GENERAL AGREEMENT

ON TARIFFS AND TRADE

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Committee on Anti-Dumping Practices

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INFORMATION ON IMPLEMENTATION AND ADMINISTRATION OF THE AGREEMENT

Legislation of Mexico

Supplement

The following communication, dated 11 January, has been received from the Permanent Mission of Mexico.

On behalf of the Mexican Government I have the honour of notifying the new Regulations under the Foreign Trade Act to the Committee on Anti-Dumping Practices. These Regulations were published in the Diario Oficial de la Federación (Official Journal) of 30 December 1993.

The new instrument contains detailed Regulations under the Foreign Trade Act passed by this country on 27 July last year, and covering different areas. We are only notifying to the Committee those provisions which fall within its sphere of competence.

TITLE IV

UNFAIR INTERNATIONAL TRADE PRACTICES

CHAPTER I

Definitions

ARTICLE 37. For the purposes of these Regulations:

I. Identical goods mean products which are alike in all respects to the product under investigation; and

II. Like goods mean products which, although not alike in all respects, are similar in their characteristics and composition, thus allowing them to fulfil the same functions and making them commercially interchangeable with those with which they are being compared.

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*This document cancels and replaces document ADP/1/Add.27/Rev.2

CHAPTER II

Imports under Conditions of Price Discrimination

ARTICLE 38. The margin of price discrimination of the goods shall be defined as the difference between their normal value and their export price, relative to the latter price.

ARTICLE 39. If the product under investigation consists of goods which are not physically identical with each other, the margin of price discrimination shall be estimated according to the type of goods, in such a way that the normal value and the export price utilized for each calculation correspond to comparable goods. In general, types of goods shall be defined according to the product classification recognized in the accounting information system of each exporting enterprise.

When the margin of price discrimination is calculated by type of goods, the margin for the product under investigation shall be determined as the weighted average of all the individual margins which have been estimated. This weighted average shall be calculated according to the proportion of each type of goods relative to the total volume of the product exported during the period of the investigation.

ARTICLE 40. As a general rule, both the normal value and the export price shall be calculated on the basis of the weighted average figures obtained for the period of the investigation.

When the normal value is determined on the basis of the prices to which Article 31 of the Act refers, they shall be weighted according to the proportion of each transaction relative to the total volume of sales in the country of origin or export to a third country, as appropriate.

If the normal value is established on the basis of the computed value, the production costs estimated for sub-periods within the period of investigation shall be weighted according to the production in each sub-period as a proportion of the total volume produced.

Export prices shall be weighted according to the proportion of each transaction relative to the total volume exported.

ARTICLE 41. When, in the judgement of the Ministry, the number of types of goods or the quantity of transactions to be investigated is exceptionally large, the margin of price discrimination may be determined on the basis of a representative sample. In both cases, the samples shall be selected in accordance with generally accepted statistical criteria.

ARTICLE 42. For the purposes of paragraph 2 of Article 31 of the Act, it shall be deemed that sales do not permit a valid comparison when they are not representative or their prices are not determined in the ordinary course of trade. As a general rule, the comparable prices of identical or like goods in the domestic market or, where appropriate, for export to a third country, shall be deemed to be representative when they account for at least 15 per cent of the total volume of sales of the goods subject to investigation.

ARTICLE 43. For the purposes of paragraph 2 of Article 32 of the Act, the requesting party must submit the information justifying the exclusion in question. In such cases, the Ministry may take into account the fact that, during the period of investigation, selling prices were exceptionally low or costs and expenses exceptionally high, due to factors of a transitory nature or the economic situation.

As a general rule, domestic sales for profit or similar export sales to a third country shall be deemed to be representative when they account for at least 30 per cent of the relevant market.

ARTICLE 44. Production costs, overheads and profit margins shall correspond to those obtained in the ordinary course of trade.

With regard to production costs, when the materials and components are purchased from suppliers who are related under the terms of Article 61 of these Regulations, the Ministry shall ascertain that the prices of such transactions are comparable to those of purchase transactions from non-related parties. If the buying price from related parties is lower than the price under purchase transactions with non-related parties, the former shall be replaced by the latter for the purposes of calculating production costs.

When purchases have been made only from related suppliers, the buying prices shall be compared with the prices at which the related suppliers have sold the same materials and components to non-related enterprises. If this second method is not practicable, the prices under purchase transactions with non-related parties shall be obtained by any other economic method of investigation and on the basis of known facts.

ARTICLE 45. For the purposes of these Regulations, the following definitions shall apply:

I. Direct costs and expenses mean those which are specific to the product under investigation;

II. Indirect costs and expenses mean those which are common to different products of the exporting enterprise including the product under investigation;

III. Fixed costs and expenses mean those which are incurred independently of production or sales; and

IV. Variable costs and expenses mean those which result from production and sales.

ARTICLE 46. For the purposes of subparagraph II of Article 31 of the Act, the following rules shall apply:

I. The cost of production shall include the cost of direct materials and components, the cost of direct labour and indirect manufacturing costs. Indirect manufacturing costs shall include:

A. The cost of indirect materials and components;

B. The cost of indirect labour;

C. The cost of energy, including electricity and fuel;

D. Depreciation of assets consumed in production; and

E. Other relevant indirect costs.

Production costs shall be determined from the weighted average cost incurred in all the factories of each exporter manufacturing the goods under investigation.

As a general rule, packaging costs shall be considered part of production costs;

II. Overheads shall be determined taking into account administration and sales, financial and other not directly attributable costs, including research and development and depreciation of assets not related to production;

III. Indirect costs and expenses shall be allocated proportionally to the product under investigation. In particular, the prorating methods shall allocate a proportional contribution of each of the indirect costs and expenses to the product under investigation. The Ministry shall reconcile the available accounting information in order to verify that, when the proportion allocated to the product under investigation is added to the allocations determined for products not under investigation, each of the indirect costs and expenses is totally or partly absorbed.

The allocation methods shall show a clear and reasonably verifiable relation between the cost or expense to be allocated and the basis of prorating applied;

IV. With regard to overheads which cannot be directly allocated to the product under investigation, when the available accounting information allocates parts of such expenses at departmental level and part at corporate level, both headings are prorated to the product under investigation, preferably on the basis of selling costs.

In the second case, the allocation of overheads to the product under investigation shall be equivalent to the average overheads for all products of the enterprise. For the purposes of this calculation, overheads shall be standardized in terms of selling costs. Average overheads shall be estimated by dividing overheads among selling costs, according to the figures reported in the financial statements of the enterprise. Overheads attributable to the product under investigation shall be determined by multiplying the resulting factor by the selling cost specific to that product;

V. Both production costs and overheads shall include all fixed and variable components.

Cost relating to idle factors of production shall be considered as fixed costs and, as appropriate, directly allocated to the product under investigation or apportioned to it;

VI. Depreciation charges shall include both depreciation of assets in use and depreciation of assets not in use;

VII. As a general rule, recovery of costs and expenses shall be deducted from the cost categories to which they relate;

VIII. Financial expenses shall be estimated net, excluding financial revenue not related to the normal activities of the enterprises, for example, permanent or long-term investments;

IX. All overheads recognized in the accounting period corresponding to the period of investigation shall be taken into account. However, they shall be prorated to the period of investigation in a proportional manner.

By way of exception to the foregoing rule, expenses recognized in an accounting period may be allocated over a longer period, when:

A. The nature of the expense in question justifies such a procedure; and

B. The Ministry has accounting information for prior years which allows the inclusion in the expenses of the period of investigation of a proportion of expenses previously incurred which should be allocated in a like manner;

X. The Ministry may exclude such overheads as may be of an extraordinary nature, meaning those which occur in a fortuitous or infrequent manner, essentially represent a loss of accounting capital and are not related to generation of income. This exclusion shall be considered as an exceptional case;

XI. As a general rule, the profit margin shall not be greater than that ordinarily obtained in the sale of products of the same generic category in the country of origin.

When the margin of price discrimination is estimated by type of product, for the purposes of calculating the profit margin, a generic category shall be deemed to be a type of product for which the normal value is determined by domestic prices. In particular the profit margin shall be estimated according to the weighted average profit margin for domestic sales used to establish normal values based on prices.

If this method is not applicable because there is no normal value by class of goods determined on the basis of prices, the generic category shall be deemed to be the first category of goods, according to the accounting information systems of the enterprise, which contains the product under investigation and for which there are profit figures.

When the accounting information available only reports profits at corporative level, the enterprise as a whole shall be deemed to be a generic category. In such cases, the profit margin for the product under investigation shall be equivalent to the average margin for all products of the enterprise. In particular, the average margin shall be calculated by dividing the profits, before direct taxation and distributions of the share of profits due to third parties, into the selling cost, in accordance with corporative data. The profit attributable to the product under investigation shall be determined by multiplying the resulting average margin by the selling costs specific to the said product.

The methods described in the foregoing paragraphs shall not be used when they result in a profit margin which does not reflect a long-term position, but a transitory effect or the economic situation. In such cases, the profit margin shall be calculated on the basis of additional financial information strictly related to the period of investigation; if the latter procedure is not satisfactory, the Ministry shall determine the profit margin by any other method of economic and accounting investigation, and on the basis of the facts of which it is aware;

XII. For the purposes of comparing the total of costs and expenses with domestic prices, and comparing the computed value with export prices, the Ministry shall take into account timing differences between production and the sales relating to them.

