

Committee on Safeguards

NOTIFICATION OF LAWS, REGULATIONS AND
ADMINISTRATIVE PROCEDURES RELATING
TO SAFEGUARD MEASURES

MEXICO

The following communication, dated 2 May 1995, has been received from the Permanent Mission of Mexico.

In accordance with the established procedures, I am forwarding herewith the text of the Mexican law on safeguard measures and the pertinent regulations.

It should be noted that the Mexican legislation on safeguard measures is made up of various provisions of the Mexican Foreign Trade Act and its Regulations, together with the Agreement on Safeguards of the World Trade Organization.

Since the Agreement on Safeguards is well known, this communication includes only the safeguard provisions of:

- the Foreign Trade Act, published in the Diario Oficial de la Federación (Official Journal) of 27 July 1993 (Annex I), and
- the Regulations under the Foreign Trade Act, published in the Diario Oficial de la Federación of 30 December 1993 (Annex II).

ANNEX I

FOREIGN TRADE ACT

TITLE II

POWERS OF THE FEDERAL EXECUTIVE, THE MINISTRY
OF TRADE AND INDUSTRIAL DEVELOPMENT
AND THE AUXILIARY COMMISSIONS

Chapter I

Powers of the Federal Executive

ARTICLE 4 - The Federal Executive shall have the following powers:

II. To regulate, restrict or prohibit the exportation, importation or transit of goods, in circumstances deemed to constitute an emergency, by means of decrees published in the Diario Oficial de la Federación, in accordance with Article 131 of the Mexican Constitution.

TITLE VI

SAFEGUARD MEASURES

Sole Chapter

ARTICLE 45 - Safeguard measures are measures which, in the terms of subparagraph II of Article 4, temporarily regulate or restrict imports of goods identical or alike to or directly competitive with products of the domestic industry and are intended to prevent or remedy serious injury and facilitate adjustment by the domestic producers.

Such measures shall be imposed only when it has been determined that the goods are being imported in such increased quantities and under such conditions as to cause or threaten to cause serious injury to the domestic industry.

Safeguard measures may consist of specific or ad valorem duties, licences or maximum quotas.

ARTICLE 46 - Serious injury shall mean significant overall injury to a domestic industry. Threat of serious injury shall mean an imminent and clearly foreseen risk of serious injury to a domestic industry. A determination of the existence of a threat of serious injury shall be based on facts and not merely on allegation, conjecture or remote possibility.

ARTICLE 47 - Serious injury or threat of serious injury and its causal link with increased imports shall be determined and safeguard measures established by conducting an investigation in accordance with the administrative procedure laid down in this Act and its Regulations.

ARTICLE 48 - For the purpose of determining safeguard measures, the Ministry shall, as far as possible, obtain all the relevant information and evaluate all the significant factors having a bearing on the situation of domestic producers of identical, like or directly competitive goods. This information shall include:

I. The increase in imports of the product concerned, in absolute and relative terms;

- II. The penetration of the domestic market by these imports;
- III. Changes in the level of sales, production, productivity, installed capacity utilization, profits, employment, prices and inventories;
- IV. The ability of the enterprises to generate capital; and
- V. Other information which the Ministry may deem necessary.

TITLE VII

PROCEDURE IN RELATION TO UNFAIR INTERNATIONAL TRADE PRACTICES AND SAFEGUARD MEASURES

Chapter I

Common Provisions Relating to the Initiation of Proceedings

ARTICLE 49 - The investigation of unfair international trade practices and safeguard measures shall be initiated *ex officio* or at the request of a party, in accordance with the provisions of the next article.

In the investigation procedure to which this Title refers, an administrative dossier shall be compiled to serve as a basis for the issuance of the relevant administrative resolutions.

ARTICLE 50 - An interested-party request may be submitted by natural and legal persons producing:

- I. Goods identical or alike to those being imported or intended for import in circumstances involving unfair international trade practices, or
- II. Goods identical or alike to or directly competitive with those being imported under conditions and in volumes such that they seriously injure or threaten seriously to injure the domestic industry.

