production or hinders the establishment of industrial undertakings, provided that reciprocal arrangements exist in those countries for resolving questions pertaining to goods exported from Mexico to them.

In all cases, the resolutions fixing these countervailing duties shall be published in the Diario Oficial de la Federación.

ARTICLE 15: Responsibility for determining whether imports of goods cause or threaten to cause injury to domestic production or hinder the establishment of industrial undertakings shall rest with the Secretariat of Trade and Industrial Development, which shall take into account the test enumerated in the agreements referred to the preceding Article, or, in their absence, the following factors at least:

I. The volume of goods imported in circumstances involving unfair international trade practices, in order to determine whether there has been an appreciable increase in such operations compared to output or domestic consumption in Mexico.

II. The effects on prices of identical or similar products on the domestic market, in order to determine whether they are caused or are likely to be caused by import operations involving unfair international trade practices. Here, consideration shall be given to whether the imported goods are being sold on the domestic market at a price significantly below that of identical or similar products, or whether such imports bring down domestic prices to an abnormal degree or impede to an abnormal degree any reasonable increase that would otherwise have occurred in those prices.

III. The actual or likely impact on domestic manufacturers of goods identical or similar to those imported. Here, account shall be taken of all pertinent economic factors or indexes that influence output and sales, for instance: their actual and potential decline; market share; investment yields; utilization of installed capacity; domestic prices movements; actual and potential adverse effects on employment, wages, growth, investment; and other relevant particulars.

ARTICLE 16: Importers or their consignees shall be required to show on applications for import licences the amount of any countervailing duty imposed and to pay it together with the other taxes applicable to external trade operations, including instances where the Secretariat of Trade and Industrial Development has fixed the duty merely on a provisional basis.

ARTICLE 17: Importers of merchandise identical or similar to that on which the countervailing duty referred to in Article 7(II) is payable, and likewise their consignees, shall not be expected to pay the duty on submitting their import licence application if they provide evidence that the country of origin of the merchandise is not that which employs unfair international trade practices. In such cases, the application shall be accompanied by the certificate of origin issued by the authorities in the exporting country competent to do so and who are accredited to the satisfaction of the Mexican authorities.

ARTICLE 18: Importers liable for countervailing duties which have been declared final may petition to have the decision issued by the Secretariat of Trade and Industrial Development modified if the price difference or the benefits referred to in Article 7 have themselves been modified. In such cases, the Secretariat of Trade and Industrial Development may authorize import without payment of the duties while the petition is being considered, provided the petitioner furnishes guarantees covering the financial obligation involved.

ARTICLE 19: A countervailing duty shall remain in force until the unfair international trade practices that gave rise to it are declared to have ceased.

The Secretariat of Trade and Industrial Development shall issue a declaration to that effect, publishing it in the Diario Oficial de la Federación, once the disappearance of the practices has been verified.

Such practices shall be considered to have disappeared when the foreign exporters or the government of the country that provides the inducements, incentives, premiums, subsidies or similar kinds of assistance take any of the following steps:

I. Adjust their prices, eliminating the causes for application of the countervailing duty.

II. Eliminate completely the factors that caused the export price to be a subsidized price.

III. Give their undertaking to the Secretariat of Trade and Industrial Development, through government channels in their own countries, to limit their exports to Mexico to agreed quantities, whereupon the countervailing duty shall be suspended. Should they subsequently fail to abide by their undertaking, the duty shall again become payable.

IV. Proceed with actions different from those enumerated in the preceding paragraphs but the outcome of which is equivalent in the judgement of the Secretariat of Trade and Industrial Development.

The interested parties may request that the Secretariat issue a declaration to that effect, accompanying their petition with evidence verifying the disappearance of the unfair trade practices, in which case the authorization referred to in the preceding Article may be issued, but against guarantees covering the financial obligation involved.

CHAPTER III

Inspection and Supervision, Penalties and Administrative Remedies

ARTICLE 20: Infringements of this Act, which are for the same reasons also infringements of the Customs Act, shall be investigated or substantiated and penalized according to the provisions of the latter, which shall also

govern the refutation via administrative channels of resolutions issued pursuant to the former.