For the purpose of the aforementioned calculations, the Ministry shall admit as valid such generally accepted accounting principles as apply in the country of origin, provided that they do not contravene legislation on unfair international trade practice and other applicable legal provisions.

ARTICLE 47. In the case of trading enterprises, the buying cost shall be taken as the cost of production. Under the terms of the first paragraph of Article 44 of these Regulations, the selling cost shall be determined in the ordinary course of trade. Purchases by trading enterprises shall be considered as such when they do not involve losses for the supplying enterprises, i.e. purchases are

at prices exceeding production cost plus the overheads of the suppliers. The Ministry shall verify the production costs and suppliers' overheads before making the comparison.

When the purchases by trading enterprises which generate profits for the suppliers are representative, the production cost for the former shall be calculated on the buying cost recorded during the period of investigation. Alternatively, the production cost shall be estimated according to the computed value determined by the Ministry for the supplier enterprises. For the purposes of calculating overheads and the profit margin, the proportions derived at enterprise level shall apply to actual buying costs.

When the trading enterprise is located in a country other than the country of origin of the goods, the production cost shall be the cost incurred in the country of origin, plus all costs and expenses involved in transporting and importing the goods from the country of origin to the country of consignment. In such cases, the overheads and profit shall be that of the country of consignment.

ARTICLE 48. For the purposes of Article 33 of the Act, centrally planned economies shall be deemed to be those where, subject to contrary evidence, the majority of enterprises are, wholly or partly owned by the State, and where operating criteria, including prices, production, investment programmes and levels of employment, are under the direct control of the Government.

A substitute country means a third country with a market economy similar to the exporting country with a centrally planned economy. The similarity between the substitute country and the exporting country shall be defined in a reasonable manner, so that the normal value in the exporting country, if it does not have a planned economy, may be estimated on the basis of the domestic price in the substitute country. In particular, in selecting the substitute country, account shall be taken of economic criteria such as the cost of factors used intensively in production of the product subject to investigation.

The product on the basis of which the normal value is determined must originate in the substitute country. When the normal value is determined according to the export price in a substitute country, that price shall be related to a market other than Mexico. If there is no substitute country with a market economy in which goods are produced identical or alike to those exported by the country with a centrally planned economy, the Mexican market itself shall be deemed to be a substitute country.

ARTICLE 49. When, under the terms of the second paragraph of Article 34 of the Act, the normal value is determined on the basis of the market price in the country of origin, the export price shall be established on the same basis.

ARTICLE 50. When the exporter and importer are related in any of the ways to which Article 61 of these Regulations refers and there are compensatory arrangements between them, the export price shall be calculated in accordance with the provisions of Article 35 of the Act.

In that case, all costs incurred between export and resale shall be deducted, including payment of taxes and tariffs in the importing country, and profit margins on import and distribution.

ARTICLE 51. In cases where the normal value is determined on the basis of the prices to which Article 31 of the Act refers, the prices actually paid or payable by the purchaser shall be used, including discounts on list prices, rebates and refunds. The same rule shall apply in calculating export prices to Mexico. This is determined independently of the quantity adjustment to which Article 55 of these Regulations refers.

ARTICLE 52. In addition to the adjustments to which Article 36 of the Act refers, differences relating to levels of trade shall also be adjusted to the extent they have not otherwise been taken into account.

ARTICLE 53. For the purposes of the provisions of Article 36 of the Act, the adjustments for differences in terms and conditions of sale shall be applied both to the normal value and the export price. Adjustments for differences in quantity, physical differences and differences in tax charges shall apply exclusively to the normal value.

ARTICLE 54. The differences between the normal value and the export price with regard to terms and conditions of sale shall be justification for adjustment provided that such differences are directly related to the markets under investigation. The adjustable expenses must be related to sales and form part of the selling price. Admissible adjustments include the following categories:

I. Packaging charges;

II. Transport charges, including freight and insurance, handling outside the factory, harbour dues and customs duties;

III. Cost of credit;

IV. Commission payments; and

V. Payments for after-sales services such as technical assistance, maintenance and repair.

Salaries paid to salesmen shall be subject to adjustment to the extent that they are variable costs of the enterprise and are analogous to the payment of commissions.

The amounts remaining after the foregoing adjustments have been made, shall correspond respectively to the normal value and the export price.

As a general rule, adjustments shall not be made for differences relating to expenses of a general character, including those for research and development.

ARTICLE 55. The Ministry shall adjust the normal value by differences in quantities with respect to the export price in accordance with the following criteria:

I. When prices vary inversely to the quantities sold, whether in terms of individual transactions or volumes accumulated by the customer, both the normal value and the export price shall be calculated on the basis of transactions for similar quantities. In such cases, the margin of price discrimination shall correspond to the weighted average margin of the margins specific to each level;

II. When the prices vary inversely to the quantities sold, whether in terms of individual transactions or volumes accumulated by the customer, and certain domestic sales are not for quantities similar to those of export sales, the normal value shall be calculated on the total of domestic sales, after the differences among domestic prices due to quantity differences have been offset. In particular, prices of domestic sales not comparable to export sales shall be brought into line with prices of comparable domestic sales by adjusting the difference between them;

III. When the exporter requests that the adjustments provided in either of the two foregoing subparagraphs be taken into account, the following rules shall apply:

A. Domestic sales comparable to export sales must be regular and representative of the market of the country of origin. For the purposes of this Article, regular sales shall mean those which have been made recurrently during the period of investigation; and

B. The model of prices differentiated by quantity shall be drawn up in a consistent manner, therefore, domestic sales during the period of investigation whose prices are inconsistent with this model shall not be taken into account.

When the methods of adjustment for quantities provided in subparagraphs I and II of this Article are not practicable, the Ministry shall make the adjustment in accordance with the facts known to it and on the basis of available information.

ARTICLE 56. When the prices vary according to the physical characteristics of the goods sold, and certain goods sold in the country of origin are not physically identical to the goods exported, the normal value shall be calculated on the total of domestic sales, after the differences among domestic prices due to physical differences between the goods have been offset. As a general rule, prices of domestic sales which are not comparable to export sales shall be brought into line with prices of comparable domestic sales by adjusting the difference among the variable production costs for both types of goods.

Likewise, as a general rule, when prices vary according to the physical characteristics of the goods sold, and none of the goods sold in the country of origin are physically identical to the goods exported, the prices of the domestic goods shall be brought into line with the prices of export sales by adjusting the difference among the variable costs of production for both types of goods.

Generally, goods shall be deemed to be physically different when the accounting information systems of each enterprise classify them under different product codes.

ARTICLE 57. When the tax charge on goods sold in the country of origin is different from that on export goods, the prices of domestic sales shall be brought into line with prices of export sales by adjusting the difference between both tax charges. Adjustable levies shall be restricted to indirect taxes and import taxes. Indirect taxes may be adjusted on both identical or like goods sold in the country of origin and on national inputs incorporated in them. Import taxes may only be adjusted in relation to imported inputs incorporated in the identical or like goods sold in the country of origin.

ARTICLE 58. The effects of inflation on the information which serves as a basis for determining the margin of price discrimination shall be adjusted in accordance with generally accepted economic and accounting methods.

For the exchange of foreign currency, the applicable rate of exchange shall be that in effect on the date when the transaction in question took place.

CHAPTER III

Injury and Threat of Injury to Domestic Production

ARTICLE 59. The Ministry shall establish through the appropriate investigation procedure that determination of the injury or threat of injury to which Article 39 of the Act refers is based on

the minimum analysis of all the elements to which Articles 41 and 42 of that Act refer. In conformity with the civil legislation, the investigating authority shall under no circumstances determine the existence of injury.

ARTICLE 60. The requesting parties referred to in Article 50 of the Act shall demonstrate that they represent at least 25 per cent of the domestic production of the goods in question. However, when certain producers are related to exporters or importers or are themselves importers of the product under investigation, the term "domestic production" may be considered as referring to at least 25 per cent of the rest of the producers. In any case, the applicants shall submit the required information on domestic production as described in Article 63 of these Regulations.

ARTICLE 61. In determining whether producers are related to exporters or importers, the Ministry shall use criteria generally accepted by national legislation and international practices. For this purpose, the Ministry shall take into account the following considerations:

I. Whether they are officers or directors of one another's business;

II. Whether they are legally recognized partners in business;

III. Whether they are employer and employee;

IV. Whether any person directly or indirectly owns, controls or holds 5 per cent or more of the issued voting stock, shares, securities or bonds of both of them;

V. Whether one of them directly or indirectly controls the other;

VI. Whether both of them are directly or indirectly controlled by a third person;

VII. Whether together they directly or indirectly control a third person; or

VIII. Whether they are members of the same family.

The foregoing shall apply whenever there are grounds for presumption that the effect of the relationship is such as to motivate the producer concerned to behave differently from non-related producers. A person shall be deemed to control another when the former is legally and actually in a position to restrict or direct the latter.