The requesting parties must be representative of the domestic industry, within the meaning of Article 40, or be legally constituted organizations.

In his request, the requesting party must indicate, in writing, to the competent authority, with an undertaking to tell the truth, the reasons why it is necessary that countervailing duties or safeguard measures be applied. The request must comply with the requirements laid down in the Regulations. Requesting parties must attach to their written communication the questionnaire issued by the Ministry for the purpose.

ARTICLE 51 - The term "interested party" means the producers who have submitted requests, importers and exporters of the product under investigation, as well as any foreign legal persons having a direct interest in the investigation in question and those who are so defined in international trade agreements and treaties.

ARTICLE 52 - Within a period of 30 days following the submission of the request, the Ministry shall:

- I. Accept the request and declare the initiation of the investigation through a resolution to that

effect to be published in the Diario Oficial de la Federación;

II. Ask the requesting party for further items of evidence and information which must be provided within a maximum of 20 days following receipt of the notification. If the requested elements are duly produced, the Ministry shall, within a period of 20 days, proceed in conformity with the preceding subparagraph. If the requested elements are not duly produced within the mentioned deadline, the request shall be considered as having been abandoned and the requesting party shall be personally so notified; or

III. Reject the request if it does not fulfil the requirements set forth in the Regulations, and personally notify the requesting party of such rejection.

In any case, the Ministry shall publish the corresponding resolution in the Diario Oficial de la Federación.

ARTICLE 53 - Starting from the day following the publication in the Diario Oficial de la Federación of the resolution to initiate an investigation, the Ministry shall notify the interested parties of which it is aware, so that they may appear in order to make whatever statement they see fit. The interested parties shall be accorded a period of 30 days following the publication of the resolution to initiate an investigation in the Diario Oficial de la Federación to prepare their defence and submit the information requested.

The notification shall be accompanied by a copy of the request submitted and such attached documents as do not contain confidential information or, as the case may be, any relevant documents regarding *ex officio* investigations.

ARTICLE 54 - The Ministry may request the interested parties to produce evidence, information and data which it considers relevant, for which purpose the Ministry's questionnaires shall be used.

If the above request is not satisfied, the Ministry shall decide on the basis of the information available.

ARTICLE 55 - The Ministry may request the producers, distributors or traders of the goods in question as well as the customs officers, agents, representatives and persons receiving the imported goods, or any other person it deems appropriate, to provide information and data which they have at their disposal.

ARTICLE 56 - The interested parties in an investigation shall send the other interested parties copies of each of the reports, documents or items of evidence which they submit to the authorities during the proceedings, except the confidential information referred to in Article 81.

Chapter III

Procedure in Relation to Safeguards

Section 1

Determination of Safeguard Measures

ARTICLE 75 - The safeguard measures shall be determined by the Federal Executive, within a period of 260 days from the day following the publication of the initiating resolution in the Diario Oficial de la Federación, subject to the provisions of the international treaties and conventions to which Mexico is a party.

ARTICLE 76 - Once the investigation concerning the application of safeguard measures has been concluded, the Ministry shall submit the administrative dossier and a draft final resolution to the Commission for its opinion, prior to the publication of the said resolution.

The resolution determining the safeguard measures shall be published in the Diario Oficial de la Federación and shall set forth all pertinent issues of fact and law and other information referred to in the Regulations.

ARTICLE 77 - Except in cases where a longer period is justified, safeguard measures may not be applied for more than four years. The duration of these measures shall be subject to completion of the adjustment programmes undertaken by the domestic industry.

Section 2

Critical Circumstances

ARTICLE 78 - The Federal Executive may determine provisional safeguard measures within a period of 20 days from the day following the publication of the initiation of an investigation in the Diario Oficial de la Federación, whenever:

- I. Critical circumstances have arisen and any delay would result in damage which it would be difficult to repair, and
- II. There is evidence that increased imports have caused or are threatening to cause serious injury.

ARTICLE 79 - The duration of the provisional measures shall not exceed six months. During this period the requirements of the international treaties and conventions to which Mexico is a party shall be met. The final resolution confirming, modifying or revoking the provisional measures shall be published within six months of the day following the publication of the resolution determining provisional measures in the Diario Oficial de la Federación.