ARTICLE 21: It shall be the responsibility of the Secretariat of Trade and Industrial Development and, where appropriate, the competent authority, to penalize those infringements of this Act that do not also infringe the Customs Act, particularly the following:

I. The furnishing of false particulars or documents or the omission or alteration of actual particulars or documents for the purpose of obtaining licences to export or import goods, petitioning for or eluding countervailing duties, or in connection with any other step associated with the provisions of this Act.

II. Utilizing imported merchandise of goods for purposes different from those authorized in the import licence.

ARTICLE 22: The infringements referred to in Article 21 shall be subject to the following penalties:

I. Those referred to in paragraph (I) shall be subject to fines up to the value of the goods imported or exported, or, if this is not ascertainable, up to the value of the goods as stated on the corresponding licence.

Other infringements of Article 21(I) shall be subject to fines up to five times the annual general minimum wage within the Federal District for the year in which the infringement took place. The actual amount of a fine shall reflect the financial dimensions of the particular operation, the profit obtained from it and, where applicable, the injury done either directly or indirectly to manufacturers or business firms.

II. Infringements committed by utilizing imported goods or merchandise for purposes other than those authorized shall be subject to fines up to the full value of the goods or merchandise if already disposed of, while an order shall be issued that any not disposed of must be used exclusively as authorized. Should such order not be complied with immediately, a fine shall be imposed equivalent to five times the value of such goods or merchandise.

ARTICLE 23: Inspection, supervision, and imposition of penalties, which this Act makes the responsibility of the Secretariat of Trade and Industrial Development, shall be carried out according to the formalities and procedures laid down in the Federal Executive Economic Powers Act.

ARTICLE 24: Appeal for reversal of final resolutions or acts or administrative actions fixing or implementing countervailing duties shall lie via administrative channels as provided in the Federal Taxation Code. Appeal proceedings may be instituted only by importers of goods affected by such duties and must be exhausted before Article 202(IV) of the Code will apply.

Any such appeal shall be substantiated and heard in accordance with the provisions of said Code and the following rules:

I. The appeal shall be directed to whichever department has issued the resolution or taken the action that is the subject of the dispute. However, in cases where both are disputed, the appeal shall be filed with the department which has fixed the countervailing duties.

II. A decision on the appeal against the fixing of the countervailing duties shall be handed down prior to the appeal against the implementing action. The department competent to hear the former shall furnish a copy of its decision to the department competent to hear the latter. Should the countervailing duty fixed be changed or revoked, the appeal against implementing action shall automatically become null and void.

III. Should successive appeals be lodged against the fixing of the countervailing duty and the implementing action, the latter shall be suspended. The appellant shall be required to give notice of the situation to the departments responsible for hearing and deciding these appeals. Suspension may be ordered on the initiative of the departments themselves when for any reason they become aware of this situation.

Appeals from the decisions on petitions for reversal referred to in this Article shall lie to the Federal Taxation Court, except where contrary to the provisions of Article 202 of the Federal Taxation Code.

When the same appellant who instituted proceedings before the Federal Taxation Court contesting the decision handed down with respect to the petition for reversal of the fixing of the countervailing duty subsequently also contests the decision handed down with respect to the petition against the implementing action, he shall be required to amplify his original plea within the time period allowed for formulating the latter objection.

ARTICLE 25: Resolutions issued by the Secretariat of Trade and Industrial Development imposing penalties may be appealed via the administrative channel by the individuals affected to the senior official of the department concerned within fifteen working days of the date on which notification of the particular resolution was given.

Filing of such an appeal, to which the following Articles shall be applicable, shall cause a suspension of execution of the penalty disputed if it consists of a fine, provided that guarantees covering the amount in question are given in accordance with the provisions of the Federal Taxation Code. In other cases, the effects of the resolution shall be suspended if the following tests are met:

I. Filing of the appeal has been acknowledged and the appellant requests suspension.

II. The suspension does not result in the initiation or continuation of acts of omissions that constitute a failure to comply with this Act or other public laws.

III. Third parties do not suffer injury or loss, unless payment of indemnities is guaranteed should the decision handed down be unfavourable.

IV. Execution of the resolution appealed causes injury impossible or difficult for the appellant to indemnify.

ARTICLE 26: When the appeal is not launched in the name of an individual, particulars must be given identifying the person instituting the proceedings.

