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Takeuchi Waldegren, Linn

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PO Box 117
221 00 Lund
+46 46-222 00 00

Antidumping in Mexico

Linn Takeuchi

Supervisor: Yves Bourdet

Abstract

Today antidumping policy is recognized as a major defense against import competition in many countries and for many the policy is governed by the **Antidumping Agreement of the GATT**. It has been noticed that **antidumping** is increasing among the developing countries around the world and at the same time the antidumping policy is recognized to have negative impacts on trade and welfare. As the users increase it becomes more important to understand this instrument and in order to study the antidumping policy in a developing country, **Mexico** was chosen. The main purpose of this thesis is to present the antidumping policy in Mexico and its implementation.

In many cases the antidumping policy is being adopted in connection with **economic liberalization** and this was also the case of Mexico. The correlation of adopting an antidumping policy and economic liberalization has been worrisome and there is concern that liberalization is being hampered by this policy. Could the policy be just another instrument of **protectionism** replacing the previous trade barriers being brought down by the liberalization? Regional agreements seem to be today's solution to this problem and are hoped to secure important markets and help protect economic liberalization.

Mexico is a member of the **NAFTA** and this made it possible to study the antidumping policy in a regional agreement. The material also allows an analysis of how the producers reacted to the signing of the agreement and how the uncertainty created by this action was reflected in the number of antidumping cases. The correlation, between actual imports and antidumping cases, was found to be weak and the material regarding Mexico shows a tendency for the producers to rather react to the potential imports than actual imports.

Keywords: Mexico, antidumping, Antidumping Agreement of the GATT, economic liberalization, protectionism, NAFTA

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Glossary

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| AD | Antidumping |
| Antidumping Agreement | Article VI of the General Agreement on Tariffs and Trade of the World Trade Organization, supplementary provisions to that article and the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade of the World Trade Organization |
| COCEX | Foreign Trade Commission (<i>Comisión de Comercio Exterior</i>) |
| DOF | Official Journal of the Federation (<i>Diario Oficial de la Federación</i>) |
| FTA | Free Trade Agreement |
| GATT | General Agreement of Tariffs and Trade |
| NAFTA | North American Free Trade Agreement |
| SECOFI | Department of Trade and Industrial Promotion (<i>Secretaría de Comercio y Fomento Industrial</i>) |
| UPCI | Unit of International Trade Practices (<i>Unidad de Prácticas Comerciales Internacionales</i>) |
| WTO | World Trade Organization |
| The Ruling Law | The Ruling Law of Article 131 of the Constitution of the United Mexican States (<i>Ley Reglamentaria del Artículo 131 de la Constitución Política de los Estados Unidos Mexicanos en Materia de Comercio Exterior</i>) |
| The Act | Foreign Trade Act (<i>Ley de Comercio Exterior</i>) |

Countervailing duty: duties that are applied to goods imported which are dumped or subsidized in the country of origin according to the provisions of the Foreign Trade Act.

Preliminary countervailing duty: can be imposed during investigations addressing unfair international trade practices and safeguard measures

Final countervailing duty: can be imposed when investigations addressing unfair international trade practices and safeguard measures have been concluded

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1 Introduction

1.1 Statement of Purpose and Limitations

Antidumping policy is hard to justify in terms of economic theory and yet today it is one of the major defenses against import competition in many countries. This thesis will concentrate on studying Mexico's antidumping policy. Questions and aspects I set out to answer and highlight in this thesis:

1. What is dumping and antidumping?
2. What are the arguments behind the antidumping policy in Mexico?
3. What does the antidumping policy look like in Mexico?
4. Implementation of the antidumping policy in Mexico.

I have studied Mexico as an example of a developing country that has adopted the antidumping policy. The Mexican case may not reflect all other developing countries' different considerations and views regarding dumping but neither do I think that the case of Mexico is profoundly different from other countries. This is why I believe that by studying Mexico some general insight about this policy can be gained.

An important objective of this paper is to study the antidumping policy in a developing country (Mexico) because it has been recognized that the use of this policy is mainly increasing among these countries (see table 1.1, p. 3). It is important to realize potential effects of this policy and the reasons behind the usage of the policy. As the numbers of users increase, the need to understand this policy will also increase.

1.2 Case Selection

Mexico adopted the antidumping system at the same time as it decided to liberalize its trade during the 1980's, and has the largest caseload of antidumping measures in force among the developing countries. Further, compared to other developing countries Mexico was early to adopt an antidumping legislation. I chose Mexico based on these facts hoping that the

country's experience with the policy would help me gather relevant information and highlight the issue of antidumping in developing countries.

1.3 History of Antidumping

The first antidumping law was passed in Canada 1904 after being proposed by the minister of finance at that time, W.S. Fielding. It was felt that the law would give the country the necessary protection against dumping which was seen as something evil and harmful. Soon after the antidumping law was passed in Canada other countries followed. By 1921, Australia, New Zealand, the United States, France, Great Britain and most of the British Commonwealth countries had antidumping laws.¹

The concept of dumping was from the beginning selling abroad at a price below domestic price but the concept has gradually broadened over the years. Today, for many countries, the national legislation is governed by Article VI of the General Agreement on Tariffs and Trade of the World Trade Organization, supplementary provisions to that article and the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade of the World Trade Organization. Hereafter referred to as the Antidumping Agreement. The Antidumping Agreement of the GATT has been in force since 1968.²

This instrument has turned out to be both politically favorable and hard to control once unleashed, and antidumping has become a major tool for controlling imports and it is one of the most powerful instruments domestic industries have today when seeking relief from import competition.³

Previous to 1985 there were no reported cases of antidumping measures initiated by a developing country, but only five years later the picture had changed dramatically.⁴ In 1999 the developing countries were responsible for roughly 40 percent of the total amount of anti-dumping measures in force in the world (see table 1.1, p. 3). Correlation between liberalization and antidumping has been noticed and the question is if this indicates the device has become protectionist in nature. There is a concern that the achievements of economic liberalization might be hampered by the increasing usage of antidumping measures.⁵

¹ Finger (1993) pp. 14-17

² Runnbeck (1996) p. 3

³ Prusa (1999) pp. 3-4

⁴ Runnbeck (1996) p. 18

⁵ Prusa (1999) p. 2

Table 1.1 Antidumping Measures in Force in the World 1995 - 1999

| | 1995 | 1996 | 1997 | 1998 | 1999 |
|-----------------------------------|------|------|------|------|------|
| Initiated By: | | | | | |
| Developed Countries | 694 | 642 | 661 | 693 | 653 |
| annual change in % | | -7 | 3 | 5 | -6 |
| of world total in % | 73 | 70 | 68 | 75 | 58 |
| Developing Countries | 254 | 277 | 307 | 231 | 475 |
| annual change in % | | 9 | 11 | -25 | 106 |
| of world total in % | 27 | 30 | 32 | 25 | 42 |
| Total Amount of Measures in Force | 948 | 919 | 968 | 924 | 1128 |

Source: Kommerskollegium

2 Dumping in International Trade

- Theoretical and Practical Aspects

2.1 Price Discrimination

Price discrimination means selling identical products at different prices in different markets. In the short run companies will normally try to at least cover their **marginal cost**, the cost of producing one more unit. Since the fixed costs will be incurred whether or not they produce any goods this is a normal and rational decision. On the other hand if the marginal cost is not covered the company might as well stop the production since every additional output will cost them money. In the long run, however, companies will have to cover all their costs, both fixed and variable. This means that the total cost per unit, i.e. **average cost**, must be covered.

If a market is characterized by imperfect competition, which it often is in reality, companies will choose a price depending on how much they wish to sell. The higher the price the less will be sold. If a market is characterized by perfect competition, companies will treat prices as given when making their profit-maximizing decisions. The model of imperfect competition is probably closer to reality. Further different markets usually have different demand elasticity, i.e. the prices will differ in these markets. The more elastic a demand is the more price-sensitive it is. A lower price will be charged in the price-sensitive market and a higher price in the less price sensitive market in order to maximize profits.

In order to price discriminate, the following two conditions must be satisfied: **market segmentation** to avoid parallel imports and **different demand elasticity** in the markets to allow different prices to be charged. Segmentation of the markets is crucial if price discrimination is to be possible. If the market is not sealed off from secondary import, i.e. re-importation of the cheaper identical product sold in the other market, price discrimination will be impossible.⁶

If a lower price is a result of a more efficient use of resources, this will reallocate resources to where it is more efficiently used in an economy and thus it will be welfare enhancing. Prices that result from an efficient use of resources are said to reflect real efficiency. The more productive companies will push out the less productive companies and

⁶ Runnbeck (1996)

thereby free resources, which then can be utilized by more productive companies. In the long run this will be to the advantage of the economy.

Given normal circumstances a company will try to maximize profit. In the short run a company may however behave differently. It may forgo profit in order to gain market power or a depressed market may force the company to lower its prices because the demand is too small, and a small income will be preferred to no income at all. A lower price could allow a company to survive in a temporarily depressed market and hopefully avoid laying off personnel, or even worse, being forced to lay down the production altogether. This example of short run strategy of coping with temporary demand problems saves jobs. Other reasons for variations in price may be due to cyclical variations in business cycles, market penetration, increasing returns to scale, defending an existing market, and differing demand elasticity.⁷

2.2 Dumping and the World Trading System

Price discrimination is a common price strategy among companies and as long as the prices reflect real efficiency this strategy will help resources to be reallocated where they can be efficiently used. While it is not illegal to price discriminate internationally, there is legislation under which domestic producers can seek protection against price discriminated imports.

The Antidumping Agreement has brought some unity, which was hoped to benefit trade, but at the same time has the dual effect of spreading the use of an instrument that is increasingly being criticized for its negative impacts on trade. The Antidumping Agreement states that a good is considered **dumped** when the **export price** (the price of the product in the country of import) is less than the **normal value** (the price charged in the exporters home-market in the **ordinary course of trade**). Trade is not considered normal if a price is less than **average total costs**. Average total cost is the sum of fixed and variable costs of production plus selling, general and administrative costs. If there are no comparable sales in the domestic market the highest comparable price charged in third markets or the exporting firm's estimated costs of production plus a reasonable amount of profits, administrative, selling and other expenses is used to determine normal value.⁸

If an export price is missing or considered unreliable by the authorities due to a relationship or agreement between parties involved in the transaction, export price can be

⁷ Kostecki (1991)

⁸ Article 2 of the AD Agreement

reconstructed based on the price at which the good has been first resold to an independent buyer. If the good is not resold to an independent buyer, reconstruction may be made “on such reasonable basis as the authorities may determine.”⁹

Antidumping measures may only be applied if **dumped products have caused or threaten to cause material injury to domestic producers of like goods** and this must be proved with positive evidence.¹⁰ It is **optional** to enforce the antidumping legislation and impose antidumping duties, when all conditions for imposition are met.¹¹ Countries are i.e. free to take into consideration the effects of dumped imports on other segments in the economy (consumers and secondary-line producers for example) before deciding on remedies. It is also stated in the Antidumping Agreement that it is desirable that the imposition of a duty is **permissive**.¹² Meaning that it is preferred that a lesser duty is used when a lesser duty would be adequate to remove the injury / threat of injury to the domestic industry.

The volume of the dumped products, the effects on the prices in the domestic market due to the dumped products, and the effect on domestic producers are to be objectively assessed when determining **material injury**.¹³ Other factors, that are known and injuring the domestic industry, are to be taken into account and are not to be attributed to the imported goods.¹⁴ **Domestic industry**¹⁵ is considered to be the domestic producers of **like goods**¹⁶ with the exception of those who are **related** to the exporters or importers or themselves are importer of the dumped product.¹⁷

For actions to be taken the **dumping margins**, the difference between the 'normal value' and the actual price, are *de minimis* required to be 2 percent or the volume of imports/injury that are/is not negligible.¹⁸ Authorities can also **cumulatively** assess the effects of imports from more than one country. This can be done if the dumping margins of each country exceeds *de minimis*, the volume of imports are not negligible, and a cumulative assessment of effects is appropriate considering the conditions of competition among the imported products and between the imported products and the like domestic product.¹⁹

⁹ Article 2 of the AD Agreement

¹⁰ Article 1 of the AD Agreement

¹¹ Article 9 of the AD Agreement

¹² Article 9 of the AD Agreement

¹³ Article 3 of the AD Agreement

¹⁴ Article 3.5 of the AD Agreement

¹⁵ Article 4 of the AD Agreement

¹⁶ Article 2.6 of the AD Agreement

¹⁷ Article 4 of the AD Agreement

¹⁸ Article 5.8 of the AD Agreement

¹⁹ Article 3.3 of the AD Agreement

3 Antidumping in Mexico

3.1 History of Antidumping in Mexico²⁰

Mexico started a process of economic liberalization in the early 1980's. Before 1982 the development of the country was based on a model of import substitution and the main objectives were industrialization, endowment of infrastructure and economic diversification. The consolidation of the national industry and modernization of the Mexican economy, were pursued through the application of relatively elevated tariffs, import licenses and other forms of commercial protection. However, this jeopardized the long-term success due to the limited size of the internal market, inefficiency, and lack of competitiveness.

In 1982 the financial crisis, caused by the external debt, the fall of the international price of petroleum and other factors, made the import substitution model unsustainable. It became apparent that the policies of commercial protection did not create the necessary incentives to increase productivity and sustain economic growth. The crisis made it necessary to reframe the previous development model and to establish a strategy of growth based on a more outward oriented regime to promote efficiency, better resource allocation, and employment.

Mexico changed its trade policy, lowered the tariffs, eliminated quantitative restrictions, and import licenses. The opening of the Mexican market stimulated the non-oil exports, which began to grow in importance in the economy, and also increased the volume of imports. The increased competition in the Mexican market, generated by an increase in imported products at international prices, promoted a better allocation of resources and greater efficiency.

The process of economic liberalization Mexico initiated in the early 1980's had positive effects on the country's economy. However, it was felt that the potential benefits of the more outward oriented regime would not be fully reached if it was not complemented by an effective policy that would protect the domestic producers against unfair trade.

Another objective of this policy was to give credibility to, and guarantee, the process of economic liberalization by applying safeguard measures as an escape valve and thereby reduce adjustment costs caused by increased competition. This would give the domestic

²⁰ This section is based on information received from Concepción Ramírez Watanabe, Jefe del Departamento de Difusión, SECOFI, via e-mail 27 November 1999.

producers time to adjust to an increasingly competitive environment. Safeguard policies are used to protect the domestic producers from imports that expand more rapidly than expected.²¹

The Ruling Law (*Ley Reglamentaria*) was approved in 1985 and in 1986 the Regulations against Unfair International Trade Practices was approved. The system consolidated until 1987 with the subscription of the Antidumping Agreement. The same year the first investigation against unfair trade practices was initiated in Mexico.

As of 1987 a series of national and international events in addition to the opening of the Mexican market promoted the increase of imports. The events recognized by Mexico as the most significant were the following:

- In the beginning of 1987 the peso was underestimated due to the constant exchange adjustments but during the period from the end of 1987 to 1990 the peso began to appreciate, a tendency which lasted until 1994.
- The gross domestic product showed a recovery between 1991 and 1994, which generated an increase in the demand for intermediate goods mainly iron, steel, and chemical products.
- The Republic of China increased its penetration of the market with products at low and commercialized prices.
- A period of worldwide recession and the appearance of new participants in the world trade from Central Asia, East Europe, and the new independent states of the ex-Soviet Union.
- International markets of several products entered a recessive phase in their cycle, which caused an increase in their inventories and lower prices.

3.2 Unit of International Trade Practices - UPCI²²

The project to create a specialized unit to investigate cases of unfair international trade practices started when Mexico started liberalizing the trade and the unit started running when Mexico initiated the writing of a new legal frame that would regulate their trade with other

²¹ Markusen et al (1995) p. 345

²² This section is based on information received from Concepción Ramírez Watanabe, Jefe del Departamento de Difusión, SECOFI, via e-mail 27 November 1999.

countries. The writing of a new legal frame was a result of the negotiations to enter the GATT.