If the provisional measures are confirmed or revoked, the final resolution shall make their application effective or, as the case may be, order the refunding, with interest, of the amounts previously paid or any difference.

Chapter IV

Other Common Provisions Relating to the Proceedings

ARTICLE 80 - The Ministry shall provide timely opportunities for the interested parties to see all information in the administrative dossier relevant to the presentation of their cases. Confidential information shall be made available only to the accredited legal representatives of the parties interested in the administrative investigation, except in the case of restricted commercial information which, if divulged, could cause substantial and irreversible injury to the owner of that information, and confidential government information.

The legal representatives of the interested parties having access to the confidential information shall not use such information for their personal benefit, nor disseminate it. Infringement of this requirement shall be punishable under the provisions of this Act, independently of such civil and criminal penalties as may be applicable.

During the investigation proceedings referred to in this section the Ministry shall provide timely access, at the request of the interested parties or their representatives, to any non-confidential information forming part of the administrative dossier of any other investigation after a period of 60 days following the publication of the relevant final resolution.

ARTICLE 81 - In the notification referred to in Article 53, the Ministry shall inform the interested parties that a public hearing will be held at which they may appear and submit arguments in defence of their interests and, in the case of safeguard action, present the relevant evidence. At this hearing, interested parties may question the other interested parties. In the case of investigations into unfair international trade practices, the hearings shall be held following the publication of the preliminary resolution and prior to the publication of the final resolution.

ARTICLE 82 - The interested parties may adduce evidence of all types except statements by the authorities or material considered contrary to public order or offensive to morals or decency.

The Ministry may agree at any time to the institution, repetition or extension of any proceedings considered necessary and conducive to the discovery of the truth regarding the matters under dispute. Furthermore, the Ministry may institute such proceedings as it considers appropriate in order to obtain better information.

The Ministry shall appoint a period for pleadings following the period for the presentation of evidence to permit the interested parties to make their submissions.

The Ministry's decisions to accept a given piece of evidence shall not be open to appeal during the proceedings.

ARTICLE 83 - The Ministry may verify the information and evidence submitted during the course of the investigation, and for that purpose may issue a written order authorizing a search of the legal domicile, the establishment or the place where the relevant information is located. The Ministry may proceed as it deems appropriate in order to verify that the said information and evidence conform with the accounts of the company subject to the search, to collate the documents in the administrative dossier or to make attested copies.

Information and evidence submitted by the interested parties may be verified in the country of origin if the interested parties so agree. Without their consent, the Ministry shall assume that the requesting party's claims are true, unless there exist elements which indicate otherwise.

Searches by the Ministry for the purpose of verification shall be carried out on working days and during working hours by its own accredited staff. However, they may also take place outside working days and hours where necessary, in which case the official letter ordering the search shall contain the necessary authorization.

Detailed records of the searches shall be drawn up in the presence of two witnesses provided by the party subject to the search or, in the absence of the said party or in the event that the said party refuses to provide witnesses, by the authority in charge of the proceedings. These searches shall be subject to the provisions of the Regulations.

ARTICLE 84 - The notifications referred to in this Act shall be transmitted to the interested party or his representative personally at his domicile by registered mail with acknowledgement of receipt or by any other direct means such as a specialized messenger service or electronic mail. The notifications shall enter into force on the working day following the day on which they were issued. The Regulations shall establish the form and content of the notifications.

ARTICLE 85 - In the absence of any express provision in this Act concerning the administrative proceedings in respect of unfair international trade practices and safeguard action, the Federal Tax Code shall apply by default on a supplementary basis for all matters pertaining to the nature of the said proceedings. This provision shall not apply in respect of notifications and searches for the purpose of verification.

ARTICLE 86 - If in the course of the proceedings referred to in this section the Ministry observes that any of the interested parties is involved in the monopolistic practices which are punishable under the relevant legislation, it shall so inform the competent authority.