In appeal proceedings via the administrative channel, all classes of evidence, except witness depositions, may be adduced, provided they have to do with the facts on which the resolution disputed was based. Such evidence, together with documentary materials, shall be provided at the time the appellant's position is lodged. Evidence and documentary materials adduced may be amplified during the fifteen days following filing of the appeal.

When evidence is presented which requires substantiation, the interested party shall be allowed a period of not less than eight and not more than thirty working days for that purpose.

The presentation of witnesses, judgements and documentation shall be the responsibility of the appellant. Should they not be presented within the period allowed, the evidence they relate shall not be taken into account in the decision handed down.

The Federal Civil Procedures Code shall be applicable to matters related to the presentation, acknowledgement and substantiation of evidence not dealt with specifically in this Chapter.

ARTICLE 27: The department to which appeal lies shall hand down its decision within thirty working days of the date on which substantiation of evidence is completed, or if no specific course of action is required to that end, of the date on which the record of the case is completed.

ARTICLE 28: An appeal shall be considered not to have been filed:

I. When not instituted within the time limits act in Article 25.

II. When documentation accrediting the legal status of the appellant's representative has either not been filed at all or has been filed out of time.

III. When the notice of appeal is not signed, unless the signature can be added prior to termination of the period allowed for filing. The department with which the appeal is lodged shall notify the appellant to sign it should the signature have been omitted.

ARTICLE 29: Resolutions not appealed within the time-limit specified in Article 25, decisions handed down in matters appealed, or decisions which hold that no appeal has in effect been filed, shall be administratively binding.

TRANSITORY PROVISIONS

ARTICLE 1: This act shall come into force on the day following its publication in the Diario Oficial de la Federación.

ARTICLE 2: The Regulatory Act issued in implementation of the second paragraph of Article 131 of the Constitution of the United Mexican States, published in the Diario Oficial de la Federación on 5 January 1961, is hereby repealed, as are Articles 9 and 10 of the Federal Executive Economic Powers Act, and all other provisions at variance with those contained herein.

ARTICLE 3: Until such time as the Regulations to this Act are issued, the provisions contained in the following texts shall continue to apply: Regulations governing Licences to Import and Export Restricted Merchandise, the Decree creating the Commission on Tariffs and Trade, and all other prior provisions not at variance with them.

Mexico, Federal District, 19 December 1985, (TN: Signatures of two Senators and two Deputies).

In exercise of the powers vested in me by Article 89(I) of the Constitution of the United Mexican States, I hereby sign into law this decree, which shall be duly published and promulgated, at the headquarters of the Federal Executive Branch, Mexico City, Federal District, on 20 December 1985. Miguel de la Madrid H. (TN: Signatures of various cabinet ministers, etc.).

REGULATIONS AGAINST UNFAIR INTERNATIONAL TRADE PRACTICES

I, MIGUEL DE LA MADRID H., President of the United Mexican States, in exercise of the powers vested in me by Article 89(1) of the Constitution of the United Mexican States, in keeping with the provisions made in Articles 7 and 19 of the Foreign Trade Regulatory Act Implementing Article 131 of the Constitution of the United Mexican States, and CONSIDERING:

THAT the 1983-1988 National Development Plan and the 1984-1988 Foreign Industrial Trade Development Programme assign a primary rôle to foreign trade in the strategy for the economic development of the country;

THAT among the measures instituted by the Government of the Republic in the field of external trade special emphasis is placed on the Foreign Trade Regulatory Act Implementing Article 131 of the Constitution of the United Mexican States passed by the Congress of the Union, and promulgated and published by the Executive which I head in the Diario Oficial de la Federación of 13 January 1986;

THAT the Foreign Trade Act, by which name the legislation just mentioned is also known, establishes the legal foundations that enable the Government to respond to certain aspects of international trade, such as dumping and subsidization, commonly regarded as unfair international trade practices, and to take steps for the adequate protection of the domestic production apparatus as it is affected by them;

THAT the Foreign Trade Act empowers the Executive which I head to fix and implement countervailing duties on foreign goods that are being imported or which it is intended to import into Mexico in circumstances involving unfair international trade practices;

THAT the fixing and implementation of countervailing duties must be based on prior investigation into unfair international trade practices in order to ascertain whether they are in fact in play and, if so, what precise rate of duty should be applied in each specific case, a process that requires the following of an administrative process involving domestic producers, importers, foreign exporters, and the governments of the countries with which Mexico maintains trade relations;