With the publication of the Ruling Law and the Regulations against Unfair International Trade Practices, Mexico for the first time initiated an administrative procedure to determine the existence of unfair trade practices and the amount of countervailing duty necessary to correct the distortions caused in the market by this practice. As a result the *Dirección de Cuotas Compensatorias* (General Management Office of Countervailing Duties)²³ was created within the *Dirección General de Servicios al Comercio Exterior* (General Management Office of Foreign Trade)²⁴ of the *Secretaría de Comercio y Fomento Industrial* (Department of Trade and Industrial Promotion)²⁵, **SECOFI**. The *Dirección de Cuotas Compensatorias* was to handle the cases of unfair international trade practices. The first request for investigation came from several chemical companies against the imports of caustic from the United States. A team consisting of ten people carried out the first procedure and the first resolution was published in the *Diario Oficial de la Federación* (Official Journal of the Federation), **DOF**, in January 1987. See appendix A 1.12 for the result of the investigation.

Since then the system has developed and this was reflected in the increase of cases, their increased complexity, and the transformation of the office handling the cases. In 1991 the *Dirección de Cuotas Compensatorias* was transformed into the *Dirección General de Prácticas Comerciales Internacionales* (General Management Office of International Trade Practices)²⁶, and two years later it became the *Unidad de Prácticas Comerciales Internacionales* (Unit of International Trade Practices)²⁷, **UPCI**. The UPCI is organized in a Headquarters Unit and five Main General Management Offices, which are responsible for different areas that are involved in the investigations of unfair international trade practices and safeguard measures. See figure 3.1 on p. 10.

UPCI recommends to SECOFI the application of, and the amount of, countervailing duties when it is demonstrated that imports of a product is subsidized and/or dumped and cause or threatens to cause injury to the domestic industry. UPCI helps the *Secretario del Ramo* (Secretary of the Branch)²⁸ to propose, to the President of Mexico, the application of

²³ Author's translation

²⁴ Author's translation

²⁵ Author's translation

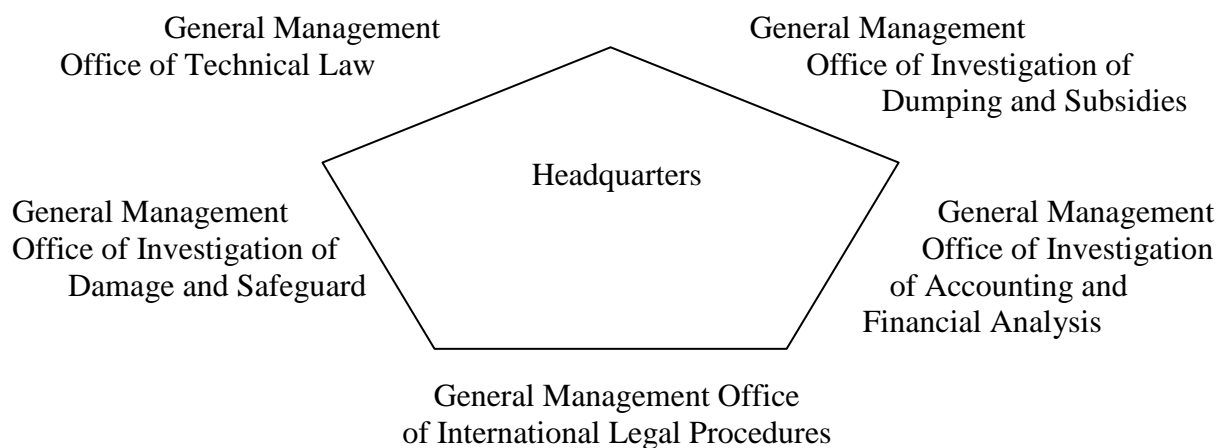
²⁶ Author's translation

²⁷ Author's translation

²⁸ Author's translation

safeguard measures if it is determined that a productive sectors of the country faces serious injury or is threatened to be injured due to a substantial increase in imports.

Fig. 3.1 Structure of UPCI



Other responsibilities of UPCI is to act as a technical consulting unit for SECOFI and other Mexican government offices regarding unfair international trade practices, safeguard measures, and international trade negotiations; take part in the formulation of reforms to the Act and its Regulations; take part in the defense of the resolutions emitted by SECOFI when controversies arise from treaties and commercial agreements to which Mexico is obliged; offer help to Mexican exporters involved in foreign investigations of unfair trade and safeguard measures; and give consulting services for the proper defense of the Mexican producers' interests. For more information about SECOFI see appendix 4.

3.3 The North American Free Trade Agreement - NAFTA

The North American Free Trade Agreement, **NAFTA**, took effect in 1994 as the first free trade agreement between two industrialized countries, the United States and Canada, and a semi-industrialized country, Mexico. Since Canada and the United States are already highly integrated, NAFTA is presently primarily centered on negotiations between the United States and Mexico. The establishment of NAFTA reflected frustration with the slow progress of the multilateral agreements and the concern for the possible negative impact of the EU on trade. The fact that the smaller countries, Canada and Mexico, desired to secure their access to the markets of their larger trading partner, the United States, was yet another important factor

driving the free trade agreement. Mexico, apart from its desire to secure an important market for its exports, also hoped that the NAFTA would attract foreign direct investment and also give credibility to the economic policy reforms taken in the country.²⁹

The effects of NAFTA are hard to assess partly because it is difficult to know how the picture would have looked without the NAFTA. Tariffs are gradually removed over a 10 to 15 year period. The time varies depending on commodity category. Other factors such as continuing multilateral trade negotiations, other free trade agreements' effect on world trade etc. also effect trade patterns. In the case of Mexico there were several events which were significant during the last twenty years and that probably had a greater effect on Mexico's trade flows than the NAFTA.

By 1990 Mexico had significantly liberalized its trade and had an average tariff level of 10 percent against U.S. imports, compared to the U.S. average level of 4 percent for imports from Mexico. At the same time as Mexico was liberalizing its trade, Mexico adopted a nominal anchor exchange rate regime starting in 1987, which meant the Mexican Peso was appreciating in real terms after 1987. This was reflected in the falling share of Mexican exports as a share of GDP between 1987 and 1992. The share fell from 19.7 percent to 12.7 percent of GDP during this period while imports grew from 13.4 percent to 18.8 percent of GDP between 1987 to 1994. In 1994, a year marked by political instability, the Mexican Peso was devaluated 15 percent.

As a result of the crisis in 1994 – 95, called the “tequila crisis”, the Mexican government imposed a surcharge on all imports entering Mexico except those from NAFTA, and following the fall in oil prices in 1998 and early 1999 this tax was subsequently raised. These measures are clearly in favor of NAFTA members and as Anne Krueger (1999) says, it could not have resulted in anything but trade diversion. However Krueger also points to the fact that sufficient indication exists that there has been trade expansion, in both absolute terms and as a percentage of total trade, among NAFTA members in the 1990's.

Evidence she found indicates that those commodity categories in which Mexican exports grew the most where the same categories in which Mexican exports to the U.S. grew the most, which would imply that the trade expansion was trade creating rather than trade diverting.

²⁹ ECLAC (1994) p. 23 ; ECLAC (1999) p.40

Table 3.1 Mexican Trade 1980 – 1998 (in billions of U.S. dollars and as percent of total trade)

Mexican Exports

| Year | Total Exports | Exports to U.S. | Percent | Exports to Canada | Percent |
|------|---------------|-----------------|---------|-------------------|---------|
| 1980 | 18,0 | 12,5 | 69,4 | 0,1 | 0.8 |
| 1985 | 26,8 | 19,0 | 70,8 | 0,4 | 1.8 |
| 1990 | 40,7 | 32,3 | 79,4 | 0,2 | 0.8 |
| 1991 | 42,7 | 34,0 | 79,5 | 1,1 | 2.7 |
| 1992 | 46,2 | 37,5 | 81,1 | 1,0 | 2.2 |
| 1993 | 51,8 | 43,1 | 83,3 | 1,5 | 3.0 |
| 1994 | 60,9 | 51,9 | 85,3 | 1,5 | 2.4 |
| 1995 | 79,5 | 66,5 | 83,6 | 2,0 | 2.5 |
| 1996 | 96,0 | 80,7 | 84,0 | 2,2 | 2.3 |
| 1997 | 110,4 | 94,5 | 85,6 | 2,2 | 2.0 |
| 1998 | 106,8 | 87,3 | 81,8 | 4,9 | 4.5 |

Mexican Imports

| Year | Total Imports | Imports from U.S. | Percent | Imports from Canada | Percent |
|------|---------------|-------------------|---------|---------------------|---------|
| 1980 | 17,7 | 10,9 | 61,6 | 0,3 | 1.8 |
| 1985 | 13,4 | 9,0 | 66,6 | 0,2 | 1.8 |
| 1990 | 30,0 | 19,8 | 66,1 | 0,4 | 1.3 |
| 1991 | 49,9 | 36,9 | 73,9 | 0,7 | 1.4 |
| 1992 | 62,1 | 44,3 | 71,3 | 1,1 | 1.7 |
| 1993 | 65,4 | 46,6 | 71,2 | 1,2 | 1.8 |
| 1994 | 79,3 | 57,0 | 71,8 | 1,6 | 2.0 |
| 1995 | 72,5 | 54,0 | 74,5 | 1,4 | 1.9 |
| 1996 | 89,5 | 67,6 | 75,6 | 1,7 | 1.9 |
| 1997 | 109,8 | 82,2 | 74,8 | 2,0 | 1.8 |
| 1998 | 106,9 | 79,0 | 73,9 | 0,9 | 0.8 |

Source: Krueger (1999)

According to G. R. Wingham (1998) integration also has other important effects, which can be seen in the case of NAFTA and Mexico today. As integration deepens national restrictions on trade are reduced and greater attention will be focused on the remaining trade distorting actions that occur within countries. This was the case both for Canada with the Free Trade Agreement, **FTA**, and Mexico with the NAFTA. These countries had substantial access to the U.S. market prior to the negotiation of a regional agreement and integration was further

deepened by the urge to secure their access of this market. As the integration deepened, the concern about the restrictions produced by the administration of unfair trade remedies led to the creation of the dispute settlement procedure for antidumping and countervailing duty measures in Chapter 19 of the FTA and was later extended to the NAFTA.

Following the Trade Act of 1979, cases against unfair trade (dumping and subsidy) literally exploded in volume in the U.S. and Canada responded by initially creating legislation and administrative procedures on unfair trade similar to those in the U.S. Then Canada demanded as a part of a bilateral free trade agreement (the FTA) that they be exempted from U.S. unfair trade remedies. The rationale behind this demand was the threat of losing the access, gained by the FTA, piecemeal through the unfair trade remedies and the uncertainty created by these actions. The U.S. did not accept this and had Canada persisted the free trade agreement would have ended. Canada then proposed that antitrust legislation replace the antidumping duties, and to negotiate a subsidy code of agreed ground rules on subsidies that would reduce the need for countervailing duties. Neither of these proposals was successful.³⁰

Canada held a perception that U.S. practices regarding unfair trade were politicized and was concerned that the uncertainty created by the politicized process made it difficult to create a stable trade and investment climate in Canada. The U.S. rejected this accusation but found it hard to assure foreigners of the appearance of due process when conducted wholly within U.S. territory. The final breakthrough came with the proposal of a binational dispute settlement panel, which would replace judicial review of unfair trade actions by the individual countries. No changes would be made to the existing laws but the panel, where the countries would be equally represented, would be responsible of applying the domestic unfair trade legislation in whichever country a case arose.³¹

The binational dispute settlement was written into Chapter 19 of the FTA and was a step away from the notion that domestic agencies were solely answerable towards domestic legal institutions. The provisions in Chapter 19 were intended to be maintained for a period of seven years during which the U.S. and Canada were to continue negotiations to establish common rules regarding unfair trade that would eliminate the need for antidumping and countervailing duties.³²

Later, during the NAFTA negotiations, it initially seemed impossible to incorporate Chapter 19 due to irreconcilable differences in legal systems. The Mexican system against

³⁰ Wingham (1998)

³¹ Wingham (1998)

³² Wingham (1998)

unfair trade was different on a number of points but Mexico was willing to alter its legislation in return for gaining access to Chapter 19. Here integration has generated a desire and movement toward deeper integration, which in turn has led to harmonization of domestic legislation among the involved countries. The changes Mexico had to make in its legislation were considerable and it should be remembered that countries in trade negotiations often resist such intrusion into domestic law. In this sense it was quite an accomplishment and it also gives hope for continued harmonization, possibly eliminating the need for unfair trade remedies.³³ However, NAFTA made Chapter 19 a permanent part of the trade agreement, and for the time being there are no indications of that changing in the near future.³⁴

Today, each NAFTA member reserves the right to apply its antidumping law and countervailing duty law to goods imported from the territory of any other member according to chapter 19 of the NAFTA. Antidumping law include, as appropriate for each member, relevant statutes, legislative history, regulations, administrative practice and judicial precedents. Members have the right to request a **binational panel review**³⁵ based on the administrative record, a final antidumping, or countervailing duty determination of a competent investigating authority of an importing member. The panel will determine whether such determination was in accordance with the antidumping or countervailing duty law of the importing member.³⁶

3.4 Dumping in Mexico Today

In the following two sections the Mexican legislation against unfair international trade will be presented. It is not meant to be a comprehensive analysis of the legislature against unfair trade but rather a presentation of the legislature regarding antidumping in Mexico to get a basic understanding of the antidumping measure and to present the important parts and definitions from an economic point of view.

The Ruling Law was replaced by the Foreign Trade Act (*Ley de Comercio Exterior*) in 1993, hereafter referred to as the **Act**. Under the Act price discrimination or subsidization in the country of origin, will be considered **unfair international trade practices**. Individuals or legal entities that import goods to Mexico under unfair international trade practices, which

³³ Wingham (1998)

³⁴ Interview with Dr. Juan Saldaña at UPCI, 25 Jan. 2000

³⁵ See appendix 3.

³⁶ Chapter 19 of the NAFTA

cause or threaten to cause damage to domestic production, must pay a **countervailing duty** in accordance with the provisions of the Act.³⁷

There is a conflict between the Federal Law of Economic Competition (1993) and the antidumping policy, because the antidumping policy results in higher prices. The recognition of this conflict led to the Administrative Collaboration Agreement, in Mexico, in an effort to promote and protect competition in the Mexican market. This agreement enables the Unit of Unfair Trade Practices (UPCI) to ask the Federal Competition Commission's opinion on the possible effects of investigations on competition and freedom of access.³⁸ Mexico also has a "general interest clause" (article 88 of the Act) in the legislation which states that negative impacts on other production process and on consumers should be avoided while providing timely defense for the domestic industry.

Importation of goods under conditions of **price discrimination**³⁹ is defined as the introduction of goods into the nation territory at a value less than the normal value. **Normal value** is defined as the comparable price, of identical or like goods, in the domestic market of the country of origin in the ordinary course of trade. If such sales of identical or like goods do not exist, or when such sales do not allow a valid comparison to be made, normal value will be considered to be:

- 1) The **comparable price** of an identical or like product exported from the country of origin to a third country in the ordinary course of trade.⁴⁰
- 2) The **reconstructed** normal value based on the sum of the cost of production, general expenses, and a reasonable profit.⁴¹ Reconstruction will take place when normal value cannot be established, due to the lack of a comparable price of an identical or like product, or within a representative period, which is to correspond to normal business transactions in the country of origin. Sales in the country of origin or export sales to a third country, which show sustained losses will be excluded in the reconstruction of normal value.⁴²

³⁷ Article 28 of the Act.

³⁸ Mexico's Annual Competition Report 1994-1995 and WTO Trade Policy Review Mexico 1997

³⁹ Article 30 of the Act.

⁴⁰ Paragraph 1 of article 31 of the Act.

⁴¹ Paragraph 2 of article 31 of the Act.

⁴² Paragraph 2 of article 31 and article 32 of the Act and article 42 of the Regulations.