ARTICLE 62. The second paragraph of Article 40 of the Act, shall apply to the following:

I. Producers who may be deemed to be representative of domestic production and to have capacity to act as requesting parties must demonstrate that the relationship does not and will not have the effect of restricting competition, or where they are themselves importers of part of the products under investigation, that their imports are not the cause of distortion in domestic prices or the cause of the alleged injury; and

II. All manufacturers of goods produced during the stage immediately preceding in the same continuous line of production of the goods identical or alike to the goods imported under price discrimination or subsidies, may also be deemed representative of domestic production when:

A. As a result of the relationship the interests of the related producer or the producer-importer coincide in such a way with those of the exporters or importers that these producers accept or encourage imports under conditions of price discrimination or subsidy and, thus, would not submit a request for investigation into unfair practices;

B. The product produced at the stage immediately preceding manufacture of the goods identical or alike to the imported product is a raw material of agricultural origin and is a principal input of the product in question; and

C. The input of agricultural origin is used in the same continuous line of production of the processed product and is utilized almost entirely for the production of the processed product.

The application of this provision shall be consistent with Mexico's obligations under international treaties or conventions.

ARTICLE 63. In order to determine the existence of injury, the Ministry shall evaluate the impact of the imports under investigation on total domestic production, or on those domestic producers whose production together constitutes the main part of total domestic production of the product in question.

If the requesting parties do not represent domestic production as a whole, they must submit to the Ministry, using the prescribed questionnaire, information on total domestic production provided that the required figures are reasonably accessible to the requesting parties. In any case, request shall contain a reliable estimate of figures for the total domestic production concern and the methodology used.

The Ministry shall satisfy itself that the corresponding determination of injury is representative of the situation of domestic production as a whole. For that purpose, the Ministry shall obtain the necessary information from domestic producers who are not requesting parties who shall submit to the Ministry any information that is requested from them.

ARTICLE 64. For the purposes of Article 41 of the Act, the Ministry shall take into account:

I. With regard to the volume of imports under investigation, whether there has been a considerable increase in such imports in absolute terms or in relation to domestic production for the domestic market or internal consumption in the country. The Ministry shall assess whether the imports under investigation are competing in the domestic market to serve the same markets or the same actual or potential customers of domestic producers and whether they are utilizing the same distribution channels;

II. Concerning the effects of imports subject to investigation on domestic prices:

A. The pattern and trend of prices of the imports under investigation shall be analysed, to determine whether they show a reduction in the period under investigation compared with prices in comparable periods, or whether they are lower than other products which are not imported under conditions of price discrimination or subsidy;

B. Whether there is a significant correlation between the reduction in prices of the imports and the growth in quantities imported;

C. Whether the imports under investigation have a selling price considerably lower than the comparable selling price for the like domestic product;

D. Whether the effect of the imports under investigation is to reduce domestic prices or else to prevent the reasonable increase which would otherwise have occurred; and

E. Whether the price-level at which the imports under investigation are competing in the domestic market is the determining factor in explaining the pattern and share of those imports in the domestic market;

III. With regard to the effects of the imports under investigation on domestic production of identical or like goods, an evaluation shall be made of the operations of the industry in Mexico. This evaluation shall include the impact of the quantities and prices of the imports under investigation on all the relevant economic factors and indicators which influence the state of the industry concerned, such as:

A. The actual and potential reduction in production and employment, domestic sales, market share, productivity, utilization of installed capacity and real or potential increase in stocks;

B. The factors affecting domestic prices such as conditions or terms of sale; and

C. Real or potential negative effects of the decrease or containment of domestic prices and sales on profits, cash flow, return on investment, salaries, capacity to attract capital, investment and growth in production; and

IV. Other elements that it may consider appropriate concerning economic factors or indicators relevant to the industry in question and not mentioned in the foregoing paragraphs. In this case, the Ministry shall identify such factors and explain their significance to the case concerned.

ARTICLE 65. The Ministry shall evaluate the economic factors described in the preceding Article in the context of the economic cycle and conditions of competition specific to the industry affected. For that purpose, the requesting parties shall 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, unless the enterprise concerned had not been established for the whole of this period. In addition, domestic producers making the request or organizations representing them shall submit economic studies, case studies, technical literature and national and international statistics on the performance of the market concerned, or any other documentation permitting identification of economic cycles and conditions of competition specific to the industry affected.

ARTICLE 66. The effect of imports subject to unfair practices shall be evaluated in relation to domestic production of the identical or like product when the available data allow its separate identification in accordance with criteria such as the production process, sales by producers and their profits. If it is not possible to identify production separately, the effect of such imports shall be evaluated by analysing production of the most restricted group or range of products which includes the identical or like product for which all the necessary information to show injury can be provided.

ARTICLE 67. In order to determine injury, when imports of a product from more than one country are simultaneously subject to investigation for unfair international trade practices, the Ministry shall evaluate the volume and effects of such imports collectively, provided that the imports from the countries under investigation compete amongst themselves and with products identical or alike to those imported which are manufactured in Mexico.

The Ministry need not evaluate collectively the effects of specific origin if such imports are not significant and do not have any identifiable adverse effect on domestic production. In order to determine this, the Ministry shall analyse the pattern of such imports and shall take into account the following relevant economic factors:

I. Whether the rate of growth of the volume and share of the imports under analysis in the domestic market shows any sign of sustained increase during the period under investigation or whether there is any real probability that it will increase in the immediate future;

II. Whether sales of the imported product, from the country in question, in the domestic market are isolated and intermittent; and

III. Whether, given the nature of the product under investigation and the specific characteristics of the domestic market, the presence of such imports has no identifiable effect on domestic prices or the factors which affect the prices of the domestic product and the conditions of the domestic industry producing the identical or like product.

ARTICLE 68. For the purposes of Article 42 of the Act, the Ministry shall take into account:

I. Whether there is a high rate of growth of the imports under investigation in the domestic market pointing to a well-founded probability that there will be a substantial increase in such imports in the immediate future. Likewise it shall be determined whether the growth of such imports results in increased and sustained growth of the share of such imports in the domestic market and the well-founded probability that market share indicators will rise to a level which may injure domestic production. For this purpose, the Ministry shall consider, among other factors, whether the imports under investigation are competing in the domestic market to serve the same markets or the same actual or potential customers of domestic producers and whether they are utilizing the same distribution channels;

II. The readily available capacity of the exporter or an imminent and substantial increase thereof pointing to the well-founded probability of a significant increase in exports to the Mexican market under conditions of price discrimination or subsidy, taking into account the existence of other export markets which may absorb the possible increase in such exports;

III. Whether the imports under investigation are at prices such that they have a noticeable effect on domestic prices, reducing them or preventing them from rising. Likewise, it shall be determined whether there is a real probability that the prices of the imports under investigation will significantly increase the quantity of new imports demanded. In that case the factors that affect domestic prices shall be taken into account, including changes in conditions or terms of sale to certain customers as a direct consequence of the imports under investigation;

IV. The stocks of the product under investigation in the domestic market;

V. Where applicable, the expected return on potential investment. Investment projects shall be related to the production line of the product under investigation. The domestic producers concerned shall submit economic and financial studies supporting the viability of the project, and financial models which show the negative effects of the imports under investigation on the expected profitability; and

VI. Any other demonstrable economic trend that permits the conclusion that unfair practices relating to imports will injure domestic production. In determining the threat of injury, the generally accepted methods available shall be used.

ARTICLE 69. The Ministry shall examine other factors of which it is aware, other than imports which are the subject of investigation, which simultaneously affect domestic production, in order to determine whether the alleged injury or threat of injury is caused directly by such imports. Factors which the Ministry may evaluate shall include the following:

I. The volume and prices of imports which are not subject to price discrimination or subsidy;

II. Contraction of demand or variations in patterns of consumption;

III. Restrictive trade practices of foreign and domestic producers, and competition between them; and

IV. Technological developments, productivity and results of export activity.

TITLE VI

PROCEDURE IN RELATION TO UNFAIR INTERNATIONAL TRADE PRACTICES

CHAPTER I

General Provisions

ARTICLE 75. The request by an interested party to initiate an administrative investigation into unfair international trade practices, in addition to being submitted in writing and satisfying the requirements prescribed in Article 50 of the Act, shall be submitted using the questionnaire issued by the Ministry, which shall contain the following:

I. The designation of the competent administrative authority to which the request is made;

II. Name or business name and domicile of the requesting party and, if applicable, his representative, accompanied by accrediting documents;

III. Principal activity of the requesting party;

IV. Volume and value of domestic production of the product identical or alike to the imported product;

V. Description of the volume and value of the requesting party's share of domestic production;

VI. If applicable, membership of the organization to which the requesting party belongs, indicating the number of members and including information on the goods they produce as a percentage share of domestic production;

VII. The legal basis of the request;

VIII. Description of the imported product, together with specifications and details showing its quality in comparison with the domestic product and other distinguishing details; the volume and value imported or intended to be imported based on the appropriate unit of measure and its tariff classification according to the schedule of the General Import Taxes Act;

IX. Name or business name and domicile of the importers or intending importers of the product, stating whether the import consisted or will consist of one or several shipments;

X. Name of the country or countries of origin or source of the product, as appropriate, and the name or business name of the person or persons exporting or intending to export the product under unfair conditions to Mexico;

XI. Statement of the facts and dates, accompanied by reasonably available evidence, on which the request is based. Those facts from which it can be inferred that there is a well-founded probability of the existence of the unfair international trade practice shall be stated succinctly, with clarity and precision;

XII. Indication of the difference between the normal value and the comparable export price or, if applicable, the effect of the subsidy on the export price;

XIII. In addition, in the case of subsidies, information and facts concerning the unfair practice, the foreign governmental authority or body involved, the form of payment or transfers and the amount of the subsidy to the producer or foreign exporter of the product;

XIV. Evidence which shows that the introduction of the goods concerned into the domestic market is causing or threatens to cause injury to the domestic industry;

XV. If appropriate, description of requests for other regulatory or commercial restraint measures concerning the product which is the subject of the request; and

XVI. Any other factors considered necessary.

The requests to which this Article refers shall, in addition to the provisions of the foregoing subparagraphs, contain the signature of the interested party or the person acting in his name or representing him.