AND THAT in order to give effect to the provisions of the Foreign Trade Act and to provide adequate and timely protection for the domestic production apparatus, it is necessary to define certain concepts employed in the Act and to establish in detail formalities governing time limits, conditions, general and specific situations, procedure, admission and substantiation of evidence, provisional and final fixing of countervailing duties, procedures for determining the existence of injury to the domestic production apparatus or the likelihood that such injury may occur, setting the amount of a countervailing duty when it is to be imposed, and the form and duration of any investigations into the possible existence of unfair international trade practices;

I HAVE THEREFORE SEEN FIT to issue the following:

REGULATIONS AGAINST UNFAIR INTERNATIONAL TRADE PRACTICES

CHAPTER 1

Definitions

ARTICLE 1: For purposes of application of these Regulations, the following terms, when used in them, shall be defined as follows:

I. Act, the Foreign Trade Regulatory Act Implementing Article 131 of the Constitution of the United Mexican States.

II. Secretariat, the Secretariat of Trade and Industrial Development.

III. Commission, the Commission on Tariffs and Trade.

IV. Dumping, the unfair international trade practice referred to in Article 7(I) of the Act, which consists of the importing into the domestic market of foreign goods at a price below their normal value.

V. Normal course of trade: those operations customarily carried out, or which during a reasonable period immediately preceding the date of export to Mexico have been carried out, in the market of the country of origin or consignment in connection with identical or similar goods between buyers and sellers who are independent of one another.

VI. Subsidization, the unfair international trade practice referred to in Article 7(II) of the Act, which consists in the granting, either directly or indirectly, by a foreign government or its public or semi-public agencies of inducements, incentives, premiums, subsidies, or support of any kind to producers, processors, marketing agents or exporters of goods exported to Mexico, thereby inequitably reinforcing their international competitiveness, except where such practices are regarded internationally as acceptable. Also considered as subsidization are sales on the international market by foreign governments or their agents or inventory or reserve stocks or agricultural or mining products under conditions whose effect is that their prices are considerably lower than those offered by other suppliers in the same market, or the capture of more than an equitable share of world export trade in a particular product.

VII. Identical goods shall be considered as those coinciding in all respects with those against which they may be compared, taking into consideration such characteristics as their nature, origin, provenance, use, function, quality, brand name and commercial reputation. Should they not coincide in all respects with the goods against which they may be compared, it shall be sufficient if the latter possess a number of identical features, especially as to their nature, use, function and quality, to be considered similar.

VIII. Injury to national production is the loss or impairment of a national asset or the closure of access to any licit, normal gain which one or several domestic producers suffer or may suffer as an immediate and direct consequence of any of the unfair international trade practices envisaged in Article 7 of the Act and in these Regulations. This concept includes impediments to the establishment of new industries or to further development of existing industries as a direct result of unfair international practices.

CHAPTER II

Determining Occurrence of Dumping

ARTICLE 2: For purposes of calculating the margin of dumping, the Secretariat shall compare the normal value of the foreign goods with the price at which they are being imported into the Mexican market.

The Secretariat shall consider as the normal value of particular goods:

I. The comparable price, in the normal course of trade, of identical or similar goods intended for consumption in the country of origin.

II. When sales of identical or similar goods are not made in the normal course of trade in the domestic market of the country of origin, or when such sales do not allow valid comparison, the normal price shall be considered as:

- (a) the highest comparable price for identical or similar goods exported to a third country in the normal course of trade, provided it is a representative price; or otherwise as
- (b) the price obtained by totalling the production cost of the goods in the country of origin, selling costs, shipping costs, and a reasonable profit margin.

Assessment of production cost shall be based on the package of costs, both fixed and variable, associated with the materials and the manufacturing process in the normal course of trade in the country of origin, and shall be increased by a reasonable amount to cover administrative and other overhead costs.

As a general rule, where a profit is normally obtained on sales of products within the same general category in the domestic market of the country of origin, the amount to be added in respect of profit for purposes of this assessment shall not be higher. In other cases, profit shall be determined according to reasonable standards and whatever pertinent information may be available.