As a general rule comparable prices of identical or like are considered to be **representative** when they account for at least 15 percent of the total volume of sales of the goods subject to investigation.⁴³ Also as a general rule, domestic sales for profit or similar export sales to a third country are considered representative when they account for at least 30 percent of the relevant market.⁴⁴

Business transactions, which reflect market conditions in the country of origin and have been carried out normally between independent buyers and sellers, are considered **normal business transactions / ordinary course of trade**.⁴⁵ If the country of origin is a **centrally managed economy**⁴⁶ the normal value will be determined by using the price of an identical or like product in a third country with a market economy.⁴⁷ Mexico will be used as a third country if there is no third country, similar to the exporting country, with a market economy where an identical or like goods is produced.⁴⁸

When goods are exported to Mexico from an **intermediate country** and are not exported directly from the country of origin, the normal value will be the comparable price of identical or like goods in the country of export. If the goods in question are merely **transshipped** through, or are not produced in the country of export or there is no comparable price for them in that country, the normal value / export price will be determined on the basis of the market price / export price in the country of origin.⁴⁹ If there is **no export price** or if SECOFI finds that the export price is not comparable with the normal value, the export price can be calculated on the basis of the price at which the imported products are first resold to an independent buyer in the national territory.⁵⁰

To compare the export price and the normal value, SECOFI will make the necessary adjustments. Differences in the terms of conditions of sale, quantities, physical characteristics and tax charges will be taken into consideration. It is, however, up to the interested party to request such an adjustment and also to provide the supporting evidence to SECOFI.⁵¹

The definition of price discrimination in the Mexican legislature is different from the one in economic theory. In the Antidumping Agreement the term ‘dumping’ is used instead of ‘price discrimination’ but the definitions are the same since the ‘normal value’ is used when

⁴³ Article 42 of the Regulations.

⁴⁴ Article 43 of the Regulations.

⁴⁵ Article 32 of the Act.

⁴⁶ For definition of a centrally managed economy see article 48 of the Regulations.

⁴⁷ Articles 31 and 33 of the Act.

⁴⁸ Article 48 of the Regulations.

⁴⁹ Article 34 of the Act. Also see article 49 of the Regulations.

⁵⁰ Article 35 of the Act.

⁵¹ Article 36 of the Act.

defining ‘unfairly’ priced imports. To avoid confusion, the term ‘dumping’ will be used for what is considered unfair trade practices according to the Antidumping Agreement and the Mexican Foreign Trade Act. ‘Price discrimination’ will be used according to definitions in economic theory.

The definition of dumped goods in both the Mexican legislation and in the Antidumping Agreement of the GATT has the following characteristics. Prices will be considered ‘unfair’ not only if they are discriminatory, but also if they are below ‘normal value’. Although export price and domestic price are the same, they can still be below ‘normal value’. Therefore they can be considered dumped and dutiable according to the antidumping policy. Discriminatory prices will also be considered as dumped even if they are above ‘normal value’.

The term ‘normal value’ is a strictly legal term and there is no support, in economic theory, that prices below ‘normal value’ are unfair or potentially harmful for an economy. The term ‘normal value’ uses average cost plus a reasonable profit margin⁵² as the lowest acceptable price, while in economic theory it is recognized that a profit-maximizing company will use marginal cost when determining their prices. This means antidumping does not make much economic sense because virtually all prices, which make good economic sense according to economic theory, can be considered as legally unfair. The problem is not that truly injurious practices, which result in prices that are not a result of an efficient use of resources, do not exist. The problem with the current legislation is that it is incapable of distinguishing between fair and unfair prices.

Dumped goods are seen as unfair. This is based on the assumption that dumped goods are cheap due to unfair practices, such as cross-subsidization and predatory dumping. In both of these cases **market access restriction** and **market power** are necessary conditions. Market access restrictions are barriers making it difficult to enter a market. These barriers create possibilities for companies to cross subsidize their products. The restrictions will enable a company with enough market power in a market to charge a higher price than what would be possible if the market was competitive. The dominant company can then sell products to other markets, where they do not have any market power, at an artificially low price with the help of the extra revenue.

Predatory dumping is a strategy to gain market power and reap monopoly profits in a market, using prices below marginal cost. The aim is to push other competitors out of the

⁵² See article 46 of the Regulations for a more detailed description of how the price is reconstructed.

market and then raise the prices to reap excess profit. The strategy is to forgo profit today for larger profits tomorrow. For predatory dumping to be worthwhile, future entry by new competitors must be avoided to ensure the expected future gain. Prohibiting future entry will require a global dominance or a host government that supports or tolerates high entry restrictions. Due to the complexity of this strategy, successful cases of predatory dumping are unheard of.

The current legislation does not require that the necessary conditions, which facilitate prices that do not reflect real efficiency, i.e. unfair prices, be proven in the antidumping investigations. Neither is the antidumping policy capable of distinguishing between prices, which reflect real efficiency and those that do not. These two qualities, I believe, are central problems with today's antidumping policy in Mexico.

3.5 Definition of Injury and Threat of Injury in Mexico

A necessary finding according to article 28 of the Act is that imports injure or threatens to injure the domestic producers. **Injury** is defined as, material loss or impairment or deprivation of any lawful normal gain which the domestic producers of the goods in question may suffer, or impediment to the establishment of new industries. It must be established that the injury or threat of injury to the domestic industry is a direct consequence of import of goods that are dumped or are subsidized in the country of origin. Other known factors, which may be effecting domestic production, are to be taken into consideration.⁵³ **Domestic industry** is understood as referring to at least 25 % of the domestic production of the goods in question. Producers who are related to the importers or exporters or are themselves importers of the product under investigation will be excluded,⁵⁴ i.e. the term domestic industry will be interpreted as 25% of the rest of the producers.⁵⁵

When determining whether imports are **causing injury** to the domestic industry the following criteria will be taken into account by SECOFI: ⁵⁶

⁵³ Article 39 of the Act and article 69 of the Regulations.

⁵⁴ See article 61 of the Regulations for a complete list of considerations when determining 'relation'.

⁵⁵ Article 40 of the Act.

⁵⁶ Article 41 of the Act and articles 59, 63-66 of the Regulations.

- The volume of dumped imports, in order to determine whether there has been a significant increase in such imports in relation to the country's domestic production or consumption;
- The impact that the dumped imports has, or may have, on the prices of identical or like products on the domestic market. SECOFI will also evaluate whether imports are depressing prices in an abnormal manner or if the imports are preventing a reasonable price rise which would have otherwise taken place;
- The impact that dumped imports have had, or may have, on domestic producers of identical or like goods to those imported, considering all the relevant economic factors and indices effecting the sector in question, such as: actual and potential decline in output, sales, market share, profits, productivity, return on investment, or utilization of installed capacity; factors affecting domestic prices; negative effects, actual and potential, on cash flow, inventories, employment, wages, ability to raise capital, investment or production growth;
- Any other elements that SECOFI deems appropriate.

The existence of **threat of injury** will be determined using the following criteria: ⁵⁷

- An increase in the importation of dumped goods, pointing to a well-founded probability of a significant increase in such imports in the immediate future;
- The freely disposable capacity of the exporter or an imminent substantial increase therein, pointing to the well-founded probability of a significant increase in dumped exports to the Mexican market, with due regard for the availability of other export markets to absorb any additional exports;
- Whether imports will have a significant depressing or suppressing effect on domestic prices, and are likely to increase demand for further imports;
- Inventories of the product under investigation;
- Where appropriate, the expected return on realizable investments;
- Any other elements that SECOFI deems appropriate.

SECOFI can **cumulate** the volume and the impact of imports of identical or like products from two or more countries under investigation.⁵⁸

⁵⁷ Article 42 of the Act and article 68 of the Regulations.

⁵⁸ Article 43 of the Act and article 67 of the Regulations.

4 Implementation of Antidumping in Mexico

4.1 Procedure in Relation to Unfair International Trade Practices

4.1.1 Initiation of Procedure, and the Preliminary and Final Resolutions

An antidumping procedure begins with a written **request**⁵⁹ to the competent authority (SECOFI), by an interested party, or may be initiated ex officio.⁶⁰

Investigations initiated **ex officio** are subject to the same legal and regulatory provisions as those applicable to investigations undertaken at the request of a party.⁶¹ An **interested party request** can be submitted by a natural or legal person producing identical or like goods to those being imported, or to those intended for import, under unfair international trade practices. Also considered as natural and legal persons are those producing identical or like goods or goods directly competitive with goods being imported under conditions and volumes such that it seriously injures or threatens to injure the production.⁶² Further the requesting party must prove that they represent at least 25 percent of the domestic industry excluding those producers who are related to the exporters or importers of the good in question.⁶³

After receiving the request SECOFI has 30 days⁶⁴ to either declare the investigation initiated or rejected, and publish the resolution in the DOF.⁶⁵ SECOFI shall also compile an **administrative dossier** on which the relevant resolutions (initiation, preliminary, and final) shall be issued.⁶⁶ Starting from the day after the publication of the resolution to initiate an investigation, SECOFI is to notify **interested parties** of which it is aware.⁶⁷ Interested parties are defined as the producers who submitted the requests, importers and exporters of the

⁵⁹ See article 75 of the Regulations for a complete list of what a questionnaire, referred to in article 50 of the Act, is to contain.

⁶⁰ Article 49 of the Act. Andere (1993) p. 14 calls the ex officio initiation ‘government initiation’ and ‘self-initiation’. It was explained to me by Dr. Juan Saldaña at the UPCI, that an ex officio initiation can take place when dumped imports are entering the country and it may be difficult for the domestic producers to make a request due to e.g. lack of organization and information. The ex officio initiation is however not common.

⁶¹ Article 135 of the Regulations.

⁶² Article 50 of the Act.

⁶³ Article 40 of the Act and articles 60 and 61 of the Regulations. In article 61 criteria for defining relation is presented.

⁶⁴ Article 3 of the Act. Days are to be understood as **business days**.

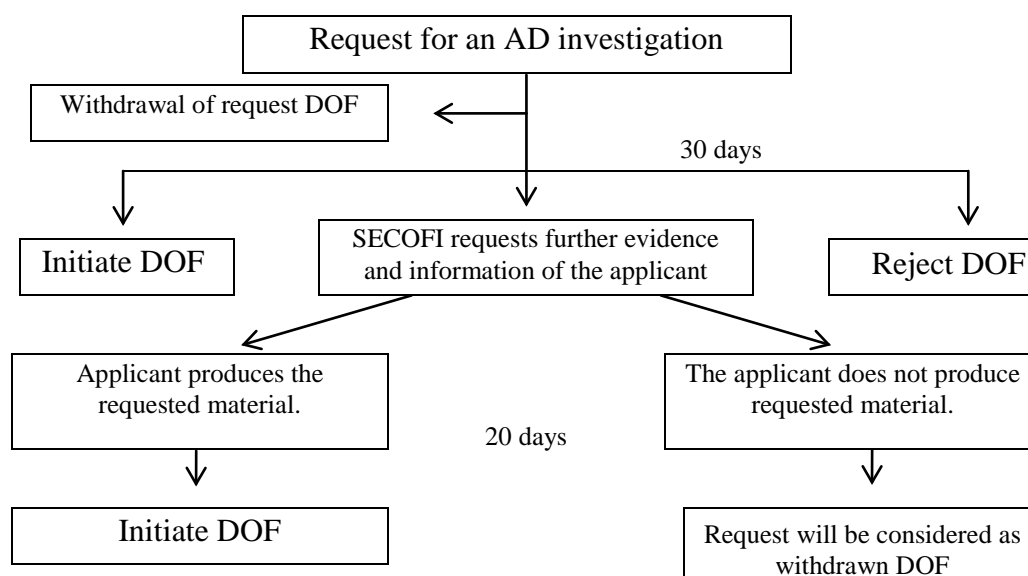
⁶⁵ Article 52 of the Act.

⁶⁶ Article 40 of the Act. See article 138 of the Regulations for a complete list of what this dossier is to include.

⁶⁷ Article 53 of the Act.

product under investigation, as well as any foreign legal person having a direct interest in the investigation in question, and those who are so defined in international trade agreements and treaties.⁶⁸

Fig. 4.1 From Request to Initiation of an Antidumping Case in Mexico



The figure is based on information presented on SECOFI's homepage, in the Foreign Trade Act and in the Regulations regarding Unfair International Practices.

The interested parties shall be accorded 30 days, following the publication of the **resolution to initiate** an investigation in the DOF, to prepare their defense and present the information requested.⁶⁹ See article 80 of the Regulations for a complete list of what information this resolution is to contain. Further, information regarding summons to the interested parties, the time allowed for presenting evidence and date, time, and place for the public hearing and the pleadings should also be included in the resolution to initiate an antidumping investigation.⁷⁰ When the 30 days, mentioned in the beginning of this paragraph, has passed the requesting parties, and if applicable the joint parties, has eight days to present counter arguments or replies.⁷¹

⁶⁸ Article 51 of the Act.

⁶⁹ Article 53 of the Act and article 164 of the Regulations.

⁷⁰ Article 81 of the Regulations.

⁷¹ Article 164 of the Regulations.

Three cases (where information was available) described in *Informe de Labores 1997*, which were initiated 1995 suggests that in practice it often took about 7 months for a request to be initiated, the time between request and initiation did however seem to fall during the two following years. Information regarding the time between request and initiation was only available for three cases in 1996 and two in 1997 and they varied between 1,5 – 6 month.

Within a period of 130 days (roughly equivalent to six months) following the publication of the decision to initiate an unfair international trade investigation in the DOF, SECOFI shall issue a **preliminary resolution**.⁷² Here there are three possible outcomes:

- 1) a provisional countervailing duty is imposed after at least 45 days has passed from the date of publication of the initiation in the DOF;
- 2) the investigation continues without a countervailing duty being imposed or;
- 3) the investigation is terminated due to insufficient evidence of price discrimination or subsidization, of injury or threat of injury, or of a causal relationship between them.⁷³

Cases described in *Informe de Labores 1997* and *1998*, regarding the time between initiation and preliminary resolution (information regarding this time was available for seven cases initiated in 1995-1997), suggests SECOFI has managed to become more efficient. The three cases initiated in 1997 described in *Informe de Labores* suggested SECOFI was successful in staying within the time limit between initiation and preliminary resolution put forward by the Act.

Interested parties are granted a period of 30 days following the publication of the preliminary resolution in the DOF to present supplementary arguments and evidence which they consider relevant for the investigation.⁷⁴ SECOFI may **verify** the information and evidence submitted during the course of the investigation, if the interested parties so agree. SECOFI may proceed, as it deems appropriate in order to verify that the said information and evidence conform to the accounts of the company subject to the search, to collate the documents in the administrative dossier or to make attested copies. Without the consent of the interested parties to verify the information, SECOFI will assume that the requesting party's claims are true, unless elements exist, which indicate otherwise.⁷⁵

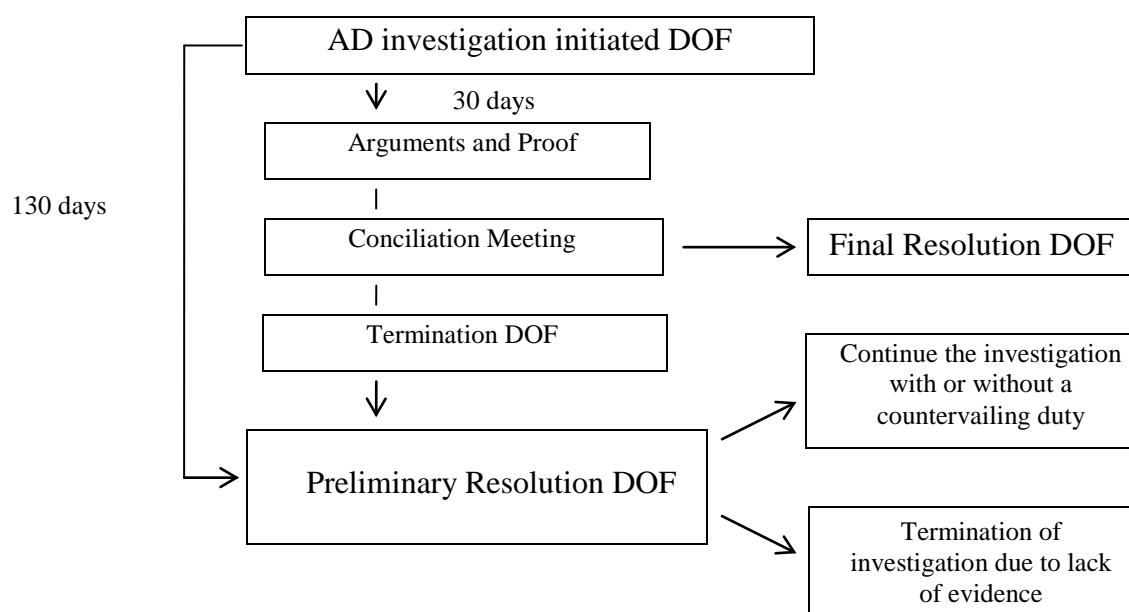
⁷² Article 80 – 82 of the Regulations specifies what information the preliminary resolution is to contain.

⁷³ Article 57 of the Act.

⁷⁴ Article 164 of the Regulations.