The request and annexed documents shall be submitted in the original and as many copies as importers, exporters and, where applicable, foreign governments name in their request, and a public version thereof contained in the magnetic media indicated by the Ministry.

The investigation procedure shall not prevent the clearance by the customs concerned of the goods involved in the investigation.

ARTICLE 76. The investigation into unfair international trade practices shall address the existence of price discrimination or subsidy and the injury caused or which may be caused to domestic industry. It shall include a period which covers imports of goods identical or alike to those in the domestic industry which may be affected over a period of at least six months prior to the commencement of the investigation.

The period of investigation to which the foregoing paragraph refers may be modified at the discretion of the Ministry to cover a period which includes imports made subsequent to the commencement of the investigation. In that case, decisions to impose provisional or final countervailing duties shall refer both to the original period and to the extended period.

ARTICLE 77. Notwithstanding the provisions of the preceding Article, in evaluating injury or threat of injury to domestic industry, the Ministry may require the requesting party or any other domestic producer or person involved in the economic activity concerned, to provide the information or data it considers relevant relating to a maximum period of five years prior to the submission of the request.

ARTICLE 78. If the request is ambiguous or irregular, the Ministry shall, once only, advise the requesting party so that he may clarify, correct or complete it, for which purpose shall be returned to him, with specific indications of its omissions and ambiguities. Following the elapse of the twenty days to which subparagraph II of Article 52 of the Act refers, the Ministry shall proceed with or reject the request, as appropriate.

ARTICLE 79. A product shall be deemed to be intended for import when there is a legally binding agreement for its transport or dispatch to the territory of Mexico. In that case, the Ministry may open the investigation, following examination of the legal instruments submitted for that purpose. Offers, quotes or orders which do not legally bind the signatories are excepted from the foregoing.

In the review to which the preceding paragraph refers, the Ministry shall ascertain that the import transaction or transactions will actually be realized.

In order that the Ministry may declare the initiation of an investigation into intended imports, the interested party shall, in addition to the provisions of this Article, comply with the applicable provisions contained in the Act and in these Regulations.

ARTICLE 80. The decision to initiate the investigation into unfair international trading practices and the preliminary and final resolutions shall contain the following information:

I. The designation of the authority issuing the resolution;

II. The grounds and reasoning justifying the decision;

III. The name or names or business name and domicile of the domestic producer or producers of identical or like goods;

IV. The name or names or business name and domiciles of the importer or importers, foreign exporters or, where appropriate, known agencies or authorities of foreign governments;

V. The country or countries of origin or source of the goods in question;

VI. The detailed description of the product imported or, where appropriate, intended for import, where there is presumption of price discrimination or subsidy, indicating the tariff rate applicable under the schedule of General Import Taxes;

VII. The description of the domestic product identical or alike to the product which has been imported or is being imported;

VIII. The period under investigation; and

IX. Any other elements which the Ministry deems appropriate.

CHAPTER II

Resolution to Initiate the Investigation

ARTICLE 81. In addition to the information indicated in the preceding Article, the resolution on initiating the investigation to which Article 52 of the Act refers shall contain:

I. A summons to the interested parties and, where applicable, foreign governments, so that they may appear in order to exercise their right to make representations fit;

II. The time allowed for producing evidence; and

III. The date, time and place of the public hearing and the presentation of evidence to which Articles 81 and 82 of the Act refer.

CHAPTER III

Preliminary Resolution

ARTICLE 82. The preliminary resolution to which Article 57 of the Act refers shall contain in addition to the data indicated in Articles 80 and 81, subparagraph II of these Regulations, the following elements:

I. Where the existence of unfair international trade practices has been established:

A. The normal value and export price obtained by the Ministry, except in the case of information which an interested party considers to be confidential or restricted commercial information;

B. A description of the methods used in determining the normal value and the export price and, if applicable, the amount of the subsidy and its effect on the export price, in conformity with Chapters II and III of Title V of the Act and the applicable Articles of Chapter II of Title IV of these Regulations, except in the case of information which an interested party considers to be confidential or restricted commercial information;

C. The margin of price discrimination, the characteristics and amount of the subsidy, and its effect on the export price;

D. A description of the injury caused or which may be caused to domestic industry;

E. An explanation of the analysis by the Ministry of each of the factors indicated in Articles 41 and 42 of the Act, and other factors taken into account, which it shall identify and whose significance in each case in relation to the relevant resolution shall be explained in detail;

F. If applicable, the export price which would not injure domestic industry and a description of the procedure for determining it;

G. The amount of the provisional countervailing duty payable; and

H. A statement that the Treasury and Public Credit Department shall be notified so that it may duly collect the countervailing duties.

II. If there has been no change in the grounds for initiating the investigation into unfair international trade practices, a statement that the administrative investigation is continuing without the imposition of countervailing duties, with the appropriate grounds and justification; and

III. If it is established that there are no unfair international trade practices, the statement that the administrative investigation is terminated without the imposition of countervailing duties, and a summary of the opinion of the Commission in explanation of the resolution.

CHAPTER IV

Final Resolution

ARTICLE 83. The final resolution to which Article 59 of the Act refers shall contain, in addition to the data indicated in Article 80 of these Regulations, the following elements:

I. Where the existence of unfair international trade practices has been established:

A. The normal value and export price obtained by the Ministry, except in the case of information which an interested party considers to be confidential or restricted commercial information;

B. A description of the methods used in determining the normal value and the export price and, if applicable, the amount of the subsidy and its effect on the export price, in conformity with Chapters II and III of Title V of the Act and the applicable articles of Chapter II of Title IV of these Regulations, except in the case of information which an interested party considers to be confidential or restricted commercial information;

C. The margin of price discrimination, the characteristics and amount of the subsidy, and its effect on the export price;

D. A description of the injury caused or which may be caused to domestic industry;

E. An explanation of the analysis by the Ministry of each of the factors indicated in Articles 41 and 42 of the Act, and other factors taken into account, which it shall identify and whose significance in each case in relation to the relevant resolution shall be explained in detail;

F. If applicable, the export price which would not injure domestic industry and a description of the procedure for determining it;

G. The amount of the final countervailing duties payable;

H. A statement that the Treasury and Public Credit Department shall be notified so that it may duly collect the countervailing duties; and

I. A summary of the opinion of the Commission in explanation of the resolution.

II. If it is established that there are no unfair international trade practices, the statement that the administrative investigation is terminated without the imposition of countervailing duties, with appropriate grounds and justification, and a summary of the opinion of the Commission in explanation of the resolution.

CHAPTER V

Technical Information Meetings

ARTICLE 84. The Ministry shall hold technical information meetings with interested parties who so request, within five days from the day following the publication in the Official Journal of the preliminary and final resolutions.

The purpose of the technical meetings shall be to explain the method used in determining the margins of price discrimination and calculation of subsidies, as well as injury or threat of injury and the arguments concerning causality.

At these meetings, interested parties shall have the right to obtain the computation schedules and computer programmes, where appropriate, which the Ministry may have used in issuing its resolutions.

ARTICLE 85. An information report of the technical meetings shall be drawn up, containing the details of the meeting. The report shall be signed by all those present. The interested parties may formulate questions which they consider relevant provided that they are related to the information published and the rules of confidentiality contained in the Act and these Regulations are observed. The report shall be incorporated in the administrative records of the case.

CHAPTER VI

Conciliation Meetings

ARTICLE 86. The interested parties may request the Ministry in writing to convene a conciliation meeting, from the date of publication in the Official Journal of the initiation of the investigation until fifteen days before the close of the period for submission of evidence. The request shall contain proposed formulas for a solution and arguments to allow their effectiveness to be assessed.

When the Ministry considers it appropriate, it may invite the interested parties to a conciliation meeting without the request of an interested party.

ARTICLE 87. Following submission of the request to which Article 61 of the Act refers, the Ministry shall study the proposed formulas for a solution and, if appropriate, shall within five days following the acceptance of the request convene the remaining interested parties so that they can state their views within five days following the notification of the meeting.

The parties summoned to a conciliation meeting shall not be obliged to participate therein and where they do so participate they shall not be obliged to accept the proposed solutions.