ARTICLE 87 - Countervailing duties and safeguard measures may be specific, or ad valorem. If specific, they shall be computed at a fixed rate per unit of measurement, and shall be assessed in the equivalent in Mexican currency. If ad valorem, they shall be computed as a percentage of the customs value of the product in question.

ARTICLE 88 - When imposing a countervailing duty or proposing the application of a safeguard measure, the Ministry shall ensure as far as possible that such measure, in addition to providing timely defence for the domestic industry, avoids any negative impact on other production processes and on consumers.

ARTICLE 89 - Provisional and final countervailing duties and safeguard actions shall be applied from the day following their publication in the Diario Oficial de la Federación.

Importers or their consignees shall be required to calculate in the relevant import applications the amounts of the provisional and final countervailing duties or safeguard duties and to pay them, together with their foreign trade taxes, without prejudice to the guarantees in respect of provisional countervailing duties pursuant to Article 65 and in respect of the final countervailing duties pursuant to Article 98, subparagraph III.

TITLE IX

INFRINGEMENTS, PENALTIES AND APPEALS

Chapter I

Infringements and Administrative Penalties

ARTICLE 93 - It shall be the responsibility of the Ministry to punish the following infringements:

- III. Presentation of false information or documents, failure to provide valid information or documents, or alteration thereof, to obtain the application of countervailing duties or safeguard action: by a fine equivalent to the value of the imported goods during the period of investigation in question;
- IV. Failure to provide the Ministry with the documents and reports relating to cases referred to in Article 55 within the deadline stipulated in the relevant request: by a fine equivalent to 180 times the legal minimum wage;
- V. Importation of goods in significant quantities, as compared to total imports and domestic production, within a relatively short period, when there are previous cases on record of unfair practices in the export market in question, or when the importer knew or should have known that the exporter was engaged in such practices: by a fine equivalent to the amount resulting from the application of the final countervailing duty to the imports entered for up to three months prior to the date of application of the provisional countervailing duties. This penalty shall only be applied once the Ministry has issued the resolution determining the final countervailing duties; and
- VI. Disclosure of confidential information or utilization thereof for personal benefit within the meaning of Article 80 of this Act or in respect of the dispute settlement mechanisms set forth in the international treaties or conventions to which Mexico is a party: by a fine proportional to the loss caused or to the benefit obtained by disclosing or utilizing the said information.

For the purposes of this Article, the term "legal minimum wage" shall be understood to mean the general daily minimum wage in force in the Federal District at the time at which the infringement was committed.

In applying the fines referred to in subparagraphs V and VI of this Article, the Ministry shall take account of the seriousness of the infringement, the injury and losses caused, the previous record and the personal and economic situation of the offender.

The fines referred to in this Article shall be imposed independently of the penal and civil sanctions applicable under the law. The fines shall only be imposed once the suspected offender has been heard.

ANNEX II

REGULATIONS UNDER THE FOREIGN TRADE ACT

TITLE V

SAFEGUARD MEASURES

Sole Chapter

ARTICLE 70 - To determine whether a safeguard measure is appropriate, the Ministry shall carry out an investigation pursuant to the administrative procedures laid down in the Act, in the international treaties and conventions to which Mexico is a signatory, and in these Regulations. Safeguard measures may be applied only if, as a result of the investigation, the Ministry determines, on the evidence, that the product investigated is being imported in such increased total quantities and under such conditions as to constitute a substantial cause of serious injury or threat of serious injury to the domestic producers of identical, like or directly competitive goods.

ARTICLE 71 - In order to determine serious injury or the threat of serious injury, the Ministry shall evaluate the impact of the imports under investigation on the total domestic production of identical, like or directly competitive goods or on those domestic producers whose collective output constitutes a major proportion of the total domestic production of such goods.

If the requesting parties do not represent the whole of domestic production, they must nevertheless submit information on total domestic production to the Ministry, using the prescribed questionnaire, provided that the required figures are reasonably available to them. In any case, the request must include a reliable estimate of the figures for the total domestic production concerned required by the Ministry, together with an indication of the methodology used.