⁷⁵ Article 83 of the Act and article 173 – 176 of the Regulations.

Fig. 4.2 From Initiation to Preliminary Resolution of an Antidumping Case in Mexico



The figure is based on information presented on SECOFI's homepage, in the Foreign Trade Act and in the Regulations regarding Unfair International Practices.

A **public hearing** will be held following the publication of the preliminary resolution and prior to the publication of the final resolution. Interested parties are notified of the exact time of this hearing in the notification following the publication of the initiation of an antidumping investigation. At the public hearing interested parties and, if applicable additional parties, may appear and submit arguments in defense of their interests. At this hearing interested parties may question the other interested parties, and allows interested parties to question or reject the arguments of the other parties regarding the information, data and the evidence submitted.⁷⁶

The interested parties may only present information, evidence and data they consider relevant in defense of their interests during the **period for the submission of evidence**.⁷⁷ This period runs from the day following the publication of the initiation of the antidumping investigation in the DOF, until the date when the public hearing is declare concluded.⁷⁸ If however SECOFI considers it necessary it may allow the submission, repetition or amplification, of any evidence or evidential acts outside the period for the submission of evidence.⁷⁹ Further, a **period for pleadings** shall be appointed by SECOFI following the

⁷⁶ Article 81 of the Act and article 165 of the Regulations.

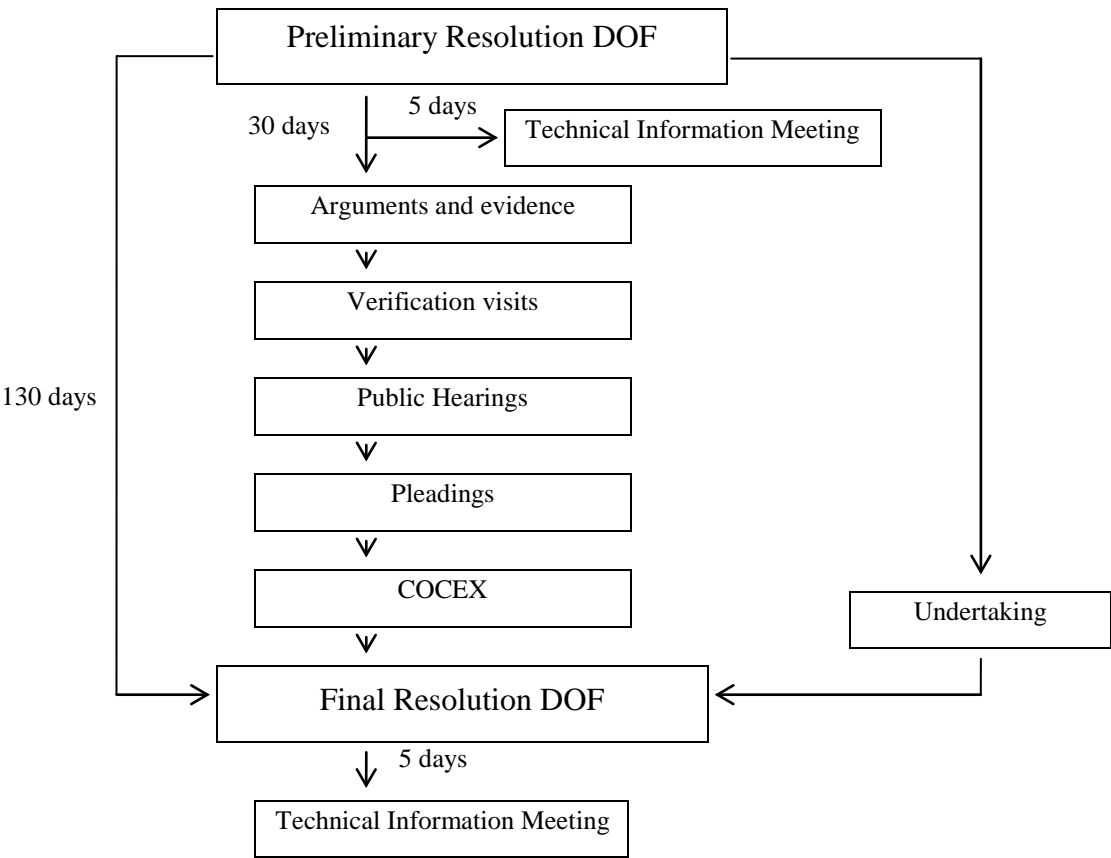
⁷⁷ Article 171 of the Regulations.

⁷⁸ Article 163 of the Regulations.

⁷⁹ Article 82 of the Act and article 171 of the Regulations

period of submission of evidence. During the period of pleadings parties may submit their conclusions on the substance or matters arising in the course of the proceedings.⁸⁰

Fig. 4.3 From Preliminary Resolution to Final Resolution of an Antidumping Case in Mexico



The figure is based on information presented on SECOFI's homepage, in the Foreign Trade Act and in the Regulations regarding Unfair International Practices.

When the investigation has been concluded SECOFI shall submit the draft final resolution to the *Comisión de Comercio Exterior* (Foreign Trade Commission), **COCEX**, for its opinion.⁸¹ The **final resolution** is to be issued within a period of 260 days (roughly equivalent of one year) following the publication of the resolution to initiate the investigation in the DOF. In the final resolution SECOFI shall either:

⁸⁰ Article 82 of the Act and article 172 of the Regulations.

⁸¹ Article 58 of the Act.

- 1) impose a final countervailing duty;
- 2) revoke the preliminary countervailing duty or;
- 3) pronounce the investigation terminated without imposing a countervailing duty.

Interested parties shall be notified of the final resolution and it shall also be published in the DOF.⁸²

The actual time taken to issue a final resolution from the time of initiation shows variation. In the nine cases where this information was available in the *Informe de Labores 1997* and *1998* it took between 12 and 18 months for cases to be concluded.

Once a final countervailing duty has been decided upon, the interested parties may request SECOFI to decide whether a given product is subject to the said duty (one investigation can include several countries and/or producers). The answer will have the character of a final resolution and will also be published in the DOF.⁸³

Interested parties and anybody who can establish legal interest (other producers, importers or exporters) has the opportunity each year during the month of the anniversary of publication of the final countervailing duty in the DOF, to request a **review of the final countervailing duties**. Once the request has been put forward, SECOFI has 30 days to ask for further items of evidence and information before accepting or rejecting the request to initiate a review of the final countervailing duties. The resolution shall then be published in the DOF and the interested parties shall be notified. 260 days from the day following the publication of a resolution to initiate a review in the DOF, SECOFI shall issue the corresponding resolution, which shall be published in the DOF and notified to the interested parties.

If the review shows there is no margin of price discrimination the final countervailing duty shall be annulled, and SECOFI shall ex officio review the matter once each year, for three years. If the margin of price discrimination is found to be different from those determined in the investigation that gave rise to the final countervailing duties, new countervailing duties that are agreed upon shall replace the former. These countervailing duties shall be final and may be reviewed like all other final countervailing duties.

The reviews of the final countervailing duties can also be initiated ex officio at any time. Further, SECOFI has the responsibility to carry out reviews when there are changes in the circumstances, which determined the existence of price discrimination.

⁸² Article 59 of the Act. See article 80 and article 83 of the Regulations for a complete description of what a final resolution is to contain.

⁸³ Article 60 of the Act and article 91 of the Regulations.

4.1.2 Conciliation Meetings, Technical Information Meetings, Countervailing Duties, Undertakings, and Appeals

During an investigation interested parties may request SECOFI to hold a **conciliation meeting**. Proposals, to resolve the case and terminate the investigation, may be submitted to SECOFI and if a proposal is approved SECOFI shall terminate the investigation. The agreement/outcome of the meeting will be incorporated in the final resolution, which will be published in the DOF and the interested parties are notified.⁸⁴ Proposals which “contravene free competition or in any way hinder economic competition shall not be accepted in conciliation meeting.”⁸⁵

Interested parties have the right to request SECOFI to hold **technical information meetings**, within five days from the day following the publication in the DOF of the preliminary and final resolutions. Parties are informed about methods used in the calculation of margins of price discrimination, injury or threat of injury, and the arguments concerning causality. Further, interested parties have the right to obtain the computation schedules and computer programs used in the investigation.⁸⁶

SECOFI shall fix the amount of the **countervailing duties**, which shall be equivalent to the dumping margins, i.e. the difference between the normal value and the export price. The duties may be less than the dumping margin provided they are sufficient to discourage unfair international trade practices.⁸⁷ Countervailing duties can be specific or ad valorem. If specific they shall be computed at a fixed rate per unit of measurement. If ad valorem, they shall be computed as a percentage of the customs value, of the production in question.⁸⁸ The final countervailing duties shall be eliminated within a period of five years if none of the interested parties has requested their review or if SECOFI has not initiated a review ex officio.⁸⁹

Exporters may at any time during the proceedings (investigations and reviews) and until the close of the respective period for the examination of evidence, submit to SECOFI a

⁸⁴ Article 61 of the Act.

⁸⁵ Article 88 of the Regulations. For more information regarding these meetings see articles 86 – 88 of the Regulations.

⁸⁶ Article 84 of the Regulations.

⁸⁷ Article 62 of the Act and articles 89 – 90 of the Regulations.

⁸⁸ Article 87 of the Act.

⁸⁹ Article 70 of the Act.

undertaking which would eliminate the price discrimination and the injury or threat of injury caused to the domestic industry.⁹⁰ Undertakings may consist of:

- 1) modification to export prices of the product in question;
- 2) restricting exports, with the intervention of the government of the country of the foreign exporter, to quantities agreed with SECOFI;
- 3) complete suspension of exports to Mexico for a period agreed with SECOFI or;
- 4) other measures which, in the opinion of SECOFI have the equivalent effects.⁹¹

If SECOFI accepts an undertaking by an exporter or the interested government, an appropriate resolution will be issued, declaring the administrative investigation suspended or terminated.⁹² The fulfillment of these undertakings may be reviewed periodically, ex officio or at the request of a party.⁹³

An **appeal for reversal** may be filed by an interested party to reverse, modify, or confirm the contested resolution and the rulings issued shall set forth the action challenged, the legal grounds for the decision and the various points of the decision. Appeals concerning certification of origin and actions by which final countervailing duties are implemented shall be filed with the Ministry of Finance and Public Credit. All other appeals shall be filed with SECOFI. Appeal for reversal shall be handled and resolved in accordance with the provisions of the Federal Tax Code, and shall be referred to the Upper Chamber of the Federal Tax Court only when such proceedings have been exhausted. Resolutions issued, to decide an appeal for reversal or declare such appeal not receivable shall be final in character and may be challenged before the Upper Chamber of the Federal Tax Court.⁹⁴

4.2 Implementation of the Antidumping Policy

Today Mexico, with its large amount of antidumping duties in force, has one of the most active trade defense systems in the world and thus the antidumping policy has become a potentially significant trade barrier.⁹⁵

⁹⁰ Article 72 of the Act and article 110 of the Regulations.

⁹¹ Article 112 of the Regulations.

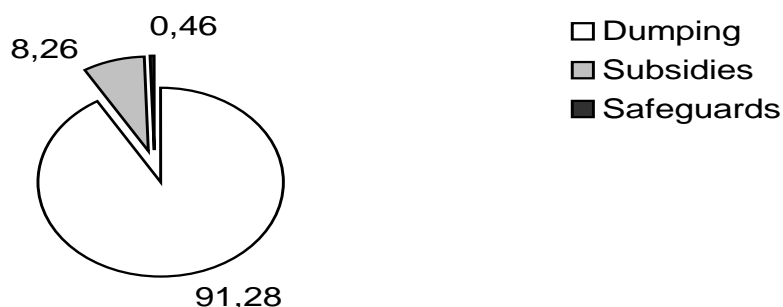
⁹² Article 73 of the Act and articles 114 – 115 of the Regulations.

⁹³ Article 74 of the Act and article 116 of the Regulations.

⁹⁴ Articles 94 – 95 of the Act.

⁹⁵ The WTO Trade Policy Review of Mexico (1997)

Fig. 4.4 Unfair Trade Practices and Safeguard Measures in Mexico 1987 - 1998



Distribution in percent, based on figures in appendix 1, table A 1.2

As one can see in figure 4.4 the majority of the 218 cases initiated between 1987 and 1998, were concerned with dumping. This is why, even though some of the figures presented here include all three measures, they are used to approximate the implications of the antidumping policy. It will be clearly stated in all the figures when they include all three measures or only antidumping investigations.

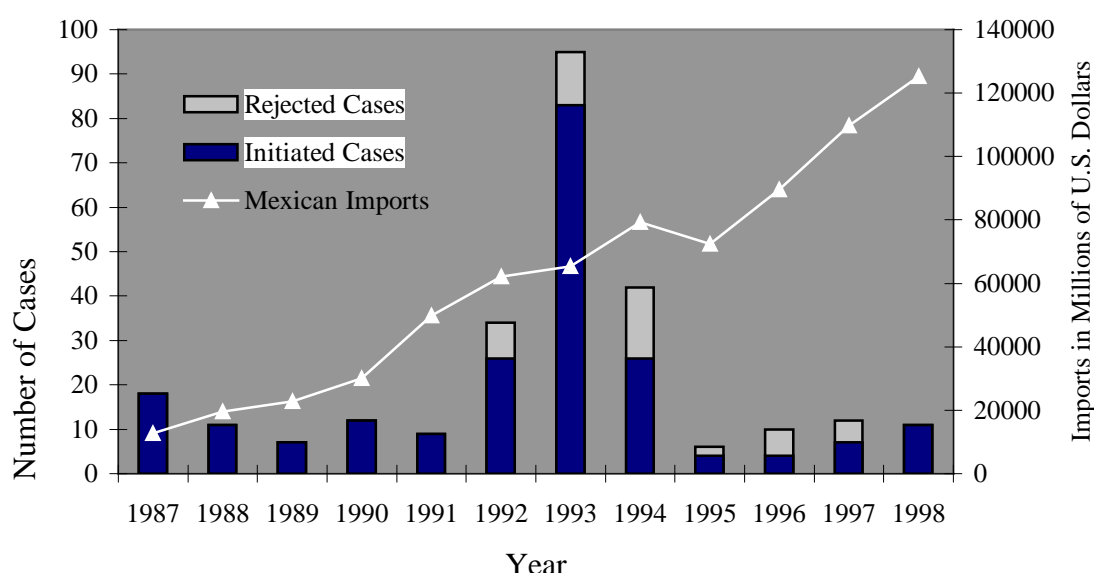
4.2.1 Change in the Number of Cases over Time

In figure 4.5 (p.29) the change in the number of cases over time, how many requests there were per year (number of rejections plus actually initiated cases, in the figure), number of rejections, and number of actually initiated investigations between 1987 and 1998 are presented together with imports in millions of U.S. dollars. Figure 4.5 includes all cases regarding unfair international practices and safeguard measures. For exact figures please see appendix 1, table A 1.1, this table also describes all the different resolutions taken regarding unfair international practices and safeguard measures during the years 1987 to 1998.

As can be seen there was a major increase in requests for investigations in the years 1992, 1993, and 1994 compared to the previous years. At this time the antidumping policy was still quite young in Mexico and the increase in cases starting in 1992 may have been partly due to an increasing knowledge among domestic producers of the antidumping policy, as suggested by Andere (1993). Considering there were five years between the adoption of the policy and the considerable increase in number of request and initiated cases, other factors may have been of greater importance.

In 1991 the value of imports grew by 66 percent.⁹⁶ This considerable increase in imports most likely also increased the competition in the Mexican market. The number of investigations against unfair trade did however decrease compared to the previous year. The amount of requests for investigations tell us how the producers have reacted during the different years. One would expect to find the number of requests and amounts of imports to be correlated, but the amount of imports for the different years and the requests for cases against unfair trade between 1987 and 1998 only shows a weak correlation.

**Fig. 4.5 Cases against Unfair Trade Practices and Safeguard Investigations & Imports
1987–1998**



Based on figures in appendix 1.1 and A 1.9

An important event occurring in 1992 was the signature of the NAFTA.⁹⁷ This may well have played an important part in the large increases in antidumping cases in the years 1992 to 1994. The NAFTA took force in 1994 and the amount of antidumping cases actually started to decrease that year. The increase in antidumping cases in 1992 could have been spurred by uncertainty created in the Mexican market by an anticipation of a large increase in imports due to the NAFTA. Starting in 1992 with the signature of the NAFTA trade barriers were removed and the U.S. imports increased by 80 percent that year. This should be compared to

⁹⁶ See appendix 1, table A 1.9

⁹⁷ WTO Trade Policy Review Mexico (1997)

the overall increase in imports of 24,6 percent in Mexico 1992. Other countries, which showed exceptionally high increases in imports in 1992, were Brazil, Korea, Russia and Taiwan and this could have been due to the elimination of trade barriers and the continued liberalization, which was enforced by the signing of NAFTA. See appendix 1, table A 1.9, for a presentation of the amounts of imports originating from the 12 most investigated countries.