ARTICLE 88. In the conciliation meeting, the Ministry shall first allow the requesting party to put forward its formulas for a solution, so that the other interested parties may express their views on the proposals. An administrative report of the conciliation meeting shall be drawn up, containing a detailed account of the proceedings, regardless of the result. The report shall be signed by the representative of the Ministry and the interested parties or their representatives who took part.

Agreements, understandings or schemes which contravene free competition or in any way hinder economic competition shall not be accepted in conciliation meetings.

CHAPTER VII

Countervailing Duties

ARTICLE 89. Countervailing duties applied to imports from foreign exporters who, after having been 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.

ARTICLE 90. For the purposes of the second paragraph of Article 62 of the Act, the countervailing duty may be less than the margin of price discrimination and the amount of subsidies, provided that it is sufficient to eliminate the injury or threat of injury caused.

ARTICLE 91. The interested parties may, at any time, request the Ministry to decide whether a given product is subject to a final countervailing duty, under the terms of Article 60 of the Act, in conformity with the following requirements and procedures:

I. The request shall be presented in writing, to the competent administrative department of the Ministry by the interested party or person acting in his name and on his behalf, together with accrediting documents. The request shall indicate precisely and clearly:

   A. The legal grounds and justification for the request, and

   B. The product in question, its physical characteristics and technical specifications, origin, function, use, quality and nature; if applicable, components or inputs utilized in its manufacture and other distinguishing data, as well as the description and tariff classification under the schedule of the General Import Taxes Act. The request shall be accompanied by samples, catalogues and other items to permit identification of the product.

II. The Ministry shall declare the initiation of the proceedings by publication in the Official Journal. In addition it shall notify the interested parties known to it and shall summon persons it considers to have an interest in the proceedings, so that within a period of sixty days from the publication of the initiation of the proceedings in the Official Journal they may exercise their right to make representations;

III. Following receipt of the request, the Ministry shall issue its resolution within a maximum period of 130 days from the day of publication in the Official Journal of the initiation of the proceedings;

IV. The Ministry shall freely assess and analyse the elements and arguments supporting the request, for which purpose it may obtain information, data, reports and other elements which it considers relevant to reach an appropriate resolution, and

V. If the requesting party considers that the product should be excluded from the final countervailing duty, it shall have the right not to make the payment concerned, during the proceedings, subject to providing the customs authorities with a security in one of the forms prescribed in the Federal Tax Code.

ARTICLE 92. For the purposes of the preceding Article, if the Ministry resolves that the product in question shall be subject to payment of a countervailing duty, the requesting importer shall pay that duty together with a surcharge, in conformity with the applicable fiscal provisions.

If the Ministry resolves that the product in question is not subject to payment of the countervailing duty, the securities provided shall be cancelled and, if applicable, the amounts paid shall be returned, with the related interest, which shall be calculated as provided in the preceding paragraph.

The result of the proceedings to which the preceding Article refers shall be published in the Official Journal and shall be notified to the interested parties. The resolution shall contain the data indicated in Article 80 of these Regulations and the meaning of the related response.

ARTICLE 93. The interested parties may at any time, request the Ministry, to clarify or explain a specific aspect or aspects of the resolutions under which final countervailing duties are imposed, in conformity with the following requirements and procedures:

I. The request shall be submitted in writing to the competent administrative department of the Ministry, by the interested party or person acting in his name and on his behalf, together with accrediting documents. The request shall state precisely and clearly:

A. The arguments in support of the request;

B. The resolution concerned and the description of the aspect or aspects for which clarification or explanation is requested, and

C. Other data allowing the authority to answer the request.

II. On receipt of the request, the Ministry shall reply to the interested party within 130 days from the day following the presentation of the request, and

III. The Ministry may require the interested party to provide information or data, or any document that it deems necessary to resolve the matter.

The reply to the request to which this Article refers shall be published in the Official Journal and shall be notified to the interested parties.

ARTICLE 94. The securities given shall be cancelled or amended or, if applicable, the sums paid or the difference involved shall be returned with corresponding interest, as appropriate, when the Ministry eliminates or modifies final countervailing duties:

I. In proceedings for review of final countervailing duties;

II. In decisions concerning applicability to the product to which Article 60 of the Act refers;

III. In proceedings to decide appeals for annulment;

IV. In application of decisions by the Federal Tax Court, and

V. In final resolutions adopted by the Ministry as a result of the decisions of alternative dispute settlement mechanisms concerning unfair international trade practices contained in international treaties or conventions to which Mexico is a party.

The interest to which this Article refers shall be equivalent to the amount which would correspond to the yield which would have been generated if the amount of the duties had been invested in Federal Treasury Bonds, at the highest rate, from the date when the payment of the duty was due until the date of its reimbursement.

ARTICLE 95. In the case to which Article 44 of the Act refers, provisional or final countervailing duties shall not apply to importers who demonstrate to the Ministry that the goods subject to such measures are destined for a market established outside the area or region concerned. In that case, the interested importers may choose to pay the countervailing duty or guarantee its payment in accordance with the provisions of the Federal Tax Code.

On presentation of the request and the evidence supporting the facts described in the preceding paragraph, the Ministry shall decide the matter within 130 working days from the date of receipt of the request. Within this period, the Ministry may order any investigative proceeding to establish the truth of the statements of the importers. If in the corresponding resolution the Ministry confirms the final countervailing duty, the securities given shall take effect. If the resolution in question revokes the countervailing duty in favour of the interested importer, the securities shall be cancelled or, if applicable, the sums paid shall be returned, with the corresponding interest. The interest shall be calculated in accordance with the provisions of the last paragraph of the preceding article. The Ministry's resolution shall be published in the Official Journal and shall be notified personally to the interested party. This resolution may only be set aside by the Federal Tax Court.

ARTICLE 96. In the cases to which Article 71 of the Act refers, the Ministry shall publish the initiation of proceedings in the Official Journal and shall notify the importer, exporter or, if applicable, the foreign government concerned, so that within a maximum of sixty days from the date of the said publication they may exercise their right to make representations.

The Ministry may require the interested parties to provide further items of evidence or data, which must be provided within the time-limit indicated by the authority. If the required evidence and data are not provided within the time and in the form required, the proceedings shall be conducted on the basis of known facts.

On completion of the procedure described in the preceding paragraphs, the Ministry shall publish the appropriate resolution in the Official Journal within a maximum of 130 days from the publication to which the first paragraph of this Article refers and shall notify the interested parties known to it.

ARTICLE 97. The Ministry shall apply the final resolutions issued as a result of an appeal for annulment, a judgement of nullity or a resolution of the Ministry adopting the decisions of an alternative dispute settlement mechanism to the extent that they are relevant to the other interested parties.

In order to determine whether the application of the final resolutions is relevant to the other interested parties, the Ministry shall on its own initiative or at the request of a party initiate a summary proceeding.

The Ministry shall publish the initiation of the proceedings in the Official Journal and shall notify the interested parties known to it.

The interested parties or persons entitled to participate in the proceeding shall have thirty days to make any representations appropriate to their interests and to submit the information required by the Ministry.

ARTICLE 98. Within sixty days from the publication of the initiation of the proceedings the Ministry shall publish the appropriate resolution in the Official Journal, and shall notify the interested parties who appeared in the proceedings.

CHAPTER VIII

Review of Final Countervailing Duties

ARTICLE 99. Under the terms of Article 68 of the Act, the Ministry shall review the final countervailing duties in the event of a change in the circumstances which determined the existence of price discrimination or, as applicable, subsidy.

In carrying out the review of the final countervailing duties, the substantive and procedural provisions contained in the Act and in these Regulations shall be observed, together with those relating to the initiation of proceedings, preliminary resolution, final resolution, conciliation meeting, countervailing duties, undertakings by exporters and governments, evidence, pleadings, public hearings, technical information meetings, notifications, clarifications and other arrangements common to the proceedings.

ARTICLE 100. The review procedure may be requested by the interested parties who participated in the proceedings which gave rise to the final countervailing duty or by any producer, importer or exporter who, although not having participated in the proceedings in question, can establish his legal interest.

The initiation of a review and the conclusion of the respective proceedings shall be published in the Official Journal and shall be notified to known interested parties, in accordance with the provisions of these Regulations.

The review of final countervailing duties initiated ex officio shall be subject to the procedural rules governing the investigations which gave rise to the duties subject to review, as applicable.

ARTICLE 101. Each year, during the month of the anniversary of publication of the final countervailing duty in the Official Journal, the interested parties may request the Ministry in writing to carry out an administrative review. In the request for review of final countervailing duties, the interested parties may request the Ministry:

I. In the case of a foreign exporter or importer of the product in question:

A. To examine or consider his individual margin of price discrimination, and

B. If appropriate, to modify or eliminate the countervailing duty;

II. If the requesting party is a national producer:

A. To examine the normal value and export price determined in a representative period, in the ordinary course of trade, for one or more foreign exporters, and

B. If appropriate, to confirm or increase the countervailing duty.

In any event, the requesting party shall provide the relevant information and evidence to support his request.