In any event, the Ministry shall satisfy itself that the corresponding determination of serious injury or threat of serious 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, and the latter shall submit it in the required form.

ARTICLE 72 - In determining whether increased imports are causing serious injury to the domestic industry, the Ministry shall take into account:

- I. Whether there has been a considerable increase in total imports of the product in question within a relatively short period, either in absolute terms or relative to domestic consumption or production, and whether there has been a sustained decline in the domestic industry's share of the domestic market;
- II. Any relevant objective and quantifiable economic factors indicating a deterioration in the position of the domestic industry, in particular:
 - A. A substantial decline in the utilization of installed capacity;
 - B. Evidence that a substantial part of the domestic industry is suffering sustained losses;
 - C. The closure of enterprises;
 - D. A sustained fall in levels of occupation, and

E. Other factors indicating that the domestic industry concerned is in a state of economic and financial decline. In this case, each of the factors taken into account must be identified in the corresponding resolution and their importance explained.

ARTICLE 73 - In determining whether increased imports are threatening to cause serious injury to the domestic industry, the Ministry shall take into account:

I. A considerable increase in total imports of the product in question within a relatively short period, in either absolute or relative terms, as well as any tendency towards a sustained decline in the domestic industry's share of the domestic market, and

II. Any relevant economic factors of an objective and quantifiable nature indicating a deterioration in the position of the domestic industry, in particular:

A. A decline in the sales, output, productivity, or employment and, where appropriate, an increase in the inventories of the domestic industry;

B. A fall in profits, and an inability to finance potential investment and generate capital, and

C. Other factors indicating adverse economic trends in the domestic industry. In this case, each of the factors taken into account must be identified in the corresponding determination and its importance explained.

ARTICLE 74 - The Ministry shall evaluate the economic factors relevant to the industry in the context of the economic cycle and the 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 that period. In addition, the domestic producers making the request or the 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.

TITLE VII

PROCEDURE RELATING TO SAFEGUARD MEASURES

Chapter I

General Provisions

ARTICLE 118 - The request by an interested party to initiate an administrative investigation concerning safeguard measures, in addition to being submitted in writing and satisfying the requirements of Article 50 of the Act, shall contain the following elements:

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

II. His name or business name and domicile and, if applicable, those of his representative, accompanied by accrediting documentation;

III. His principal activity;

- IV. The volume and value of domestic production of the product identical or alike to or directly competitive with the imported product;
- V. A description, in terms of volume and value, of his share of domestic production;
- VI. If applicable, membership of the organization to which he 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, 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, stating whether the import consisted 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 it;
- XI. Analysis of the competitive position of the domestic industry he represents;
- XII. The programme of adjustment that will be instituted if a safeguard measure is applied, and its viability;
- XIII. A description of the facts and data which show that the sole or principal cause of serious injury or threat of serious injury to domestic production of the product identical or alike to or directly competitive with the imported product is a substantial increase in imports, and
- XIV. If appropriate, a description of requests for other regulatory or trade-restrictive measures concerning the product which is the subject of the request.

The request to which this Article refers shall contain the signature of the interested party or his representative and shall be submitted in the original and as many copies as there are importers, exporters and foreign governments identified in the request.

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

ARTICLE 119 - The safeguard investigation proceedings shall address the existence of imports in quantities and under conditions such as to cause or threaten to cause serious injury to the domestic industry. They shall include a period which covers imports of goods identical or alike to or directly competitive with those produced by the domestic industry which may have been affected, entered over a period of six months prior to the commencement of the investigation, together with any other element relevant to the outcome of the investigation.

The period of investigation to which the foregoing paragraph refers may be modified at the discretion of the Ministry. In that case, the resolutions imposing safeguard measures shall relate to the modified period.

ARTICLE 120 - 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 it shall be returned to him, with specific indications of its omissions and ambiguities. When the twenty days to which subparagraph II of Article 52 of the Act refers have elapsed, the Ministry shall proceed with or reject the request, as appropriate.

ARTICLE 121 - If the requirements of the Act are satisfied, the Ministry shall accept the request and formally declare the initiation of the investigation by publishing the initiating resolution in the Diario Oficial de la Federación while notifying the interested parties.