The significant increase in requested cases 1992 and onwards was matched by Mexican authorities' willingness to supply protection and signaled the policy was getting out of control and that it was becoming increasingly protectionist.⁹⁸ One third of the 83 initiated investigations against unfair international trade practices in 1993 were related to imports originating from China.⁹⁹ The most investigated countries up until 1992 had been the U.S. (39 cases) and Brazil (12 cases).¹⁰⁰

The most significant increase in antidumping cases took place in 1993, with almost three times the requests compared to the previous year. The increase in imports does not explain this huge increase in antidumping requests considering it only increased by 5 percent. The years following 1993, requests and initiations of investigations started to decrease. Several important events took place around this time, which had great impact on trade and the antidumping policy in Mexico.

In 1993 the Ruling Law was replaced by the Foreign Trade Act which regulated the investigation procedure in greater detail than the Law had done. Also, Mexico's Federal Law of Economic Competition took force.¹⁰¹ The changes the Mexican legislation underwent might have come without the NAFTA but it probably would not have been as far reaching or deep without the pressure of a negotiated agreement.¹⁰² The Antidumping Agreement underwent changes as a result of the Uruguay Round in 1994, which took effect in 1995. The Peso depreciated in 1994 and a surcharge was imposed on all imports except those from NAFTA and quite expectedly the value of Mexican imports decreased by 8,4 percent in 1995.

Figure 4.6 (p.31) shows how the 188 concluded antidumping investigations, by Dec. 1998, were distributed across countries. Further the figure illustrates how the 94 final countervailing duties against dumped products, enforced between 1987 and 1998, were

⁹⁸ Andere (1993) p. 6

⁹⁹ This information was received from Concepción Ramírez Watanabe, Jefe del Departamento de Difusión, SECOFI, via e-mail 27 November 1999.

¹⁰⁰ Andere (1993) p. 7

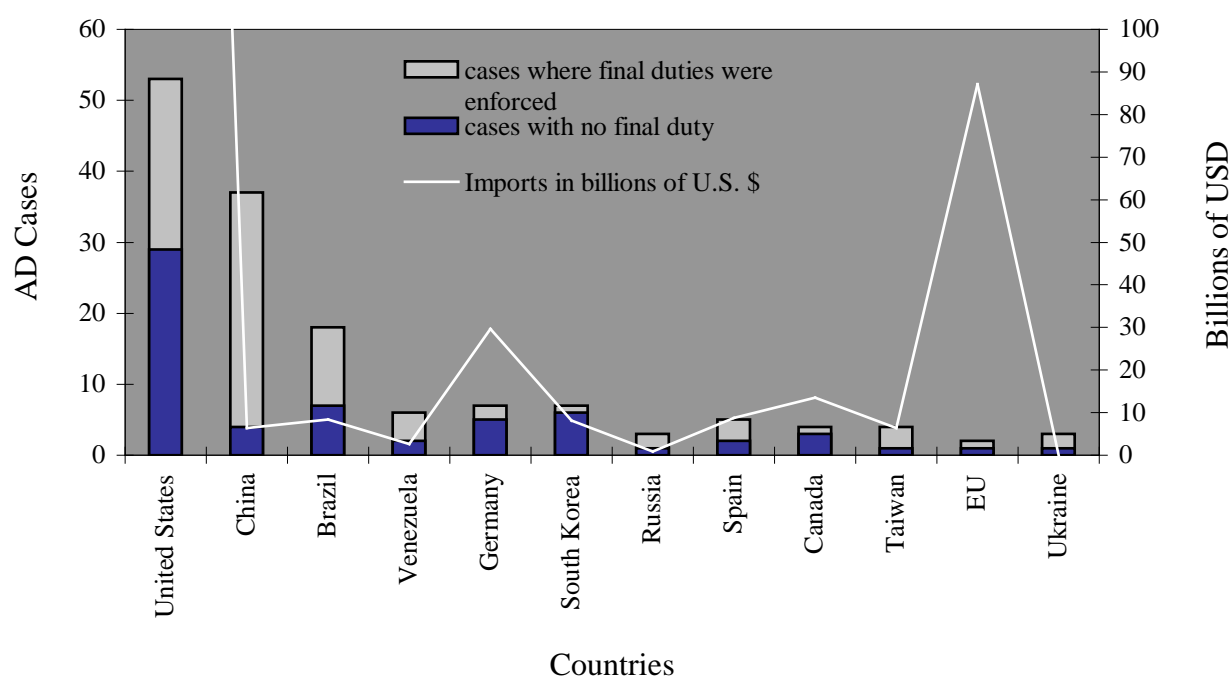
¹⁰¹ Mexico's Federal Law of Economic Competition

¹⁰² Wingham (1998) p. 73

distributed across countries.¹⁰³ Notice that only 12 of the total 40 countries are shown in the figure. These 12 countries represent 79 percent of the initiated cases and 87 percent of all the final duties enforced are against these 12 countries. For a complete presentation, of all countries see appendix 1, table A 1.4.

The U.S. imports has been investigated the most and this is most likely explained by the fact that a large proportion, approximately 70 percent, of Mexico's total imports originated from this country.¹⁰⁴

Fig. 4.6 AD Investigations and Final Countervailing Duties across Countries & Imports 1987-1998



Bases on appendix 1.4.

The case of China stands out due to the large amount of antidumping cases and number of duties in force against the country. Brazil also has a fairly large amount of investigations. A difference, between the two countries, is that the investigations against China exploded in 1993 while the cases against Brazil show a more gradual accumulation.

The liberalization and the NAFTA have had the effect of some countries benefiting more than others and some countries clearly have increased their participation in the Mexican

¹⁰³ See appendix 1.12. This figure is supposed to be 99, but it was not possible to allocate the five missing cases.

¹⁰⁴ See table 3.1.

market. Figures, in appendix A 1.10 for the years 1991 to 1994, show that China was not one of these countries. As trade barriers are reduced as an effect of the NAFTA, trade between these three countries will increase. As a reaction to the increasing competition, due to the deepening integration within the NAFTA other countries' exports (not part of the agreement) to the Mexican market, at low and competitive prices can be increasingly targeted by the antidumping policy. Considering the design of today's antidumping policy this is hardly a preferable development from a welfare point of view because prices which are a result of an efficient use of resources can be targeted.

In order to get a better look at how the countervailing duties against dumped goods were spread across countries see table 4.1 (see appendix 1, table A 1.4 for the complete list).

Table 4.1 Concluded AD Cases and Final Countervailing Duties Enforced against Dumped Goods 1987-1998

| | | A | B | C | D | E |
|------------|-----------|-----------------|-----------------|---------------------------------|------------------------|---------|
| Countries: | | Initiated Cases | Concluded Cases | Final Duties Enforced 1987-1998 | Ongoing Investigations | C/B (%) |
| 1 | U.S. | 58 | 53 | 24 | 5 | 45,3 |
| 2 | China | 38 | 37 | 33 | 1 | 89,2 |
| 3 | Brazil | 18 | 18 | 11 | | 61,1 |
| 4 | Venezuela | 6 | 6 | 4 | | 66,7 |
| 5 | Germany | 7 | 7 | 2 | | 28,6 |
| 6 | S Korea | 7 | 7 | 1 | | 14,3 |
| 7 | Russia | 5 | 3 | 2 | 2 | 66,7 |
| 8 | Spain | 5 | 5 | 3 | | 60,0 |
| 9 | Canada | 4 | 4 | 1 | | 25,0 |
| 10 | Taiwan | 4 | 4 | 3 | | 75,0 |
| 11 | EU | 3 | 2 | 1 | 1 | 50,0 |
| 12 | Ukraine | 3 | 3 | 2 | | 66,7 |

Based on figures in appendix 1, table A 1.4.

Other factors that might explain China's high share of investigations and duties could be that China is not considered to be a market economy and that China is not a member of the WTO. As described earlier in section 3.4, in cases with countries, which are centrally managed economies, the normal value will be determined by using the price from a third country with a market economy. Where that is not possible, Mexico will be used as the third market. This should increase the probability of normal value and the prices of the good being imported to

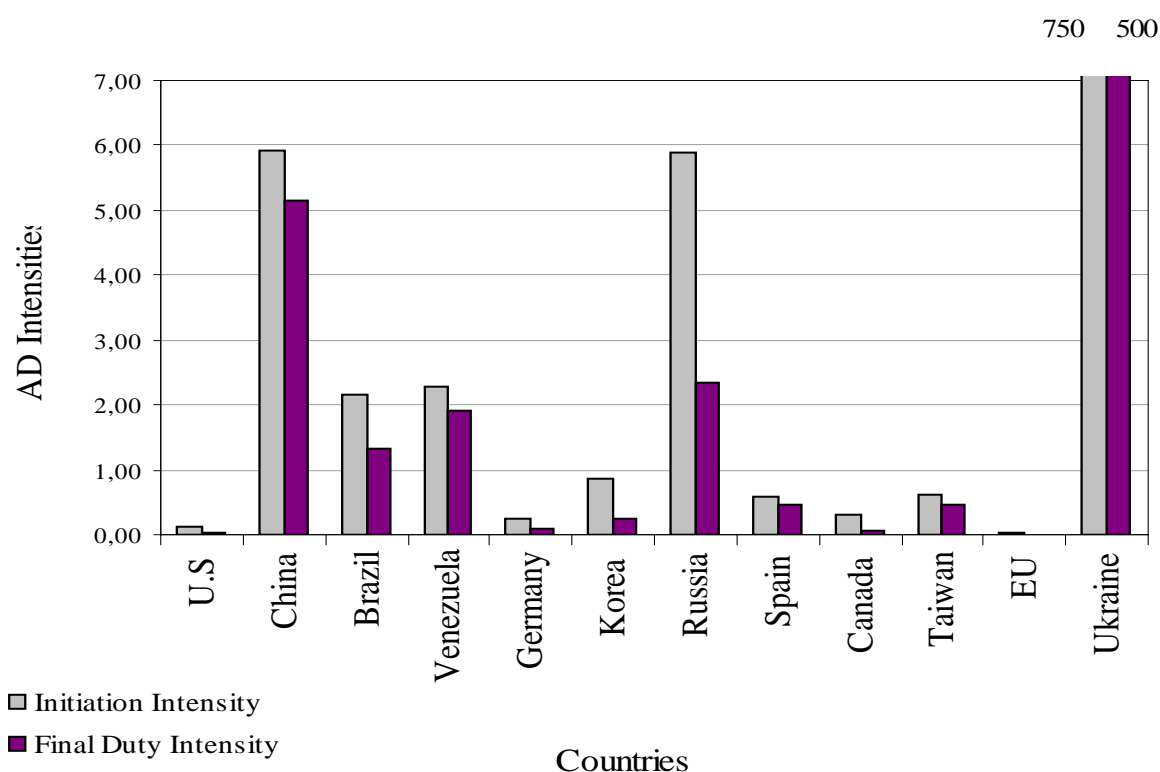
vary. Investigations against imports from Russia, which is also considered as a centrally managed economy, also show a high relation duty to investigation (see column D). Increase in uncertainty due to the use of a third market, and added complexity, in an already complex investigation, are common denominators for the centrally managed countries and they also tend to be imposed with a duty more frequently than other countries.

Due to the limited size of the material for each country, in many cases, it is difficult to be able to say anything conclusive about them despite the high percentages in column E of table 4.1. More detailed information about each country's exports to Mexico might present a clearer picture of why some countries seem to be targeted more than others are.

In figure 4.7 (p.34) the number of antidumping cases, the number of case initiations and final duties (thereof the terms 'initiation intensity' and 'final duty intensity'), has been compared to the total amount of imports from each of the 12 countries which have been investigated the most. Three countries stand out in this figure, namely: China, Russia and Ukraine. Ukraine has exceptionally high 'intensities' for this period, which is explained by the very small amount of imports from this country according to the IMF Direction of Trade Statistics Yearbooks. There is reason to believe figures for Ukraine should be somewhat smaller since imports are only recorded for 1993 while the three antidumping cases were concluded in 1995, 1996 and 1998. Although it is not stated in the *Informe de Labores 1997* or *1998* it is plausible that Ukraine is treated as a non-market economy and this could explain the high intensities

Venezuela and Brazil also show high figures for cases initiated and number of final countervailing duties, compared to their exports to Mexico. Possible explanations for this observation might be found if countries' investigated exports, were analyzed more thoroughly. This would give a better understanding of who the complainants are, the effect of the antidumping policy on the Mexican sectors, and when the antidumping policy is used. This, however, is beyond the scope of this paper since the purpose of this paper is to present a more overall description of the Mexican antidumping policy.

Fig 4.7 Antidumping Intensities 1987 - 1998



Based on figures in A 1.11

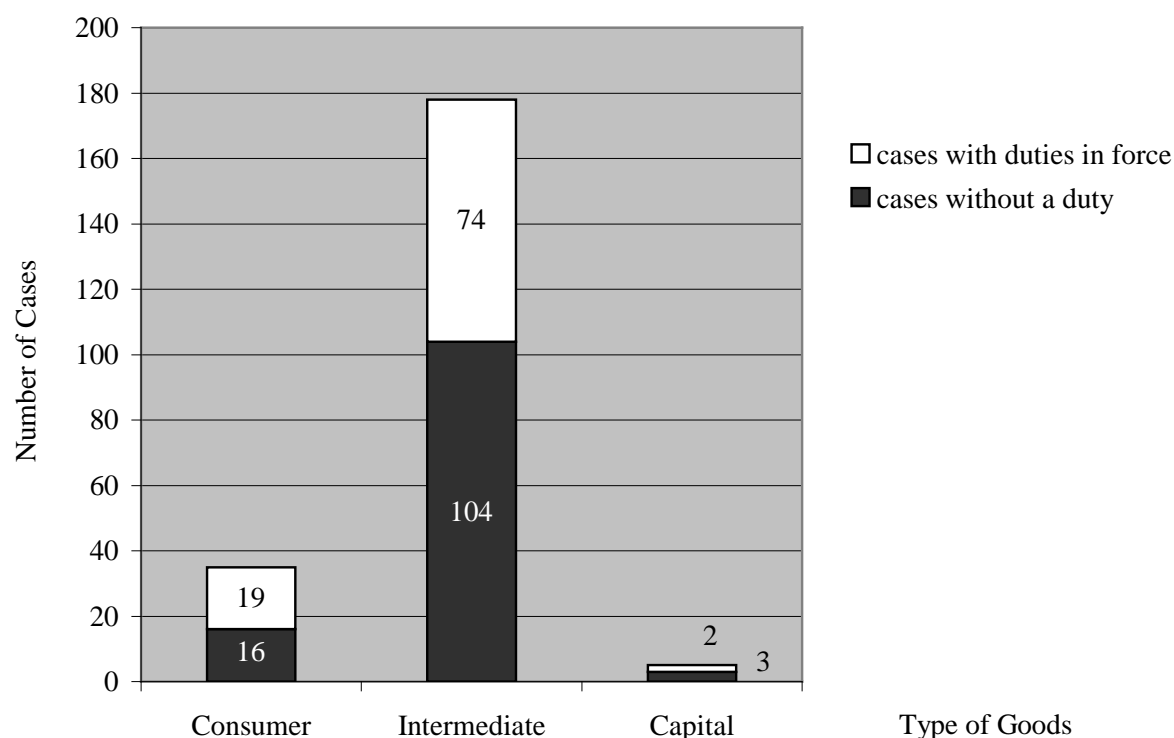
In appendix 1, table 1.11, it is explained how the ‘intensities’ have been calculated. Table A 1.11 also includes request intensities and initiation intensities for the years 1987 to 1998. As in the case in figure 4.5 (p.29), the year 1993 stands out. 1993 shows very high figures, compared to the other years, due to the large number of requests and case initiations compared to the actual amount of imports.