In the course of the proceedings, the domestic producer may request that consideration be given as to whether modifying or eliminating the final countervailing duty would lead to a recurrence of the injury or threat of injury in which case it would be up to him to provide the relevant evidence.

The interested parties shall have the obligation to submit with their request the questionnaires, established for that purpose by the Ministry, duly completed.

ARTICLE 102. The interested parties shall have the option of providing security for the payment of the final countervailing duty in case the review resolution confirms or modifies the duty. The security shall be established in the form and terms provided in the Federal Tax Code and its Regulations.

ARTICLE 103. Within a period of thirty days following the submission of the request, the Ministry shall:

I. Accept the request and declare the initiation of the review, by an appropriate resolution which shall be notified to the interested parties. The resolution to which this subparagraph refers shall contain the information specified in Article 80 of these Regulations;

II. Ask the requesting party for further items of evidence or information which shall be provided within a maximum of twenty days following receipt of the notification. If the requested information is duly provided, the Ministry shall within a period of twenty days proceed in conformity with the preceding subparagraph. If the requested items and information are not duly produced within the time-limit mentioned, the request shall be considered as having been abandoned and the requesting party shall be personally so notified, or

III. Reject the request when supporting information or evidence has not been presented and personally so notify the requesting party.

The resolutions issued in accordance with the provisions of this Article shall be published in the Official Journal.

ARTICLE 104. Within a period of 260 days from the day following publication of the resolution to initiate the review in the Official Journal, the Ministry shall issue the corresponding resolution, which shall be published in the Official Journal and notified to the interested parties.

The resolution declaring the conclusion of the review shall contain the information to which Articles 80 and 83 of these Regulations refer.

ARTICLE 105. If in the review it is decided that there is no margin of price discrimination, the final countervailing duty shall be annulled and the Ministry shall, ex-officio, review the matter each year for three years in the same month.

ARTICLE 106. If the review shows margins of price discrimination which are different from those determined in the investigation which gave rise to the final countervailing duties, the new countervailing duties which are fixed shall replace the former. These countervailing duties shall be final and may be reviewed in accordance with the provisions of the Act and these Regulations.

ARTICLE 107. If the review shows that the importers involved paid countervailing duties to the customs authorities during the period subject to review, in excess of those which they should have paid under the resolution in question, the interested party may request full reimbursement of the difference to his credit with the related interest.

If as a result of the review the Ministry notes that, during the period under review, the importers involved paid a countervailing duty less than the duty resulting from the said review, the Ministry shall confirm the application of the lesser duty.

The interest to which this Article refers shall be calculated in accordance with the applicable fiscal provisions.

ARTICLE 108. The ex officio review may be initiated at any time. The resolution initiating the review shall contain the information indicated in Article 80 of these Regulations, shall be published in the Official Journal and shall be notified to the interested parties.

ARTICLE 109. The Ministry shall declare the elimination of final countervailing duties in the circumstances to which Article 70 of the Act refers, provided that it notifies the interested parties known to it that the legal time-limit has elapsed. The declaration shall be published in the Official Journal.

CHAPTER IX

Undertakings by Exporters and Governments

ARTICLE 110. Undertakings by foreign exporters and, in the case of subsidies, by representatives of foreign governments, to which Article 72 of the Act refers, may be submitted for consideration by the Ministry at any time during the proceedings and until the close of the respective period for the examination of evidence.

ARTICLE 111. The undertakings to which this Chapter refers shall be presented in writing, by the foreign natural or legal persons who are duly accredited to the Ministry in the administrative investigation or in the corresponding review procedure. If the undertaking is presented by the representative of the foreign exporter or government, a special warrant or any other equivalent legal instrument shall be required, without which the request shall not be admitted.

ARTICLE 112. Interested foreign exporters or governments may submit for consideration by the Ministry undertakings which would have the effect of eliminating price discrimination or subsidies and the injury or threat of injury caused to domestic industry. Consequently, the undertakings may consist of:

I. Modifications to export prices of the product in question;

II. Complete elimination of the causes which make the export price a subsidized price;

III. Restricting exports, with the intervention of the government of the country of the foreign exporter, to quantities agreed with the Ministry;

IV. Complete suspension of exports to the country for a period agreed with the Ministry;

V. Restrictions on export subsidies for goods exported to Mexico; and

VI. Other measures which, in the opinion of the Ministry have the equivalent effects.

The Ministry may request information, data, documents and means of evidence which it considers relevant from the interested foreign exporter or government, in order freely to evaluate the undertaking.

ARTICLE 113. On receipt of the undertaking to which the preceding Article refers, the Ministry shall include the request in the administrative dossier and shall notify the other interested parties so that within a period of ten days from the date when the notification takes effect, they may express their views. If it is considered appropriate, the Ministry shall summon the parties interested in the investigation in question to a meeting to discuss the form and terms of the undertakings made and the feasibility of verifying them.

ARTICLE 114. In accepting or rejecting the undertaking, the Ministry shall consider the following factors among others:

I. Whether the undertaking given causes an adverse impact greater than might have been caused by the countervailing duties on prices to the consumer and on supply of the product;

II. The relative impact of the undertaking on the country's international economic interests;

III. The relative impact of the undertaking on the competitiveness of the domestic industry producing the identical or like product, and on employment and investment in that industry; and

IV. Whether the foreign exporters or governments are subject to investigation for unfair international trade practices or are affected by countervailing duties or equivalent measures in the country or abroad.

Undertakings which cannot be fulfilled in practice shall not be accepted, whether because they are undertakings which the Ministry considers unlikely to be implemented or because they involve agreements, understandings or schemes which are contrary to free competition or in any way hinder economic competition.

ARTICLE 115. On accepting or rejecting the undertaking by the interested foreign exporter or government, the Ministry shall, in the corresponding final resolution, establish the form and terms under which the undertaking given shall be implemented, stating whether as a result of that undertaking the proceedings in question are suspended or concluded and, if applicable, the grounds and justification for rejection.

The resolution to which this Article refers shall be published in the Official Journal and shall be notified to the interested parties.

ARTICLE 116. The Ministry shall, ex officio or at the request of an interested party, periodically review the due implementation of the undertaking given. If the review shows that the foreign exporter or government has failed, in total or in part, to fulfil the undertaking, the Ministry shall impose the appropriate countervailing duty in accordance with the facts known to it.

CHAPTER X

Alternative Dispute Settlement Mechanisms

ARTICLE 117. When the Government of Mexico is responsible for initiating an alternative dispute settlement mechanism with regard to unfair international trade practices under the international trade treaties or agreements to which Article 97 of the Act refers, the following rules shall apply:

I. The interested party who chooses to resort to such mechanisms shall present a request in writing containing the following information:

   A. His name or business name and domicile, and those of his legal representative, including telephone and fax number;

   B. The domiciles of the interested parties appearing on the mailing list;

   C. Identification of the final resolution contested and the issuing authority and, if applicable, the reference to the official publication of that resolution, or if not published, the date on which notification of the resolution contested was received;

   D. Description of the proceedings in which the party was involved; and

   E. Violations or injuries caused by the final resolution.

II. Following presentation of the request, the Ministry shall request, initiation of the dispute settlement procedure in conformity with the international treaty or agreement concerned.

TITLE VIII

COMMON PROVISIONS FOR PROCEEDINGS WITH REGARD TO UNFAIR INTERNATIONAL TRADE PRACTICES AND SAFEGUARD MEASURES

CHAPTER I

Ex officio investigation, legally constituted organizations, withdrawal, administrative dossier and transmission of copies to interested parties

ARTICLE 135. In the absence of an express provision in these Regulations concerning administrative proceedings with regard to unfair international trade practices and safeguard measures, the Regulations of the Federal Tax Code shall be applied, to the extent that they are applicable to the nature of these proceedings. This provision shall not apply to notifications and searches for the purpose of verification.

The conduct and resolution of the investigation proceedings to which this Title refers, which are initiated ex officio in accordance with the law, shall be subject to the same legal and regulatory provisions applicable to investigations undertaken at the request of a party.

ARTICLE 136. For the purposes of Article 50 of the Act, legally constituted organizations are deemed to be chambers, associations, confederations, councils or any other group of producers constituted in accordance with Mexican law, whose object is to represent the interests of natural or legal persons engaged in the production of goods identical, alike to or, in the case of safeguard measures, directly in competition with the imported products.

ARTICLE 137. The interested party may withdraw the request to which Article 50 of the Act refers, subject to the following rules:

I. If the request is withdrawn prior to publication of the resolution to initiate the investigation, the investigating authority shall declare the investigation void on grounds of withdrawal, and shall publish the corresponding notice in the Official Journal, and

II. If the request is withdrawn after publication of the resolution to initiate the investigation, the withdrawal may only take effect when the importers or foreign exporters and, in the case of subsidies, representatives of the foreign governments, give their consent in writing to the Ministry. In that case, the Ministry shall declare the investigation terminated, and shall publish the corresponding notice in the Official Journal.

ARTICLE 138. In the investigation proceedings to which this Title refers, the Ministry shall compile an administrative dossier on the basis of which the relevant resolutions shall be issued.