ARTICLE 122 - In the notification referred to in the preceding Article, the Ministry shall request the interested parties to provide any items of evidence or data it considers pertinent, for which purpose they shall use the forms prepared by the appropriate department.

ARTICLE 123 - The Ministry shall evaluate the viability of the competitive adjustment programme submitted by the domestic producers. This programme shall be derived from an analysis of the factors which influence and determine the sector's competitiveness, on the basis of which the measures and the estimated time required for its implementation shall be defined; these measures may vary as a result of the Ministry's evaluation of the information contributed by the interested parties in the course of the proceedings and that which it itself obtains.

ARTICLE 124 - The resolutions announcing the acceptance of the request and the initiation of the administrative investigation or imposing provisional or final safeguard measures shall be reasoned and justified. Accordingly, they shall contain the following information:

- I. The competent authority issuing the resolution;
- II. The name or names or business name and domicile of the domestic producer or producers of the identical, like or directly competitive product;
- III. The name or names or business name and domicile of the importer or importers and of the exporters;
- IV. The country or countries of origin or source of the identical, like or directly competitive product;
- V. A description of the procedure concerned;
- VI. A detailed description of the product which has been or is being imported, indicating the tariff rate applicable under the schedule of the General Import Taxes Act;
- VII. A description of the domestic product identical or alike to or directly competitive with the product which has been or is being imported;
- VIII. The period under investigation;
- IX. The arguments and circumstances taken into consideration by the authority for the purpose of issuing the resolution, and
- X. Any other information agreed in the international treaties or conventions to which Mexico is a party which the Ministry may have considered.

Chapter II

Initiating Resolution

ARTICLE 125 - In addition to the information indicated in the preceding Article, the initiating resolution shall contain:

- I.A summons to the interested parties and foreign governments, so that they may appear in order to exercise their right to make representations fit;
- II.The time-limit within which the resolution imposing the appropriate safeguard measures will be issued;
- III. The time allowed for the presentation and, where appropriate, rebuttal of evidence;
- IV.The date, time and place for the public hearing and the pleadings to which Articles 81 and 82 of the Act refer, and
- V.A statement that the countries signatories to the international treaty or convention to which Mexico is a party will be notified for consultation purposes.

Chapter III

Final Resolution

ARTICLE 126 - In addition to the data indicated in Article 124 of these Regulations, the final resolution shall contain:

- I.A description of the serious injury caused or which may be caused to the domestic industry;
- II. A description of the volume of imports and the conditions of importation;
- III. The type of safeguard measure to be applied;
- IV.The intended duration of the safeguard measure or, if not possible, a reference to the transiency of the measure;
- V. If possible, the timetable for the progressive liberalization of the safeguard measure;
- VI.A statement that the countries signatories to the international treaty or convention to which Mexico is a party will receive an explanation of the resolution;
- VII.A statement that the Ministry of Finance and Public Credit will be notified so as to permit the timely application of the measure imposed, and
- VIII. A summary of the opinion of the Commission in explanation of the resolution.

ARTICLE 127 - The Ministry shall recommend to the Federal Executive the type, amount and duration of the safeguard measures, giving the appropriate explanations and justifications. In this recommendation, the Ministry shall take into account:

- I. The short- and long-term social and economic costs of applying the measure;

- II. The cost of not applying the measures proposed;
- III. The effect of the measures on consumers and on competition in the domestic market;
- IV. Alternatives involving lower costs for the sectors concerned;
- V. Where appropriate, the impact of the compensation which would have to be offered in the context of Mexico's international commitments on the other domestic industries affected, and
- VI. Other factors relating to the public interest or national security.

The Ministry may also recommend some other type of measure or action designed to contribute to the competitive adjustment of the sector without restricting trade flows.