4.2.2 Distribution of Antidumping across Goods and Sectors

Figure 4.8 (p.35) shows how the 218 initiated cases and the 95 duties in force against unfair international trade practices were distributed across consumer, intermediate and capital goods by 31 December 1998. The majority of the cases, 82 percent, were concerned with intermediate goods. 16 percent were concerned with consumer goods, and 2 percent with capital goods. The relation ‘final duties in force’ to ‘initiated investigations’ for intermediate goods was 42 percent while the figures for consumer and intermediate goods were 54 and 40

percent respectively. The figure describes the current status of protection by goods, in Mexico.

Fig. 4.8 Initiated Cases against Unfair Trade Practices and Duties in Force, by Goods 1987-1998



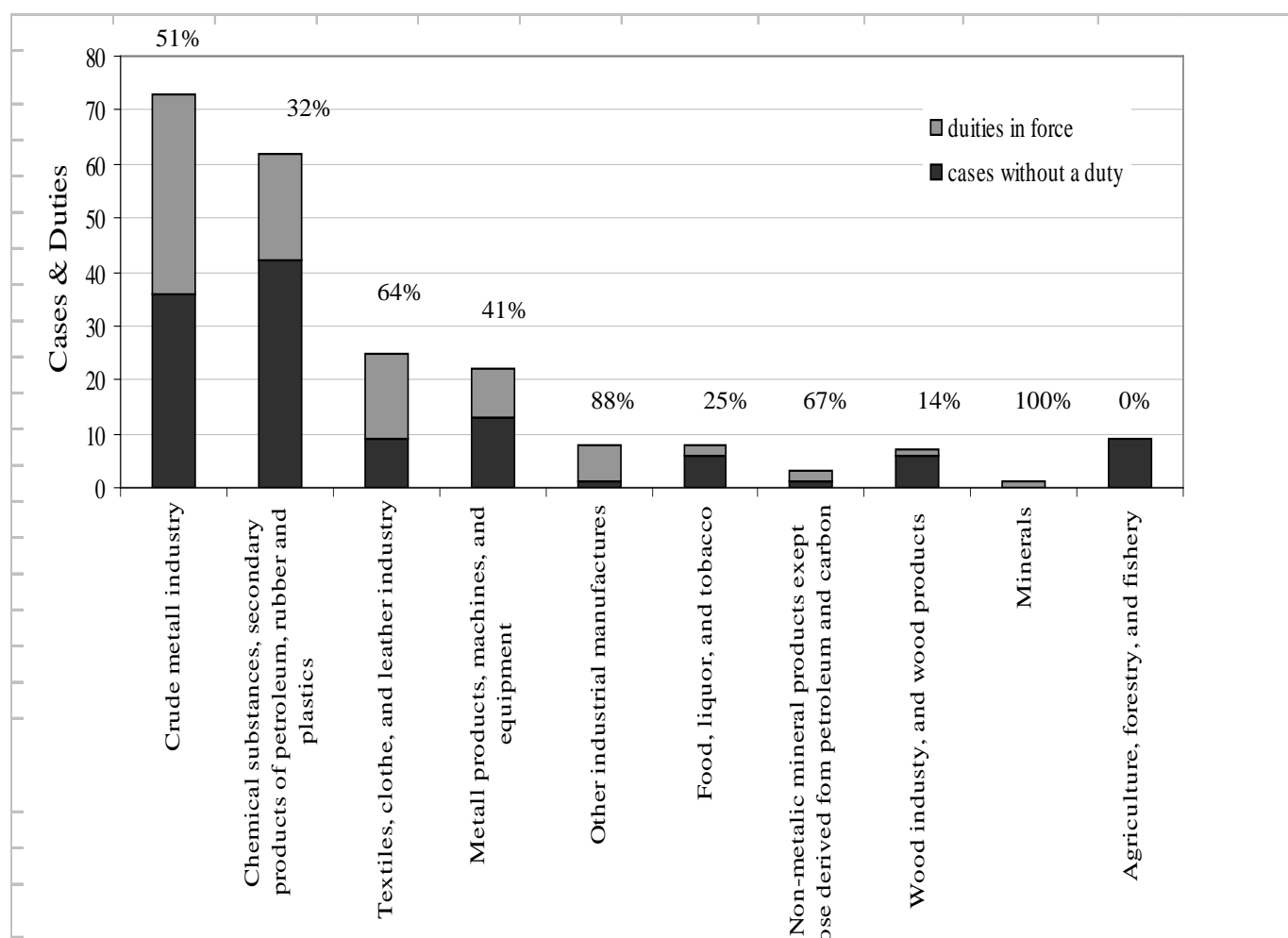
Based on figures in appendix 1.5

Figure 4.9 (p.36) illustrates how the 218 initiated investigations between 1987 and 1998, and how the 95 countervailing duties in force against cases, regarding unfair international trade practices, were distributed across different sectors in Mexico by 31 December 1998. The percentages shown in the figure describe the relation 'duties in force' to 'initiated investigations'. This figure describes the current protection by sectors, in Mexico.

The tendency for some sectors to seek protection more, i.e. filing more complaints, than others could be due to varying size, varying amounts of imports and competitiveness of the sectors. One would imagine large and well-organized sectors to be more likely to realize when to utilize the antidumping policy, and also be more capable of utilizing the antidumping policy than less organized producers, due costs related to a process of this kind. Even though the ex-officio initiation exists for this purpose it is not common that it is used.

The different levels of protection received can be seen in figure 4.9 and to find explain the variation more detailed trade statistics must be studied together with more detailed information about the investigations. This is beyond the scope of this paper. The industry-specific schemes for the motor vehicle and parts industry and textiles, clothing and footwear industry; together with the increase in tariffs (although temporary) and antidumping investigations in Mexico does, however, imply some sensitive sectors are being protected. The rational, behind the preferred treatment of theses industries, seems to be weak considering the real depreciation and the strong growth in the Mexican automotive, textiles, clothing and footwear exports, according to the WTO Trade Policy Review of Mexico (1997). Worthwhile noting is that the majority of antidumping cases against China are related to textiles, clothing and footwear (see appendix 1, table A1.12).

Fig. 4.9 Unfair Trade Practices and Safeguard Measures across Sectors 1987-1998

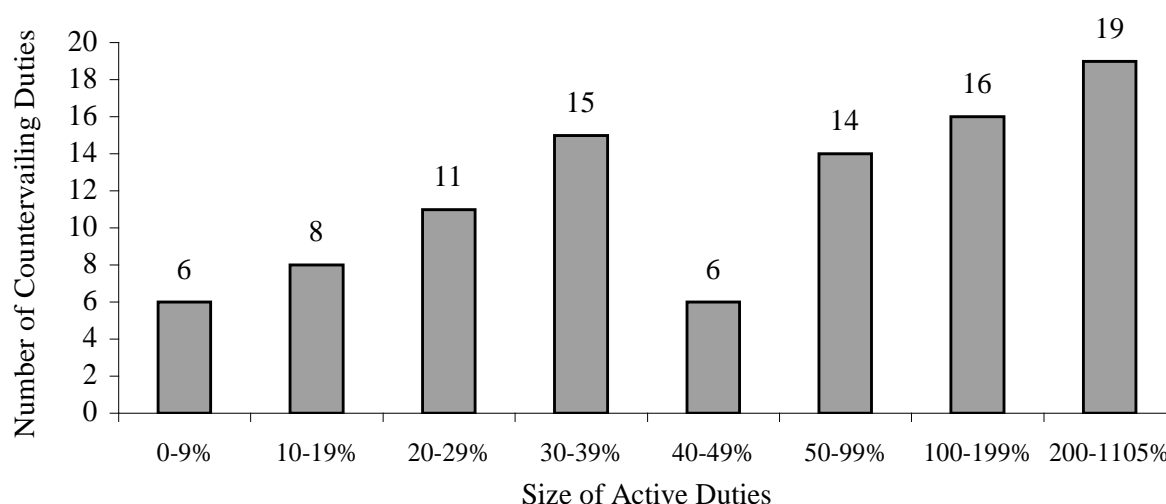


Based on figures in appendix A 1.6

Mexico's manufacturing sector is quite diversified and overall the sector has taken advantage of the trade liberalization and large investment inflows. Both efficiency and profitability has increased and this together with the real exchange rate depreciation helped the sector to overcome the slump of 1995 by increasing production for exports markets. The import-competing sector on the other hand has had great difficulties in adapting to the more liberal environment and this most likely explains the use of industry-specific protection.

Of the total 95 countervailing duties in force by 31 December 1998, 90 were final and 5 were preliminary and of these, all 5 preliminary and 88 of the 90 final duties were 'antidumping duties'. Figure 4.10 shows the size of the duties in force, ad valorem, and the number of duties distributed across the different levels.

Fig. 4.10 Countervailing Duties in Force, ad valorem, by 31 Dec. 1998



Based on figures in appendix 1.7.

Since Mexico's accession to the GATT in 1986 all of Mexico's tariff lines are covered by bindings. The ceiling rate for manufactures was reduced from 50 to 35 percent in the Uruguay Round but the applied rates are considerably lower. The trade-weighted average tariff has been reduced but the gap between the most-favored-nation rate and the preferential rates are increasing. Mexico's average most-favored-nation rate was 13.2 percent according to WTO World Trade Review for Mexico 1997 while the preferential rate for e.g. the U.S. was 4.2 percent. Compared to these figures it becomes clear that the countervailing duties are very high and restrictive. Only 6,32 percent of the duties in force were below 10 percent and

roughly 60 percent of the duties are higher than 40 percent.¹⁰⁵ In appendix 1, table A 1.12, all the concluded antidumping cases have been listed together with the duties. The highest duties are against products originating from China where duties range as high as 1105 percent.

Between 1987 and 1998 there have been 275 duties imposed, of these 168 were provisional and 107 were final.¹⁰⁶ Of the 107 final duties imposed 99 were duties against dumped goods.¹⁰⁷ A request for an investigation, regarding unfair international trade practices and safeguard measures, had a 56 percent chance of resulting in a preliminary countervailing duty and a 40 percent chance of resulting in a final countervailing duty. Once an investigation was initiated the chance of a preliminary countervailing duty being imposed was 69 percent, and the chance of a final countervailing duty being imposed was 52 percent.¹⁰⁸ Although not all cases result in a countervailing duty it is not uncommon that import prices are negotiated. In 1998 alone, 4 antidumping cases resulted in higher prices in order to avoid an antidumping duty.¹⁰⁹

This suggests that the policy is trade restrictive with or without a final countervailing duty being imposed, and that the policy's restriction on imports can not be judged only by the countervailing duties being imposed. Further an antidumping investigation today often lasts for 12 to 18 months and considering the high possibility of receiving protection, both during the investigation and after its conclusion, this device has considerable potential of restricting import competition, to the advantage of the domestic producers. The price negotiations also suggest that the mere threat of a lengthy legal procedure is enough for some exporters to agree to higher prices and that the antidumping policy is capable of giving the Mexican producers significant relief from import competition, with or without an actual duty being imposed.

¹⁰⁵ See appendix 1.7.

¹⁰⁶ See appendix 1.8.

¹⁰⁷ See appendix 1.3 note 1.

¹⁰⁸ See appendix 1.8.

¹⁰⁹ *Informe de Labores 1998*, SECOFI, p. 79.

5 Conclusions

The Mexican antidumping policy was adopted in connection with the economic liberalization in the 1980's. Liberalization has had positive effects on Mexico's economy, mainly by increasing the competitiveness in the domestic market and through large inflows of foreign investment, and the country has proven its determination of pursuing economic liberalization despite serious macroeconomic shock.

The antidumping policy is hard to defend using economic theory because it actually has the effect of restricting imports rather than promoting it. Great problems with today's legislation in Mexico and the Antidumping Agreement of the GATT are their inability of distinguishing between prices, which reflect efficient use of resources and those that do not, and the lack of requirement of proving the 'unfairness' of the imports. This, together with the facts that the antidumping investigations are proving themselves to be enough to achieve higher prices, and that duties are relatively high, creates an instrument that has great potential of restricting trade and harming liberalization.

An important reason why it is of great importance to prove the 'unfairness' of imports is because without that proof, 'injury' becomes irrelevant, and the antidumping measure will be nothing but a protectionist measure. The 'injury' is what force producers to become more efficient and more competitive in order to survive. 'Injury' in it self is not and can never be proof of unfairness.

An interesting quality of this instrument is that theoretically the more inefficient a producer is, compared to their foreign competitors, the greater the chance becomes of receiving import protection in the form of an antidumping duty. This is because the greater the difference is between the efficiency of the domestic production and the foreign production, prices will more easily seem 'too cheap' and the more likely it becomes that 'injury' is caused to the domestic production. The threat of injury will also be perceived to be more acute the larger this difference in efficiency is. All the while, the foreign producers will be the ones accused of using unfair practices.

An important purpose of the policy against unfair international trade practices, aside from protecting domestic producers from dumped goods was and still is, to act as an escape valve for the domestic production. Although it is stated that the safeguard measure is supposed to be used for this purpose, when studying the statistics for Mexico it becomes apparent that the antidumping measure has been utilized during economically difficult

periods, not the safeguard measure. Between 1987 and 1998 only one safeguard investigation was carried out. The rationale for giving protection is that in doing so the domestic producers are relieved from import competition and are given some additional time to adjust to an increasingly competitive environment. Adjustment costs are lowered, and by relieving the economy from some of the 'pains' associated with the economic liberalization it will be easier for policymakers to continue to liberalize the economy.

By restricting trade and competition the adjustment costs are brought down and in doing this, the antidumping policy will help give credibility to the continued process of liberalization. If the costs associated with an economic liberalization become too high it is possible that the process of liberalization might be slowed down or even impossible.

Although perhaps the antidumping policy is not accomplishing the task of protecting the Mexican producers from truly unfair prices that harm welfare, the policy is capable of giving specific industries and sectors considerable relief from import competition. This will have positive effects in the short run in the sense that it eases the pain of transition through the reduced adjustment costs. In the long run, protection will harm welfare and resources will be allocated less efficiently than what would be the case in a more competitive environment.

I found that the correlation between actual imports and antidumping cases is quite weak. It seems that requests for antidumping investigations rather depend on potential imports than actual imports. This suggests that the markets' expectations play an important role. Psychologically the antidumping policy might therefore have an important role of calming the market by giving producers relief from import competition during periods of uncertainty. A good example of this was 1993, the year prior to the NAFTA taking force, in Mexico.

An important question is what will happen in the future. Once the liberalization is complete the antidumping policy will no longer have the positive effect of aiding economic liberalization. On the contrary it will be reducing competition in the Mexican market and hinder the producers from becoming more effective. Further, the notion of some imports being 'unfair' will still be there and if the legislation is not adjusted to better detect prices that are truly harmful to the domestic production it is difficult to see any positive outcomes of the use of this policy.

It is not likely that the antidumping policy will disappear in Mexico in the near future. The liberalization is one reason and regional agreements is another. As liberalization proceeds the domestic producers will most likely perceive that they are increasingly exposed to unfair imports. Further, there are tendencies of preserving trade barriers as bargaining chips for negotiations and this could be seen in the case of both the FTA and the NAFTA

negotiations. As long as the antidumping policy is politically valuable it is not likely Mexico or any other country will give it up although it clearly has negative welfare effects, for the country utilizing it and for the countries targeted by this policy.

Appendix 1

A 1 Statistical Tables

Table A 1.1

Unfair Practices and Safeguard Measures in Mexico Jan. 1987 - Dec. 1998

| Year | Total Requests | Rejected Cases | Initiated Investigations | Resolutions | | Reviews | | | Special Procedures 1/ | Appeals 2/ | Other Procedures 3/ | Sum |
|-------|----------------|----------------|--------------------------|-------------|-------|------------|-------------|-------|--------------------------|---------------|------------------------|-----|
| | | | | preliminary | final | initiation | preliminary | final | | | | |
| 1987 | 18 | 0 | 18 | 5 | 2 | | | | | | | 25 |
| 1988 | 11 | 0 | 11 | 15 | 12 | | | | | | | 38 |
| 1989 | 7 | 0 | 7 | 5 | 10 | | | | | | | 22 |
| 1990 | 12 | 0 | 12 | 6 | 8 | 1 | | 1 | | | | 28 |
| 1991 | 9 | 0 | 9 | 17 | 17 | 6 | | 6 | | | | 55 |
| 1992 | 34 | 8 | 26 | 12 | 16 | 16 | | 7 | | 4 | | 89 |
| 1993 | 95 | 12 | 83 | 39 | 19 | | | | | 5 | | 158 |
| 1994 | 42 | 16 | 26 | 19 | 39 | 4 | | 2 | | 3 | | 109 |
| 1995 | 6 | 2 | 4 | 51 | 44 | 1 | | 7 | 8 | 11 | 1 | 129 |
| 1996 | 10 | 6 | 4 | 3 | 22 | 7 | 1 | 5 | 16 | 22 | 5 | 91 |
| 1997 | 12 | 5 | 7 | 8 | 7 | 1 | 8 | 5 | 7 | 7 | 1 | 56 |
| 1998 | 11 | 0 | 11 | 8 | 7 | 3 | 1 | 4 | 6 | 10 | 16 | 66 |
| Total | 267 | 49 | 218 | 188 | 203 * | 39 | 10 | 37 | 37 | 62 | 23 | 866 |

* Note: The number of concluded cases is 207 according to *Informe de Labores 1998*, A.8 on p. 81. Also see table in appendix 1.3. The figure 207 will be used in all further calculations.