The administrative dossier shall consist of:

A. Documentary or other information presented to the Ministry or obtained by it in the course of the administrative proceedings, including any government communications concerning the matter, and reports, records or memorandums of meetings with one or all the interested parties, third parties or assistants;

B. Resolutions issued by the Ministry in relation thereto;

C. Transcriptions or records of meetings or hearings before the Ministry;

D. Notices published in the Official Journal concerning the administrative proceedings, including review, and

E. Records of sessions of the Commission dealing with the establishment of safeguard measures and draft final resolutions with regard to unfair international trade practices, and draft resolutions in which the Ministry accepts the undertaking of foreign exporters or governments to which Article 72 of the Act refers.

ARTICLE 139. A written report shall be prepared, either directly or by other conventional or electronic means, of any communication between the Ministry and any interested party, his representatives or joint parties during the investigation and review proceedings, containing a summary of its object and the conclusions reached. This report shall in addition contain the name and office of the public servant who prepared it, the place and signature and shall be included forthwith in the administrative dossier.

ARTICLE 140. Copies of reports, documents or items of evidence to which Article 56 of the Act refers shall be despatched at the same time as they are presented to the Ministry. Interested parties shall send copies to other interested parties appearing on the mailing list provided by the Ministry. This obligation does not relieve the investigating authority from the duty to notify and provide the interested parties with information, documents or items of evidence pertaining to the administrative dossier when so requested.

At the time when the documentation to which the preceding paragraph refers is transmitted, the interested parties shall also submit a certificate of despatch of that documentation to the other interested parties, together with the corresponding receipt stating the name of the sender and the date of receipt, in conformity with the forms issued by the Ministry.

ARTICLE 141. The Ministry may transmit the documents to which the second paragraph of Article 53 of the Act refers by electromagnetic means.

CHAPTER II

Notification

ARTICLE 142. The Ministry shall, in a timely manner, notify the interested parties in writing of the resolutions issued with regard to the proceedings to which this Title refers.

ARTICLE 143. For the purposes of these Regulations, domicile means:

I. For natural persons: the place where they have their principal seat of business or that of their representative, and;

II. For legal persons: the place where the principal office of the business or that of their representative is located. In the case of legal persons resident abroad, the place where the principal office of the business is located in their country or known to the authority or, failing that, the place designated by the interested party.

ARTICLE 144. For notifications, there must be a corresponding receipt of despatch. Post office receipts, returned certificates of receipt, and any other acknowledgement of receipt shall be included in the administrative dossier.

ARTICLE 145. Where the Ministry does not know the address of the persons to be notified, whether resident in Mexico or abroad, the notification shall be by publication in the Official Journal and, one time only, in one of the newspapers of major circulation in Mexico; the latter publication shall contain a summary of the request concerned and the proceedings to be conducted.

For persons resident outside the country, the Ministry shall send the communications to which the previous paragraph refers to diplomatic missions of foreign governments, so that they may take the necessary steps to distribute the content of resolutions.

For the purposes of this Article, the date of notification is deemed to be that of publication in the Official Journal.

ARTICLE 146. The Ministry shall notify those subject to a search that a search is to be carried out for the purposes of verification, as referred to in Article 83 of the Act. The notification shall contain:

I. The designation of the competent issuing authority;

II. The name or names or business name of the persons to which it is addressed;

III. The place or places where the search is to take place, which may be supplemented following notification to the person subject to the search, and the date of the search;

IV. The grounds and justification for the search, and its object or purpose;

V. The signature of the competent official, and

VI. The name or names of the persons who will carry out the search, who may be replaced or whose number may be increased or reduced at any time by the Ministry. In the latter case, the replacement or addition of persons who are to carry out the search shall be notified to the person subject to the search. In addition, the Ministry shall notify the person subject to the search if external consultants are included among such persons.

The notifications shall be made in such a way that the interested party receives them at least ten days prior to the search, during this period the person subject to search must give his consent to the Ministry.

CHAPTER III

Public, Confidential, Restricted Commercial and Confidential Government Information

ARTICLE 147. For the purposes of Article 80 of the Act, the Ministry, on written request, shall grant the interested parties the opportunity to examine all the information contained in the administrative dossier for the presentation of their arguments, under the terms established in the Act and in these Regulations. This information may be examined by the parties during the investigation proceedings, the review and appeal for annulment, the hearing in the Upper Chamber of the Federal Tax Court and alternative dispute settlement mechanisms with regard to unfair international trade practices referred to in the international treaties or agreements to which Mexico is a party and, if applicable, with regard to safeguard measures.

The Ministry shall, at the expense of the interested parties, send certified copies of all or part

of the administrative dossier requested, when appropriate, in conformity with the provisions of Article 80 of the Act and these Regulations.

ARTICLE 148. For the purposes of the proceedings to which this Title refers, public information shall be deemed to be:

I. Information published by any method of dissemination, regardless of its coverage, or made available to the public by the person submitting it, or where that person has consented to its publication by a third party;

II. Summaries of confidential information and restricted commercial information presented under the terms of Article 153 of these Regulations;

III. Records relating to searches for purposes of verification and annexed documents, except for confidential, restricted commercial or confidential government information;

IV. Any other information or data which under the Act, these Regulations and other national or foreign legislation do not constitute confidential, restricted commercial or confidential government information and whose publication is not prohibited.

ARTICLE 149. For the purposes of the proceedings to which this Title refers, and subject to compliance with the provisions of Articles 152, 153 and 158 of these Regulations, confidential information shall be deemed to be:

I. Production processes for the product concerned;

II. Production costs and specification of components;

III. Distribution costs;

IV. Terms and conditions of sale, except those offered to the public;

V. Selling prices by transaction and by product, except components of prices such as dates of sales and distribution of the product, and transport if by public routes;

VI. Description of the type of individual customers, distributors or suppliers;

VII. If applicable, the exact amount of the margin of price discrimination in individual sales;

VIII. The amounts of adjustments for terms and conditions of sale, volume or quantities, variable costs and tax charges proposed by the interested party, and

IX. Any other specific information about the enterprise concerned whose disclosure or dissemination to the public may cause injury to its competitive position.

The information on costs and prices to which subparagraphs II, III, and VII of this Article refer may be presented by the interested party or his assistants in ranges of percentage variation that do not exceed the factor of 10 per cent.

ARTICLE 150. Restricted commercial information, subject to compliance with the provisions of Articles 152, 153 and 158 of these Regulations shall be deemed to be information whose disclosure may result in substantial and irreversible financial damage or harm to the net worth of the owner of

that information and which may include, among other things, secret formulas or processes which have a commercial value, are not patented and known exclusively to a small group of people who use them in the production of a commercial product.

ARTICLE 151. The name of the natural or legal persons from whom the interested party obtained relevant information shall be known only to the Ministry and may only be disclosed following the consent of such persons.

ARTICLE 152. The interested party shall be responsible for pointing out where appropriate in its requests, answers, replies to the Ministry or in any form of appearance, any information of a confidential or restricted commercial character. Likewise, he must justify the reason for so designating his information.

ARTICLE 153. The party interested in ensuring the confidential or restricted commercial treatment of his information and documents shall submit a public summary thereof to the Ministry. This summary shall be presented in writing and shall be sufficiently detailed to allow anyone consulting it to have a reasonable and complete understanding of the subject.

ARTICLE 154. For the purposes of the proceedings to which this Title refers, confidential government information shall be deemed to be information whose disclosure is prohibited by laws and other public legislation, and by international treaties or agreements to which Mexico is a party.

In any event, confidential government information shall include data, statistics and documents concerning national security and strategic activities for the scientific and technological development of the country, and information contained in government-to-government communications of a confidential nature.

ARTICLE 155. When so required, the Ministry shall provide the public, confidential, restricted commercial or confidential government information to administrative tribunals, courts and dispute settlement mechanisms relating to unfair international trade practices and safeguard measures contained in international trade treaties or agreements to which Mexico is a party, when they are seized with an appeal against the final resolutions to which the Act and these Regulations refer. In any event, the public servant responsible for transmitting the information concerned to the aforementioned authorities and mechanisms shall indicate its character.

ARTICLE 156. Following the elapse of the time-limit to which Article 80 of the Act refers, the Ministry may despatch certified copies of the dossier of the matter concerned or, if so requested, shall permit the interested parties or their representatives to inspect the requested dossiers.

ARTICLE 157. In the proceedings to which Articles 60, 68 and 94 of the Act refer, the provisions concerning public, confidential, restricted commercial and confidential government information contained in the Act and in these Regulations shall be observed.

CHAPTER IV

Request for Confidentiality of Information

ARTICLE 158. Interested parties or natural and legal persons who, under the Act and these Regulations participate in the proceedings to which this Title refers, shall have the right to require the Ministry to treat their information as confidential or as restricted commercial information. For that purpose, the interested party concerned shall comply with the following requirements:

I. The request shall be submitted in writing;

II. He shall justify why his information is of a confidential or restricted commercial character;

III. He shall present a summary of the information or, if applicable, an explanation of the reasons why it cannot be summarized; and

IV. If applicable, give his express consent in writing that the information marked as confidential or restricted commercial may be examined by the legal representatives of the other interested parties.