ARTICLE 3: In the case of goods imported from countries with centrally planned economies, normal value shall be taken as the comparable price at which identical or similar goods are actually sold in the normal course of trade in a market-economy third country for domestic consumption, or otherwise for export.

ARTICLE 4: When goods are exported to Mexico from an intermediary country and not directly from the country of origin, normal value shall be taken as market price in the exporting country.

Alternatively, the comparison may be made against the price in the country of origin should the goods merely pass through the exporting country in transit, should they not be produced in that country, or should no comparable price for them exist there.

ARTICLE 5: In order to determine the margin of dumping and ensure that the comparison between normal value and the price at which goods are being imported into the Mexican market is as reasonable as possible, the Secretariat shall examine the figures in the light of comparisons of the physical characteristics and technical specifications of the goods. Allowance shall also be made for price differentials that may be ascribable to conditions and terms of sale, taxes payable and other matters affecting the comparison of prices.

ARTICLE 6: So that normal value and the price at which the goods are being imported into the Mexican market may prove truly comparable as to physical characteristics and technical specifications, conditions and terms of sale applicable, taxes payable and other pertinent factors, proper account shall be taken in each case, of the differences likely to affect the comparison as a basis for appropriate adjustments. When an interested party requests that such differences be considered, it shall be up to him to furnish evidence that his petition is justified.

In the computation of such adjustments, the following criteria shall be applied:

I. When differences exist as to physical characteristics and technical specifications, the adjustments shall reflect their impact on the normal value of the goods. However, if information is not available on domestic market prices in the exporting country, or if the data available does not allow for valid comparison, the computations shall be based on the production costs and profit margins ascribable to such differences.

II. Where differences in quantity enter the picture, adjustments shall be made under the following headings:

- (a) Discounts for volume freely allowed in the normal course of trade during a representative prior period, usually not less than six months, and for a substantial proportion, not less than 20 per cent, of total sales of the particular product on the

domestic market or, where applicable, on a third-country market. Deferred discounts may also be considered when they have been repeatedly allowed in prior periods or when they involve an undertaking to comply with the conditions required for obtaining them.

- (b) Savings on production costs when different volumes are involved. However, when the price of the goods is given on volumes smaller than the smallest volume sold in the domestic market or, where applicable, to third countries, the adjustment shall be computed to reflect the highest price at which the smallest volume was sold in the domestic market, or, where applicable, in a third market.

III. When differences in conditions and terms of sale exist, adjustments shall be limited to those related directly to the transactions being reviewed. Such differences may include, among others, those affecting conditions of credit, sureties, guarantees, modalities of technical assistance, after-sales service, commissions or salaries paid to sales personnel, packaging, shipment, insurances, maintenance, loading and allied costs, and (in so far as not allowed for elsewhere) differences in commercial phase. In general, no adjustment shall be made for differences in administrative costs and overheads including research and development or advertising costs. The extent of these adjustments shall normally be geared to the cost of such differences to the seller, although allowance may also be made for their effect on the value of the product.

IV. Differences in taxes payable shall be cause for adjustment where the product in question exported to Mexico has been exempted from import duties or indirect taxes that affect the similar product and the materials employed in its manufacture when the product in question is intended for consumption in the country of origin or in the exporting country or when such charges have been refunded.

CHAPTER III

Determining Existence of Subsidization

ARTICLE 7: In its investigation to determine whether subsidization exists, the Secretariat shall assume that the following are subsidies unless there is evidence to the contrary: any of the actions enumerated for information purposes in the list of types of export subsidy annexed to and forming part of the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade, although that list shall not be regarded as exhaustive.

ARTICLE 8: When the size of the subsidy received on foreign goods exported to Mexico is being evaluated, the total of any export taxes, duties or

other charges payable on the export operation in the country of origin and specifically designed to offset the subsidy shall be deducted.

When an interested party requests such deduction, it shall be up to him to furnish evidence that the petition is justified.

CHAPTER IV

Countervailing Duty

ARTICLE 9: The provisional countervailing duty may not be greater, although it may be less, than the margin of dumping or the amount of the subsidy as determined during the investigation process. At all events, the duty set by the Secretariat shall be sufficient to discourage imports of goods under conditions involving unfair international trade practices.