1/ Product coverage, extensions of benefits, new exporters, and anti-evasion.

2/ Includes special resolutions of disputes and requests of revocation, etc.

3/ Price compromises, elimination of compensatory duties, renouncements, and examinations for the purpose of eliminating duties.

Source: Based on *Informe de Labores 1998*, SECOFI, pp. 75, 77, 81, 87-94

Table A 1.2

Type of Investigations Jan. 1987 - Dec. 1998

| | No. of Investigations | % |
|------------|-----------------------|-------|
| Dumping | 199 | 91.28 |
| Subsidies | 18 | 8.26 |
| Safeguards | 1 | 0.46 |
| Total | 218 | 100 |

Source: *Informe de Labores 1998*, p. 76

Table A 1.3

Investigations and Countervailing Duties Jan. 1987 - Dec. 1998

| | Antidumping Investigations | | Subsidy Investigations | | Safeguard Investigations | | Sum |
|---------------------------------|----------------------------|----|------------------------|----|--------------------------|--|--------|
| | No. of Investigations | | No. of Investigations | | No. of Investigations | | |
| Cases Concluded with | | | | | | | |
| a quota | 99 | 1/ | 8 | 3/ | 0 | | 107 4/ |
| no quota | 89 | 2/ | 10 | 3/ | 1 | | 100 5/ |
| Concluded Cases | 188 | | 18 | | 1 | | 207 6/ |
| Cases in Preliminary Stage with | | | | | | | |
| a duty | 5 | | 0 | | 0 | | 5 |
| no duty | 0 | | 0 | | 0 | | 0 |
| Cases in Preliminary Stage | 5 | | 0 | | 0 | | 5 |
| Cases in Initial Stage | 6 | | 0 | | 0 | | |
| Total Number of Investigations | 199 | | 18 | | 1 | | 218 |

1/ The figure 99 is based on the information that no final reviews regarding subsidy cases have been carried out (this suggests that the 8 duties imposed are the only duties ever to have been imposed in subsidy cases), the safeguard investigation ended with no final duty being imposed, and the the total number of final duties imposed between 1987 and 1998 was 107. Note that the figure 99 represents all the final AD duties imposed between 1987 and 1998.

2/ 188-99=89

3/ A 1.14, p. 93, in *Informe de Labores 1998*.

4/ *Informe de Labores 1998*, SECOFI, p. 81

5/ 207-107=100

6/ *Informe de Labores 1998*, p. 81, *Cuadro A.8*

Source: Based on *Informe de Labores 1998*, SECOFI, pp. 75-77, 79, 81, and 93

Table A 1.4

Antidumping Investigations across Countries Jan 1987 - Dec. 1998

| | | A | B | C | | D 1/ | E 1/ | F |
|-------|---------------|-------|----------------|---------|-------------|--------------|-----------|------|
| | | Total | Concluded | Ongoing | | Final Duties | Duties in | D/B |
| | | Cases | | Initial | Preliminary | | Force by | |
| | | (B+C) | Investigations | Stage | Stage | Enforced | Dec. 1998 | % |
| 1 | U.S. | 58 | 53 | 4 | 1 | 24 | 19 | 45 |
| 2 | China | 38 | 37 | | 1 | 33 | 33 | 89 |
| 3 | Brazil | 18 | 18 | | | 11 | 9 | 61 |
| 4 | Venezuela | 6 | 6 | | | 4 | 4 | 67 |
| 5 | Germany | 7 | 7 | | | 2 | 1 | 29 |
| 6 | S Korea | 7 | 7 | | | 1 | 1 | 14 |
| 7 | Russia | 5 | 3 | 1 | 1 | 2 | 2 | 67 |
| 8 | Spain | 5 | 5 | | | 3 | 1 | 60 |
| 9 | Canada | 4 | 4 | | | 1 | 1 | 25 |
| 10 | Taiwan | 4 | 4 | | | 3 | 3 | 75 |
| 11 | EU | 3 | 2 | 1 | | 1 | 1 | 50 |
| 12 | Ukraine | 3 | 3 | | | 2 | 2 | 67 |
| | sum | 158 | 149 | 6 | 3 | 87 | 77 | 58.4 |
| | as % of Total | 79.40 | 79.26 | 100 | 60.00 | 92.55 | 92.77 | |
| 13 | Colombia | 3 | 3 | | | | | 0 |
| 14 | Netherlands | 2 | 2 | | | 2 | 2 | 100 |
| 15 | Hong Kong | 2 | 2 | | | 1 | 1 | 50 |
| 16 | Japan | 2 | 2 | | | 1 | 1 | 50 |
| 17 | India | 2 | 2 | | | 2 | 1 | 100 |
| 18 | Kazakhstan | 2 | 1 | | 1 | | | 0 |
| 19 | Belgium | 2 | 2 | | | | | 0 |
| 20 | Byelorussia | 2 | 2 | | | | | 0 |
| 21 | Uzbekistan | 2 | 2 | | | | | 0 |
| 22 | Tajikistan | 2 | 2 | | | | | 0 |
| 23 | Lithuania | 2 | 2 | | | | | 0 |
| 24 | Chile | 1 | 1 | | | | | 0 |
| 25 | Estonia | 2 | 2 | | | | | 0 |
| 26 | Greece | 1 | 1 | | | | | 0 |
| 27 | France | 1 | 1 | | | 1 | 1 | 100 |
| 28 | Bulgaria | 1 | | | 1 | | | 0 |
| 29 | Argentina | 1 | 1 | | | | | 0 |
| 30 | Malaysia | 1 | 1 | | | | | 0 |
| 31 | Pakistan | 1 | 1 | | | | | 0 |
| 32 | Australia | 1 | 1 | | | | | 0 |
| 33 | South Africa | 1 | 1 | | | | | 0 |
| 34 | Armenia | 1 | 1 | | | | | 0 |
| 35 | Azerbaijan | 1 | 1 | | | | | 0 |
| 36 | Moldova | 1 | 1 | | | | | 0 |
| 37 | Turkmenistan | 1 | 1 | | | | | 0 |
| 38 | Kyrgyzstan | 1 | 1 | | | | | 0 |
| 39 | Latvia | 1 | 1 | | | | | 0 |
| 40 | Georgia | 1 | 1 | | | | | 0 |
| Total | | 199 | 188 | 6 | 5 | 94 2/ | 83 | 50 |

Note: Column A represents the total number of initiated investigations.

1/ See table A1.12.

2/ See table A 1.3. This figure should be 99, which means 5 final duties are missing. Calculations on this page has used the figure 94.

Source: Bases on *Informe de Labores 1998*, SECOFI, pp. 75, 77, 79, 81, 87-94

Table A 1.5

Investigations and Duties in Force across Goods Jan. 1987 - Dec. 1998

| | A | | B | | C |
|--------------------------------|------------------------------------|------------------|--------------------|------------------|----------|
| All measures are included | No. of initiated Investigations | as % of Total | Duties in Force | as % of Total | B/A % |
| Consumer | 35 | 16.06 | 19 | 20.00 | 54.29 |
| Intermediate | 178 | 81.65 | 74 | 77.89 | 41.57 |
| Capital | 5 | 2.29 | 2 | 2.11 | 40.00 |
| Total number of investigations | 218 | 100 | 95 | 100 | 43.58 |

Source: *Informe de Labores 1998*, SECOFI, p. 84

Table A 1.6

Investigations and Duties in Force across Sectors Jan. 1987 - Dec. 1998

| | A | | B | | C |
|---|-----------------------------|-------|--------------------|-------|----------|
| All measures are included | Initiated Investigations | % | Duties in Force | % | B/A % |
| Crude metall industry | 73 | 33.49 | 37 | 38.95 | 50.68 |
| Chemical substances, secondary products of petroleum, rubber and plastics | 62 | 28.44 | 20 | 21.05 | 32.26 |
| Textiles, clothe, and leather industry | 25 | 11.47 | 16 | 16.84 | 64.00 |
| Metall products, machines, and equipment | 22 | 10.09 | 9 | 9.47 | 40.91 |
| Agriculture, forestry, and fishery | 9 | 4.13 | 0 | 0 | 0 |
| Other industrial manufactures | 8 | 3.67 | 7 | 7.37 | 87.50 |
| Wood industy, and wood products | 7 | 3.21 | 1 | 1.05 | 14.29 |
| Food, liquer, and tabacco | 8 | 3.67 | 2 | 2.11 | 25.00 |
| Non-metalic mineral products except those derived from petroleum and carbon | 3 | 1.38 | 2 | 2.11 | 66.67 |
| Minerals | 1 | 0.46 | 1 | 1.05 | 100.00 |
| Sum | 218 | 100 | 95 | 100 | 43.58 |

Note: Figures for duties in force, by Dec. 1998, were used because figures for all enforced duties per sector between 1987 and 1998 were not available.

Source: *Informe de Labores 1998*, SECOFI, p. 85

Table A 1.7

Size of Duties in Force by 31 Dec. 1998

| Size of the Active Duties (ad valorem) | Number of Duties | % of Total | Cumulative | |
|---|---------------------|---------------|------------|---------|
| | | | nominal | percent |
| 0 - 9% | 6 | 6.32 | 6 | 6.32 |
| 10 - 19% | 8 | 8.42 | 14 | 14.74 |
| 20 - 29% | 11 | 11.58 | 25 | 26.32 |
| 30 - 39% | 15 | 15.79 | 40 | 42.11 |
| 40 - 49% | 6 | 6.32 | 46 | 48.42 |
| 50 - 99% | 14 | 14.74 | 60 | 63.16 |
| 100 - 199% | 16 | 16.84 | 76 | 80.00 |
| 200 - 1105% | 19 | 20.00 | 95 | 100.00 |
| Total | 95 | 100 | | |

Source: Based on *Informe de Labores 1998*, SECOFI, p. 81, and information about the countervailing duties, *coutas compensatorias*, available on www.secofi.gob.mx. Also see table A 1.12 for a more detailed list of the countervailing duties.

Table A 1.8

Countervailing Duties Imposed between Jan. 1987 - Dec. 1998

| Type of Duty | Cases where a duty was imposed | |
|--|--------------------------------|--|
| Preliminary | 150 | 56.18 % of requested cases 68.81 % of initiated cases |
| (168 preliminary duties have been imposed in 150 cases. The figure 168 includes the duties which were imposed when an investigation was initiated. Note that since 1993 the new legislation against unfair trade practices says duties can be imposed first after the preliminary resolution.) | | |
| Final | 107 | 40.07 % of requested cases 49.08 % of initiated cases 51.69 % of concluded cases |

Source: Bases on *Informe de Labores 1998*, SECOFI, p. 81

Table A 1.9

Mexico - Imports by Countries Jan. 1987 - Dec. 1998

in millions of USD

| Year | 1987 | 1988 | 1989 | 1990 | 1991 | 1992 | 1993 | 1994 | 1995 | 1996 | 1997 | 1998 | average change % |
|--------------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|--------|--------|---------------------|
| Total Imports | 12758 | 19557 | 22792 | 30014 | 49867 | 62129 | 65367 | 79346 | 72453 | 89469 | 109808 | 125242 | |
| annual change in % | | 53 | 17 | 32 | 66 | 25 | 5 | 21 | -9 | 24 | 23 | 14 | 25 |
| U.S. | 8252 | 13043 | 15554 | 19846 | 24652 | 44279 | 46542 | 57009 | 53995 | 67629 | 82182 | 93252 | |
| annual nom change | | 4791 | 2511 | 4292 | 4806 | 19627 | 2263 | 10467 | -3014 | 13634 | 14553 | 11070 | |
| annual change in % | | 58 | 19 | 28 | 24 | 80 | 5 | 22 | -5 | 25 | 22 | 13 | 26 |
| China | 130 | 179 | 161 | 218 | 429 | 158 | 353 | 429 | 521 | 760 | 1247 | 1818 | |
| annual nom change | | 49 | -18 | 57 | 211 | -271 | 195 | 76 | 92 | 239 | 487 | 571 | |
| annual change in % | | 38 | -10 | 35 | 97 | -63 | 123 | 22 | 21 | 46 | 64 | 46 | 38 |
| Brazil | 177 | 318 | 192 | 167 | 184 | 1220 | 1312 | 1326 | 622 | 759 | 956 | 1142 | |
| annual nom change | | 141 | -126 | -25 | 17 | 1036 | 92 | 14 | -704 | 137 | 197 | 186 | |
| annual change in % | | 80 | -40 | -13 | 10 | 563 | 8 | 1 | -53 | 22 | 26 | 19 | 57 |
| Venezuela | 84 | 89 | 61 | 152 | 154 | 228 | 250 | 327 | 235 | 257 | 463 | 334 | |
| annual nom change | | 5 | -28 | 91 | 2 | 74 | 22 | 77 | -92 | 22 | 206 | -129 | |
| annual change in % | | 6 | -31 | 149 | 1 | 48 | 10 | 31 | -28 | 9 | 80 | -28 | 22 |
| Germany | 859 | 1224 | 919 | 1668 | 2328 | 2477 | 2832 | 3088 | 2687 | 3174 | 3902 | 4558 | |
| annual nom change | | 365 | -305 | 749 | 660 | 149 | 355 | 256 | -401 | 487 | 728 | 656 | |
| annual change in % | | 42 | -25 | 82 | 40 | 6 | 14 | 9 | -13 | 18 | 23 | 17 | 19 |

Table A 1.9

| | | | | | | | | | | | | | |
|-------------------------|------|------|------|------|------|------|------|------|-------|------|-------|-------|----|
| Korea | 28 | 114 | 161 | 185 | 85 | 617 | 662 | 734 | 974 | 1177 | 1471 | 1951 | |
| annual nom change | | 86 | 47 | 24 | -100 | 532 | 45 | 72 | 240 | 203 | 294 | 480 | |
| annual change in % | | 307 | 41 | 15 | -54 | 626 | 7 | 11 | 33 | 21 | 25 | 33 | 97 |
| Russia (former U.S.S.R) | 6 | 11 | 6 | 7 | 17 | 49 | 75 | 140 | 64 | 50 | 180 | 246 | |
| annual nom change | | 5 | -5 | 1 | 10 | 32 | 26 | 65 | -76 | -14 | 130 | 66 | |
| annual change in % | | 83 | -45 | 17 | 143 | 188 | 53 | 87 | -54 | -22 | 260 | 37 | 68 |
| Spain | 182 | 218 | 328 | 504 | 572 | 875 | 1152 | 1333 | 694 | 630 | 987 | 1257 | |
| annual nom change | | 36 | 110 | 176 | 68 | 303 | 277 | 181 | -639 | -64 | 357 | 270 | |
| annual change in % | | 20 | 50 | 54 | 13 | 53 | 32 | 16 | -48 | -9 | 57 | 27 | 24 |
| Canada | 375 | 358 | 359 | 391 | 780 | 1052 | 1163 | 1600 | 1374 | 1744 | 1968 | 2292 | |
| annual nom change | | -17 | 1 | 32 | 389 | 272 | 111 | 437 | -226 | 370 | 224 | 324 | |
| annual change in % | | -5 | 0 | 9 | 99 | 35 | 11 | 38 | -14 | 27 | 13 | 16 | 21 |
| Taiwan | | | | | | 543 | 658 | 865 | 716 | 891 | 1137 | 1529 | |
| annual nom change | | | | | | | 115 | 207 | -149 | 175 | 246 | 392 | |
| annual change in % | | | | | | | 21 | 31 | -17 | 24 | 28 | 34 | 20 |
| EU | 2050 | 2880 | 3294 | 5755 | 6778 | 8416 | 8471 | 9848 | 7401 | 8506 | 10891 | 12867 | |
| annual nom change | | 830 | 414 | 2461 | 1023 | 1638 | 55 | 1377 | -2447 | 1105 | 2385 | 1976 | |
| annual change in % | | 40 | 14 | 75 | 18 | 24 | 1 | 16 | -25 | 15 | 28 | 18 | 20 |
| Ukraine | | | | | | | 4 | | | | | | |
| annual nom change | | | | | | | | | | | | | |
| annual change in % | | | | | | | | | | | | | |