ARTICLE 159. For the purposes of Article 80 of the Act, an accredited legal representative shall be deemed to be the natural person authorized by the Ministry to have access to confidential information, on completion of the following requirements:

I. Presentation to the Ministry of a request in writing stating the need to examine the confidential information;

II. Submission of official documents accrediting the requesting party as a lawyer entitled to exercise his profession in Mexico in accordance with the applicable laws.

The request to which this subparagraph refers may also be submitted by any other person provided that he meets the requirements established in this Article, with the exception of the provision of the previous paragraph, and is assisted by a lawyer;

III. Presentation of the original document or certified copy thereof accrediting him as representative;

IV. Show the official document or certified copy thereof accrediting the name and authority of the official of the enterprise granting the power of representation;

V. He must be resident in Mexico;

VI. He must undertake and submit the commitment to confidentiality, under the terms laid down by the Ministry in accordance with the provisions of the Act and these Regulations;

VII. He must state in writing that he is aware of the liabilities and sanctions to which he may be subject if he violates the confidentiality of the information entrusted to him;

VIII. He must state in writing the reasons why the confidential information he is requesting to examine is relevant to the defence of his case. In such a situation, the Ministry may specify under what conditions it shall be considered that confidential information may be useful to the defence of the case in question; and

IX. He must give an undertaking to the Ministry to return the original versions of his notes or summaries made when examining the confidential information, within ten days following the issue of the final resolution.

The confidential information which legal representatives of interested parties have the right to examine under these Regulations shall be strictly for personal use and shall not be transferable for

any reason whatsoever. In the case mentioned in the second part of subparagraph II of this Article, the lawyer assisting the legally-authorized representative shall comply with the requirements to which sub-paragraphs V to IX of this Article refer and shall be jointly responsible for the unauthorized use of the confidential information.

ARTICLE 160. In addition to the provisions of the preceding Article, the legal representative shall comply with the following requirements, failing which he shall not be authorized to examine the confidential information:

I. He shall not have been convicted of a deliberate offence or administrative breach of the law;

II. He must be of good personal and professional standing;

III. He must not have been a partner, a director or acted as a salaried agent or representative of the enterprise which he purports to represent, nor of any of the other interested or joint parties in the proceedings in question, during the previous year; and

IV. He must provide a form of security for the amount fixed by the Ministry under the Federal Tax Code, against his committing the unlawful acts described in subparagraph VI of Article 93 of the Act. The securities may be cancelled following the publication of the resolution in question.

When the requirements have been fulfilled, the Ministry shall hold the legal representative as accredited and shall send him the respective confirmation within ten days from the day of submission of the request.

ARTICLE 161. For the purposes of the proceedings to which this Title refers, the examination of the confidential information shall take place in the offices of the Ministry, in the presence of an official of the Ministry. The Ministry shall allow reasonable time to the legal representative to enable him to examine the confidential information, of which he may make notes or summaries.

In addition, when it is deemed appropriate, the Ministry may provide copies of that information, indicating the requirements to be observed by the legal representative for the treatment and return of that information.

CHAPTER V

Evidence, Public Hearing and Pleadings

ARTICLE 162. The Ministry shall accept as evidence public and private documents, expert reports, administrative recognition or verification, testimonial evidence, presumptions and any other method of evidence not prohibited by law.

ARTICLE 163. The period for the examination of evidence shall run from the day following the publication of the initiation of the administrative investigation and the acceptance of the request, in the Official Journal until the date when the public hearing to which Article 81 of the Act refers is declared concluded.

ARTICLE 164. In the case of proceedings in respect of unfair international trade practices and safeguard measures, following publication of the initiation of the administrative investigation and acceptance of the request, importers, exporters and, if applicable, representatives of foreign governments

who have been notified or who appear of their own will before the Ministry, shall have a time-limit of thirty days to formulate their defence and present the required information.

When the time-limit to which the preceding paragraph refers has elapsed, the Ministry shall give the opportunity to the requesting parties and, if applicable, the joint parties to present counter-arguments or replies within the eight days following.

Following the publication in the Federal Official Gazette of the preliminary resolution to which Article 57 of the Act refers, the Ministry shall grant a period of thirty days to allow the interested parties to present supplementary arguments and evidence which they consider relevant.

ARTICLE 165. The purpose of the public hearing shall be to allow the interested parties and, if applicable, joint parties, to question or reject the arguments of the other parties regarding the information, data and evidence submitted.

ARTICLE 166. When the hearing is opened, the representative of the Ministry shall, where he considers necessary, introduce for discussion the evidence presented by the requesting party. Following that, importers, foreign exporters and domestic producers in that order shall be permitted to speak. Each party shall speak, in turn, twice in respect of evidence submitted by other parties. The Ministry, subject to agreement with the interested parties, shall fix the maximum time permitted for each intervention, without prejudice to extending the time allocated for participation by interested parties as it considers necessary.

ARTICLE 167. In the case of expert evidence, where there are differences among experts, the representative of the Ministry shall allow them to speak, under the terms of the preceding Article.

ARTICLE 168. The discussion to which the preceding Articles refer may consist of rebuttals and questioning by the interested parties. The representative of the Ministry may require the interested parties to repeat their arguments in order to clarify disputed points. The rules of confidentiality of information laid down in the Act and in these Regulations shall be observed in this hearing.

ARTICLE 169. The absence of any of the interested parties, experts and other persons who by the nature of the evidence must appear shall not prevent the public hearing being held.

ARTICLE 170. A record of the public hearing shall be drawn up containing a detailed account of the proceedings; it must be signed by the interested parties and the representative of the Ministry, and included in the dossier of the case.

ARTICLE 171. The interested parties may only present information, evidence and data that they consider relevant in defence of their interests during the period for the submission of evidence. Nevertheless, the Ministry may allow the submission, repetition or amplification of any evidence or evidential acts outside the period for the submission of evidence, provided that it considers it necessary and that it may result in better knowledge of the truth about the facts under investigation.

ARTICLE 172. Once the period for the submission of evidence has concluded, the Ministry shall open a period of pleadings during which the interested parties may submit in writing their conclusions on the substance or the matters arising in the course of the proceedings. In this case, the rules of confidentiality established in the Act and these Regulations shall be observed.

CHAPTER VI

Searches for the Purpose of Verification

ARTICLE 173. When carrying out the searches for the purpose of verification to which Article 83 of the Act refers, the following rules shall be observed:

I. Searches shall be carried out at the place or places indicated in the respective notification and by the persons indicated therein;

II. The search shall be attended by the person subject to the search of his accredited representative, or by the person present on the date when the search takes place;

III. At the commencement of the search, the persons responsible for carrying out the search shall formally identify themselves to the person or persons with whom the proceeding has been arranged, requiring them to designate two witnesses. If witnesses are not designated or the designated persons do not consent to serve as such, the visiting officials shall designate witnesses, noting that fact in the record, without that invalidating the results of the search;

IV. The interested parties, their representatives or the person with whom the search at the fiscal domicile has been arranged, are obliged to allow the visiting officials designated by the Ministry access to the place or places which are the subject of the proceeding and make available to them the accounts and other documents to support the information presented during the investigation. In that case, the visiting officials may obtain copies to be compared with the original documents and authenticated by the officials and to be annexed to the record of the search. Verification shall also be permitted of goods, documents, disks, tapes or any other data storage system maintained by the interested party at the places searched.

If the interested party subject to the search maintains his accounting system or part of it on an electronic recording system, the computer equipment and its operators shall be made available to the visiting officials so that they can assist them in their work;

V. A record of every search shall be drawn up giving full details of the facts or omissions noted by the visiting officials, determining the legal consequences of such acts and omissions for the interested parties;

VI. On completion of the verification procedure and the relevant report, no additional reports may be drawn up without a new notification;

VII. On completion of the verification procedure and the relevant report, the interested parties or their representatives may present to the Ministry their objections, opinions and supplementary information which the authority in question might have required from them during the verification procedure, within five days from the conclusion of the relevant report. If within this time-limit no opinions or objections to the content of the report are submitted, the acts and omissions contained therein shall be held to be accepted, and

VIII. The report drawn up at the time of the search for the purposes of verification shall be signed by the visiting officials, the interested party or his representative or the person with whom the procedure was arranged and by the witnesses. If any of the persons

indicated refuses to sign the report concerned, the visiting officials shall note this fact in the report itself without it affecting its validity and value as evidence.

ARTICLE 174. The Ministry shall be empowered to ask third parties who have had business relations with the interested party subject to the search, such as suppliers, customers and agents, for information and data enabling it to establish the truth of the information supplied, both during the investigation and during the search.

ARTICLE 175. The Ministry may request accounting and any other information, data and documents from the interested parties, in order to verify the truth of their submissions and statements at the official domicile of the Ministry.

The person subject to the search shall have the right to indicate whether the information or data supplied or to be supplied to the visiting officials is of a confidential or restricted commercial character, provided that he satisfies the provisions of these Regulations.

The provisions contained in Articles 152 and 153 of these Regulations may be fulfilled during the search or within the time-limit to which subparagraph VII of Article 173 of these Regulations refers.

ARTICLE 176. The Ministry may utilize the services of specialized consultancy firms to provide support in investigating, ascertaining and verifying information and data needed to enable it to issue its resolutions.