ARTICLE 10: The countervailing duty may be fixed as a lump sum or as percentage points, whichever is most appropriate and, as the case may be, shall be computed in the convertible currency in which the goods are invoiced or in U.S. dollars. It shall be payable in its equivalent in Mexican currency, according to the controlled exchange rate in effect at the time of actual payment.

ARTICLE II: At any point during an investigation of the type these Regulations envisage into the presence of unfair international trade practices and up until the time a final resolution is issued, the Secretariat, if it considers there is sufficient justification for doing so, may fix a countervailing duty or vary the amount of one already in effect, taking the necessary steps to notify the interested parties of the new situation.

The countervailing duty fixed by the Secretariat at any point during the investigation process referred to in the preceding paragraph shall be provisional in character and consequently the importer, at his own discretion, may pay it or furnish guarantees covering the financial obligation involved.

CHAPTER V

Evidence of Injury or Loss

ARTICLE 12: In those cases referred to in Article 14 of the Act, countervailing duties shall be fixed finally only if as a result of its investigation into the possible existence of unfair international trade practices the Secretariat becomes convinced of the occurrence or threat of injury to the domestic production apparatus or that impediments to the establishment of industrial undertakings have arisen owing to import operations already effected or that may be effected under the same conditions.

CHAPTER VI

Investigation of Unfair International Trade Practices

ARTICLE 13: An investigation into the possible presence of unfair international trade practices, which it shall be the responsibility of the Secretariat to carry out, shall be initiated in response to a complaint made by any individual or body corporate in the categories enumerated in Article 10 of the Act. Any such complaint shall contain at least the particulars specified in that Article.

A complaint which meets the requirements specified in the preceding paragraph shall be acknowledged as received and in order by the Secretariat within a maximum of five working days by the issue of notification to that effect to the complainant, and the corresponding investigation shall be considered to have begun at this point. The period of five working days allowed for issuing the resolution referred to in Article 11 of the Act shall begin to run on the day after notification of receipt of a complaint in order has been issued.

Where in the judgement of the Secretariat grounds for an investigation are not evident, the complainant shall be so notified within five working days of receipt of the complaint, the Secretariat providing a reasoned explanation for its decision and ordering the record in the case to be closed.

ARTICLE 14: Should it be the Secretariat's view that the complaint is ambiguous or that particulars or documents justifying a presumption of the existence of unfair international trade practices are lacking, it shall within no more than five working days of acknowledging receipt of the complaint require the complainant to clarify his denunciation or furnish the pertinent particulars or documents within thirty working days, which period may be extended, but only once, at the discretion of the Secretariat.

Should the complaint not be clarified or supplemented as required, it shall be held to have been abandoned, although without prejudice to the Secretariat's launching an investigation on its own initiative.

ARTICLE 15: A resolution by the Secretariat to launch an investigation on its own initiative into unfair international trade practices shall be brought to the knowledge of the general public by publication in the Diario Oficial de la Federación, and given notice to importers, exporters, representatives of foreign governments and persons possessing a legal interest in the outcome of the investigation to appear before the Secretariat to claim any rights they may allege in the matter.

The notice referred to shall allow a period not exceeding fifteen working days for filing of the written representations of interested parties.

ARTICLE 16: By means of the resolution referred to in the foregoing Article, the Secretariat shall:

- (a) indicate that an investigation has begun into the possible presence of unfair international trade practices, without imposition of a provisional countervailing duty; or
- (b) determine provisionally the countervailing duty that shall be payable with respect to the import of goods presumably in circumstances involving dumping or subsidization, provided sufficient information is to hand which justifies assuming the existence of these unfair trade practices and the import operation in question presents such features as, in the judgement of the Secretariat, constitute injury or threat of injury to domestic producers of identical or similar goods.

ARTICLE 17: A resolution of the type referred to in paragraph (a) of the preceding Article shall give at least the following particulars:

- (a) a detailed description of the goods that have been or are being imported, presumably under conditions that involve dumping or subsidization, together with indication of the corresponding heading of the General Import Tariff;
- (b) the country of origin or provenance of these goods;
- (c) a description of domestically produced goods identical or similar to those that have been or are being imported;
- (d) the name and address of the domestic producer or producers of identical or similar goods.