Chapter IV

Provisional Safeguard Measures in Critical Circumstances

ARTICLE 128 - The provisional safeguard measures referred to in Article 78 of the Act may be applied whenever there is proof or reasonable evidence that the increased imports constitute a substantial cause of serious injury or a threat of serious injury to domestic production of identical, like or directly competitive goods and, moreover, that:

- I. There has been a substantial increase in imports within a relatively short period and this increase has created conditions for domestic producers such that any delay in the application of the measures would result in the serious injury being difficult to repair in the time laid down in the procedure, and
- II. In the event of a provisional determination of a threat of serious injury, provisional measures may be applied only if the products under investigation are perishable agricultural products and it is determined that because of the very nature of the product serious injury cannot be prevented in the time laid down in the procedure.

ARTICLE 129 - The request by an interested party to initiate an administrative investigation with a view to imposing safeguard measures in critical circumstances, which must be submitted in writing, will state the reasons why it is necessary to apply the safeguard regime and be accompanied by such information and pertinent evidence as is reasonably available to the requesting party.

The request must contain the data referred to in Article 118 of these Regulations, except for the adjustment programme mentioned in subparagraph XII of that Article, and, in addition, an explanation of the damage which would be difficult to repair if there were any delay in the application of safeguard measures.

The adjustment programme shall be submitted within a period of not more than 30 days following the publication of the resolution establishing provisional safeguard measures.

ARTICLE 130 - The resolution imposing provisional safeguard measures referred to in Article 78 of the Act shall contain, in addition to the data indicated in Article 124 of these Regulations, the following elements:

- I. A description of the critical circumstances caused by the serious injury or threat of serious injury;

II. The type of safeguard measure to be applied, and

III.A statement that the Ministry of Finance and Public Credit shall be notified with a view to the timely application of the measure imposed.

ARTICLE 131 - The resolution imposing final safeguard measures referred to in Article 79 of the Act shall contain, in addition to the data indicated in Article 124 of these Regulations, the following elements:

I.If the existence of serious injury or a threat of serious injury to domestic production due to increased imports in the volumes and under the conditions referred to in the Act and in these Regulations is confirmed:

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

B.A description of the volume of imports and the conditions of importation;

C. The type of safeguard measure to be applied;

D.A statement that the Ministry of Finance and Public Credit shall be notified with a view to the timely application of the measure imposed, and

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

II.If it is established that the increased imports, in these volumes and under these conditions, are not causing or threatening to cause serious injury to the domestic industry, a statement that the administrative investigation procedure is being terminated without the imposition of safeguard measures.

Chapter V

Other Provisions

ARTICLE 132 - The Ministry shall consult with the representatives of the productive sectors concerning the application of the compensation measures which must be adopted under the international treaties and conventions to which Mexico is a party. In any case, the Ministry shall safeguard the public interest.

ARTICLE 133 - Once the appropriate safeguard measure has been imposed, the Ministry shall regularly review the progress of the adjustment programme in order to make sure that it is being duly implemented and, where necessary, shall consider any change of circumstances that may be preventing its implementation, authorizing the appropriate changes and modifications.

ARTICLE 134 - The safeguard measures shall be applied only for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment. The Ministry shall determine the duration of the safeguard measures on the basis of the evaluation of the adjustment programme and its implementation. In any case, the requirements of the international treaties and conventions to which Mexico is a party shall be met.

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 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 as those 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 competitive 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 *Diario Oficial de la Federación*, 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 *Diario Oficial de la Federación*.

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 additional parties;
- 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 *Diario Oficial de la Federación* 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 of any communication, whether direct or made by other conventional or electronic means, between the Ministry and any interested party, his representatives or additional parties during the investigation and review proceedings. This report shall contain a summary of the object of the communication and the conclusions reached. In addition it shall 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 Diario Oficial de la Federación 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 Diario Oficial de la Federación.

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 reversal, 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 additional parties 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 comprehensive 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. When the time-limit to which Article 80 of the Act refers has expired, 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 explain 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 subparagraphs 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 additional 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 security 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, personal 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 Diario Oficial de la Federación 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 right 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 Diario Oficial de la Federación 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, additional 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 should 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. Upon the conclusion of the period for the submission of evidence, the Ministry shall open a period of pleadings during which the interested parties may submit in writing their conclusions on the substance or 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 or 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.