ARTICLE 18: A resolution of the type announcing imposition of a provisional countervailing duty shall give the following particulars:

- (a) a detailed description of the goods that have been or are being imported, under conditions involving dumping or subsidization, together with indication of the corresponding heading of the General Import Tariff;
- (b) name and address of the exporter or exporters and manufacturer of the goods referred to in the previous sub-paragraph;
- (c) the country of origin or provenance of the goods;
- (d) a description of goods produced in Mexico that are identical or similar to the imported goods in question;
- (e) name and address of the domestic producer or producers of identical or similar goods;

- (f) the margin of dumping or amount of presumed subsidization, as the case may be, with indication in the latter instance of the type of subsidy;
- (g) where applicable, description of the injury sustained or likely to be by the domestic production apparatus, or an estimate of the degree to which the establishment of new industries or the expansion of existing industries is being impeded when they produce goods identical or similar to those imported or which it is proposed to import;
- (h) the amount of the provisional countervailing duty that shall be payable.

The resolution to which this Article refers shall be published in the Diario Oficial de la Federación.

ARTICLE 19: The investigation into unfair international trade practices shall focus on the existence of dumping or subsidization and the damage caused or likely to be caused to national output. It shall consider imports of goods identical or similar to possibly affected domestic products over no more than the six months prior to commencement of the investigation, while also taking into account of any other factors relevant to its outcome.

The fact that the investigation is in progress shall not mean that the goods which are its subject may not be processed by the customs authorities.

ARTICLE 20: Within the thirty-day period referred to in Article 12 of the Act, the Secretariat shall review the matters on which it based its provisional resolution and any supplementary information furnished by the producers, importers and exporters affected, or by representatives of the government of the country of origin or provenance of the subject goods.

Following this review, the Secretariat may:

- (a) Confirm the amount of the countervailing duty previously fixed, when the facts of the case that gave rise to that duty have not altered;
- (b) Change the amount of the provisional countervailing duty previously fixed, when any variation in the margin of dumping or the subsidization provided has been verified; or
- (c) Revoke the provisional countervailing duty previously fixed, when a conclusion is reached that no unfair practice is involved, in which case the investigation shall be terminated and the record in the case closed.

The outcome of this review shall be announced in the Diario Oficial de la Federación.

In the situations indicated in sub-paragraphs (b) and (c) above, the Secretariat shall give instructions that any guarantees furnished shall be modified or cancelled, respectively, and, as the case may be, that amounts paid in respect of the countervailing duty shall be refunded or that the balance outstanding be collected if the new duty fixed is higher than that imposed initially.

Such refund or payment of amounts shall take place within a period not exceeding ten working days from the date of publication of the resolution in the Diario Oficial de la Federación.

ARTICLE 21: The Secretariat shall verify the information assembled by means of questionnaires or submitted during the course of the investigation, and for that purpose shall visit the legal domicile of the complainant or the importers of the subject goods, limiting itself on such occasions to comparison of the documents making up the record in the case or to reviewing other documents, inspection of which may have been ordered.

Information and evidence presented in connection with production costs or subsidization may be verified in the country of origin or provenance of the subject goods if the competent government authority there consents to such a course of action and, where applicable, the producer of the goods consents to such verification.

The Secretariat may use the services of specialist assessors to assist it in its investigation and checking of the data and other material it requires before it can issue a provisional resolution.

Should the government of the exporting country or, where applicable, the producer of the subject goods of the inquiry not consent to the verification process, then the Secretariat shall make a determination as to countervailing duties on the basis of whatever information is available.

ARTICLE 22: In its calculations to determine the amount of the countervailing duties, the Secretariat shall utilize generally accepted statistical or sampling techniques in those instances where there is a significant volume or number of operations involved or adjustments to be made. Such techniques should be representative of the operations which are the subject of investigation. In any event, generally accepted accounting principles shall be followed.

ARTICLE 23: Complainants, importers and exporters of the subject goods of the investigation, and representatives of the government of the exporting country shall be entitled to obtain information made available to the Secretariat by any of the parties concerned, except internal documents prepared by the Secretariat itself or any others that may be considered confidential.

To that end, they shall apply to the Secretariat in writing specifying the particular points on which they require information, which, if there is no impediment, shall be furnished to them in writing.

ARTICLE 24: The confidential information made available to the Secretariat may be utilized by it only for the purpose for which it was sought, and may not be divulged without the express authorization of the party by whom it was provided.

Requests that information be treated as confidential shall indicate the reasons why this should be so, and shall be accompanied by a non-confidential summary of the material or a statement of the reasons why it cannot be summarized.

ARTICLE 25: The Secretariat shall treat information as confidential when the party who has made it available would be significantly prejudiced if it were divulged. Where the Secretariat is of the opinion that a request for confidential treatment is not justified, and the party who has furnished the information does not wish it to be published and is not prepared to authorize it to be divulged in summary form, a decision may be taken not to consider it for purposes of the investigation if it was furnished voluntarily.

ARTICLE 26: The preceding Articles shall be no impediment to the Secretariat's divulging general information, particularly the reasons considered to justify the imposition of countervailing duties, or materials which constitute evidence, in the course of legal proceedings. Such divulgence shall take account of the legitimate concern of the interested parties to see that their trade secrets are not revealed.

ARTICLE 27: During the period when the investigation into unfair international trade practices is under way, the parties whose legal interest in the outcome of the process has been duly accredited, may adduce all classes of evidence, except witness depositions or material considered contrary to public order or offensive to morals or decency.

CHAPTER VII

Conclusion of the Investigation

ARTICLE 28: Once the investigation into unfair international trade practices is concluded, the Secretariat shall send the record in the case and a preliminary draft resolution to the Commission on Tariffs and Trade for its opinion as to what the content of the final version of the resolution ought to be and, where appropriate, on the amount of the final countervailing duty to be fixed.

Once the Commission on Tariffs and Trade has arrived at an opinion, its Technical Secretariat shall return the record in the case to the

Secretariat to that the latter may draw up the draft resolution in accordance with the opinion given by the Commission. This draft shall be submitted for consideration to the President of the Republic, who, if it meets his approval, shall order it to be published in the Diario Oficial de la Federación.

The resolution setting the final countervailing duty shall incorporate the particulars enumerated in Article 18 of these Regulations, particulars as to its duration, and, where appropriate, a reasoned statement regarding the factors taken into consideration in determining the existence of injury or a threat of injury to domestic production or of impediments to the establishment or expansion of an industry.

ARTICLE 29: The amount of the countervailing duty established as final and definitive may not exceed the margin of dumping or the amount of subsidization held to be verified as the result of the investigation. The competent administrative authorities should consider the possibility of making the countervailing duty less than the margin of dumping or the subsidy allowed if in their opinion a lesser amount is sufficient to eliminate the injurious effects on domestic production.

ARTICLE 30: During the investigation into unfair international trade practices and up until the time the final countervailing duty is fixed, the complainant, the importers and exporters of the subject goods, who have been accredited as having a legal interest in the outcome, and the accredited representatives of the governments of the countries involved may request that the Secretariat hold a conciliation meeting at which proposals for the solution or conclusion of the investigation may be put forward. Such proposals, if in order, shall be approved by the Secretariat and incorporated into the resolution that shall then be issued announcing the conclusion of the investigation. This Resolution shall be published in the Diario Oficial de la Federación.

ARTICLE 31: When the exporter of the dumped or subsidized goods undertakes, through his government, to adjust his prices or cease his export operations, or if the government of the exporting country limits or abolishes the subsidy in question or permits the exporter to adjust his prices and thereby cancel out their damaging effects, the investigation into unfair international trade practices may be suspended or declared concluded, provided prior consent is obtained from the Commission on Tariffs and Trade, in which case the resolution in the case shall incorporate the undertaking assumed and the consenting opinion given.

Compliance with such undertakings shall be monitored periodically as a matter of course or at the request of an interested party. If as a consequence of this process it becomes apparent that there is a failure to comply, collection of the provisional countervailing duty shall be resumed immediately and the investigation process shall continue.

The resolution referred to in this Article shall be published in the Diario Oficial de la Federación.

TRANSITORY PROVISIONS

SOLE PROVISO: These Regulations shall come into effect on the day following their publication in the Diario Oficial de la Federación.

Given at the headquarters of the Executive Brance of the Federation, Mexico City, Federal District, on 24 November 1986. Miguel de la Madrid H. [Secretary of Trade and Industrial Development, Héctor Hernández Cervantes. Secretary of the Treasury and Public Credit, Gustavo Petricioli Iturbide].