Source: IMF various years

Table A 1.10

Imports from Various Countries and Their Share of Mexico's Total Imports 1987 - 1998

in millions of USD

| Year | 1987 | 1988 | 1989 | 1990 | 1991 | 1992 | 1993 | 1994 | 1995 | 1996 | 1997 | 1998 | average annual change |
|--------------------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|--------|--------|-----------------------------|
| Total Imports | 12758 | 19557 | 22792 | 30014 | 49867 | 62129 | 65367 | 79346 | 72453 | 89469 | 109808 | 125242 | |
| U.S. | 8252 | 13043 | 15554 | 19846 | 24652 | 44279 | 46542 | 57009 | 53995 | 67629 | 82182 | 93252 | |
| as % of total Mx imports | 65 | 67 | 68 | 66 | 49 | 71 | 71 | 72 | 75 | 76 | 75 | 74 | |
| annual change | | 2 | 2 | -2 | -17 | 22 | 0 | 1 | 3 | 1 | -1 | 0 | 0.89 |
| China | 130 | 179 | 161 | 218 | 429 | 158 | 353 | 429 | 521 | 760 | 1247 | 1818 | |
| as % of total Mx imports | 1.0 | 0.9 | 0.7 | 0.7 | 0.9 | 0.3 | 0.5 | 0.5 | 0.7 | 0.8 | 1.1 | 1.5 | |
| annual change | | -0.1 | -0.2 | 0.0 | 0.1 | -0.6 | 0.3 | 0.0 | 0.2 | 0.1 | 0.3 | 0.3 | 0.04 |
| Brazil | 177 | 318 | 192 | 167 | 184 | 1220 | 1312 | 1326 | 622 | 759 | 956 | 1142 | |
| as % of total Mx imports | 1.4 | 1.6 | 0.8 | 0.6 | 0.4 | 2.0 | 2.0 | 1.7 | 0.9 | 0.8 | 0.9 | 0.9 | |
| annual change | | 0.2 | -0.8 | -0.3 | -0.2 | 1.6 | 0.0 | -0.3 | -0.8 | 0.0 | 0.0 | 0.0 | -0.04 |
| Venezuela | 84 | 89 | 61 | 152 | 154 | 228 | 250 | 327 | 235 | 257 | 463 | 334 | |
| as % of total Mx imports | 0.7 | 0.5 | 0.3 | 0.5 | 0.3 | 0.4 | 0.4 | 0.4 | 0.3 | 0.3 | 0.4 | 0.3 | |
| annual change | | -0.2 | -0.2 | 0.2 | -0.2 | 0.1 | 0.0 | 0.0 | -0.1 | 0.0 | 0.1 | -0.2 | -0.04 |
| Germany | 859 | 1224 | 919 | 1668 | 2328 | 2477 | 2832 | 3088 | 2687 | 3174 | 3902 | 4558 | |
| as % of total Mx imports | 6.7 | 6.3 | 4.0 | 5.6 | 4.7 | 4.0 | 4.3 | 3.9 | 3.7 | 3.5 | 3.6 | 3.6 | |
| annual change | | -0.5 | -2.2 | 1.5 | -0.9 | -0.7 | 0.3 | -0.4 | -0.2 | -0.2 | 0.0 | 0.1 | -0.28 |

Table A 1.10

| | | | | | | | | | | | | | |
|--------------------------|------|------|------|------|------|------|------|------|------|------|-------|-------|-------|
| Korea | 28 | 114 | 161 | 185 | 85 | 617 | 662 | 734 | 974 | 1177 | 1471 | 1951 | |
| as % of total Mx imports | 0.2 | 0.6 | 0.7 | 0.6 | 0.2 | 1.0 | 1.0 | 0.9 | 1.3 | 1.3 | 1.3 | 1.6 | |
| annual change | | 0.4 | 0.1 | -0.1 | -0.4 | 0.8 | 0.0 | -0.1 | 0.4 | 0.0 | 0.0 | 0.2 | 0.12 |
| Russia (former U.S.S.R.) | 6 | 11 | 6 | 7 | 17 | 49 | 75 | 140 | 64 | 50 | 180 | 246 | |
| as % of total Mx imports | 0.0 | 0.1 | 0.0 | 0.0 | 0.0 | 0.1 | 0.1 | 0.2 | 0.1 | 0.1 | 0.2 | 0.2 | |
| annual change | | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.0 | 0.1 | -0.1 | 0.0 | 0.1 | 0.0 | 0.01 |
| Spain | 182 | 218 | 328 | 504 | 572 | 875 | 1152 | 1333 | 694 | 630 | 987 | 1257 | |
| as % of total Mx imports | 1.4 | 1.1 | 1.4 | 1.7 | 1.1 | 1.4 | 1.8 | 1.7 | 1.0 | 0.7 | 0.9 | 1.0 | |
| annual change | | -0.3 | 0.3 | 0.2 | -0.5 | 0.3 | 0.4 | -0.1 | -0.7 | -0.3 | 0.2 | 0.1 | -0.04 |
| Canada | 375 | 358 | 359 | 391 | 780 | 1052 | 1163 | 1600 | 1374 | 1744 | 1968 | 2292 | |
| as % of total Mx imports | 2.9 | 1.8 | 1.6 | 1.3 | 1.6 | 1.7 | 1.8 | 2.0 | 1.9 | 1.9 | 1.8 | 1.8 | |
| annual change | | -1.1 | -0.3 | -0.3 | 0.3 | 0.1 | 0.1 | 0.2 | -0.1 | 0.1 | -0.2 | 0.0 | -0.10 |
| Taiwan | | | | | | 543 | 658 | 865 | 716 | 891 | 1137 | 1529 | |
| as % of total Mx imports | | | | | | 0.9 | 1.0 | 1.1 | 1.0 | 1.0 | 1.0 | 1.2 | |
| annual change | | | | | | | 0.1 | 0.1 | -0.1 | 0.0 | 0.0 | 0.2 | 0.06 |
| EU | 2050 | 2880 | 3294 | 5755 | 6778 | 8416 | 8471 | 9848 | 7401 | 8506 | 10891 | 12867 | |
| as % of total Mx imports | 16.1 | 14.7 | 14.5 | 19.2 | 13.6 | 13.5 | 13.0 | 12.4 | 10.2 | 9.5 | 9.9 | 10.3 | |
| annual change | | -1.3 | -0.3 | 4.7 | -5.6 | 0.0 | -0.6 | -0.5 | -2.2 | -0.7 | 0.4 | 0.4 | -0.53 |
| Ukraine | | | | | | | 4 | | | | | | |
| as % of total Mx imports | | | | | | | 0.0 | | | | | | |
| annual change | | | | | | | | | | | | | |

Based on table A 1.9

Table A 1.11

Antidumping Intensities for the Years 1987 - 1998 and for Selected Countries

| Year | 1987 | 1988 | 1989 | 1990 | 1991 | 1992 | 1993 | 1994 | 1995 | 1996 | 1997 | 1998 | overall |
|-------------------------|-------|-------|-------|-------|-------|-------|-------|-------|-------|-------|--------|--------|---------|
| Total Imports * | 12.76 | 19.56 | 22.79 | 30.01 | 49.87 | 62.13 | 65.37 | 79.35 | 72.45 | 89.47 | 109.81 | 125.24 | 738.80 |
| annual change in % | | 53 | 17 | 32 | 66 | 25 | 5 | 21 | -9 | 24 | 23 | 14 | |
| Request Intensity 1/ | 1.41 | 0.56 | 0.31 | 0.40 | 0.18 | 0.55 | 1.45 | 0.53 | 0.08 | 0.11 | 0.11 | 0.09 | 0.36 |
| Initiation Intensity 2/ | 1.41 | 0.56 | 0.31 | 0.40 | 0.18 | 0.42 | 1.27 | 0.33 | 0.06 | 0.04 | 0.06 | 0.09 | 0.30 |

| Countries | Imports 1987-1998 * | Initiation Intensity | Final Duty Intensity 3/ |
|----------------------|---------------------|----------------------|-------------------------|
| U.S. | 526.235 | 0.11 | 0.05 |
| China | 6.403 | 5.93 | 5.15 |
| Brazil | 8.375 | 2.15 | 1.31 |
| Venezuela | 2.634 | 2.28 | 1.52 |
| Germany | 29.716 | 0.24 | 0.07 |
| Korea | 8.159 | 0.86 | 0.12 |
| Russia (former USSR) | 0.851 | 5.88 | 2.35 |
| Spain | 8.732 | 0.57 | 0.34 |
| Canada | 13.456 | 0.30 | 0.07 |
| Taiwan | 6.339 | 0.63 | 0.47 |
| EU | 87.157 | 0.03 | 0.01 |
| Ukraine | 0.004 | 750 | 500 |

* Note: Imports in billions of USD.
1 billion = 1000 000 000

1/ Request Intensity: [total number of requests for AD investigations (Table A 1.1) / Total Imports]

2/ Initiation Intensity: [total number of initiated AD investigations (A in table A 1.4) / Total Imports]

3/ Final Duty Intensity: [total number of final duties imposed 1987-1998 (C in Table A 1.4) / Imports 1987 - 1998]

Table A 1.12

Antidumping Investigations Jan. 1987 - Dec. 1998

| | Products | Country | Final res | Final rev | Size of Final Duty in Force |
|----|---|----------|-----------|-----------|---|
| 1 | Caustic soda | USA | 87 12 28 | 92 11 12 | |
| 2 | Triethylamine | Germany | 88 02 29 | | |
| 3 | Triethylamine | USA | 88 02 29 | 92 09 25 | |
| 4 | Mono-isopropylamine | USA | 88 06 03 | 92 11 12 | |
| 5 | Watt-hourmeters, single and polyphase | USA | 89 04 03 | | |
| 6 | Orbit satellite magazine | USA | 87 09 04 | | |
| 7 | Milk carton, uncoated | USA | 90 08 07 | | |
| 8 | Ethylene glycol monoethyl ether acetate | USA | 89 10 10 | | |
| 9 | Silicon carbide | Brazil | 88 11 29 | | |
| 10 | Potassium carbonate | USA | 88 10 19 | | |
| 11 | Potassium carbonate | Belgium | 88 02 15 | | |
| 12 | Potassium carbonate | Germany | 88 10 19 | | |
| 13 | Potassium hydroxide | USA | 88 10 19 | 92 11 26 | |
| 14 | Potassium hydroxide | Belgium | 88 02 15 | | |
| 15 | Potassium hydroxide | Germany | 88 10 19 | | |
| 16 | Artificial coffee corundum | Brazil | 89 04 03 | 92 03 30 | |
| 17 | Monoethylamine | USA | 89 10 10 | | |
| 18 | Graphite electrodes | Spain | 89 04 03 | 91 09 05 | |
| 19 | ATT desktop computers | USA | 88 12 05 | | |
| 20 | Cuba blue | USA | 98 06 23 | | |
| 21 | Cuba blue | Germany | 89 10 10 | 91 10 17 | |
| 22 | Foely urethral catheters | Malaysia | 89 10 10 | | |
| 23 | Toluene di-isocyanate | USA | 89 10 10 | | |
| 24 | Steel bars | Brazil | 90 06 25 | | |
| 25 | Long strips made of cold rolled steel sheet | Brazil | 89 10 10 | 92 03 30 | |
| 26 | Steel products | EU | 90 07 13 | | |
| 27 | Ball bearings and roller bearings | Japan | 90 06 25 | | |
| 28 | Recycled cellulose film | USA | 90 09 05 | | |
| 29 | Kitchen articles | Taiwan | 90 10 11 | 95 08 07 | * 2,39 USD/set of 7 pieces or 0,31 USD/kg |
| 30 | Sorbitol | France | 90 09 27 | 95 08 04 | * 0,24 USD/kg |
| 31 | Cuba blue | Brazil | 90 09 05 | | |
| 32 | Alkaline batteries | USA | 89 09 04 | | |

Table A 1.12

| | Products | Country | Final res | Final rev | Size of Final Duty in Force |
|----|-------------------------------------|-------------|-----------|-----------|--|
| 33 | Muffling | Brazil | 91 08 02 | | |
| 34 | Acrylic fibers | USA | 91 06 05 | 95 08 07 | * 3.40% |
| 35 | Vulcanized rubber thread | Spain | 91 05 23 | 92 12 03 | |
| 36 | Ceramic wall coverings(tiles) | Brazil | 91 09 05 | 95 08 04 | * not available |
| 37 | PVC | USA | 91 06 05 | 95 08 14 | * 12,5-34,6% |
| 38 | Denim | USA | 91 09 09 | | |
| 39 | Denim | Hong Kong | 91 09 05 | 95 08 11 | * 47% |
| 40 | 2-Ethyl exanol | USA | 91 11 15 | 94 02 25 | |
| 41 | Milk carton, uncoated | USA | 91 03 25 | | |
| 42 | Di-iodio hydroxide | India | 91 10 17 | 94 04 20 | |
| 43 | Steel rods | USA | 91 12 23 | 95 03 07 | * 6.73% |
| 44 | Steel rods | Venezuela | 91 12 23 | | * 0,037-0,097 USD/kg |
| 45 | Rolled sheet metal | USA | 91 12 26 | | |
| 46 | Hot rolled steel sheet | USA | 91 12 26 | | |
| 47 | Cold rolled steel sheet | USA | 91 12 26 | | |
| 48 | Vinyl flooring | USA | 91 09 15 | 95 08 04 | * 0,368-1,700 USD/kg |
| 49 | Recycled cellulose corrugated steel | USA | 92 05 25 | | * not available |
| 50 | Recycled cellulose corrugated steel | Spain | 92 05 25 | | * not available |
| 51 | Dinner service | China | 92 05 25 | 97 08 31 | * 99,81% porcelain and 95,06% ceramics |
| 52 | Cationic starch | Netherlands | 92 05 25 | 96 03 08 | * 16% |
| 53 | Plasic syringes | USA | 92 05 25 | | |
| 54 | Telephone connectors | USA | 92 11 27 | | |
| 55 | Transformers | Brazil | 92 09 07 | | |
| 56 | Steel coils | USA | 93 02 08 | | |
| 57 | Sodium tripolyphosphate | Spain | 92 12 08 | | |
| 58 | Zipppers | Venezuela | 93 04 09 | | |
| 59 | Steel connestions | China | 93 04 15 | | * 33.34% |
| 60 | Cotton and synthetic textiles | China | 92 12 10 | | |
| 61 | Cotton and synthetic textiles | Taiwan | 93 12 10 | | |
| 62 | Cotton and synthetic textiles | South Korea | 94 12 10 | | |
| 63 | Cotton and synthetic textiles | Hong Kong | 95 12 10 | | |
| 64 | Cotton and synthetic textiles | Pakistan | 96 12 10 | | |
| 65 | Cotton and synthetic textiles | Argentina | 97 12 10 | | |
| 66 | Cotton and synthetic textiles | Brazil | 98 12 10 | | |

Table A 1.12

| | Products | Country | Final res | Final rev | Size of Final Duty in Force |
|-----|--|-------------|-----------|-----------|-----------------------------------|
| 67 | Cotton and synthetic textiles | Colombia | 99 12 10 | | |
| 68 | Hot rolled steel sheet | USA | 93 04 28 | 96 08 21 | * 0-28,73% |
| 69 | Cold rolled steel sheet | USA | 93 04 28 | 96 08 21 | * not available |
| 70 | Rolled sheet metal | USA | 93 04 28 | 96 10 10 | * 4,18-39,92% |
| 71 | Transperent polupropylene film | Colombia | 93 06 03 | | |
| 72 | Transperent polypropylene film | Brazil | 93 06 03 | | |
| 73 | Poliester fibers | S Korea | 93 08 19 | | * 3,74-32,00% |
| 74 | Cotton and synthetic textiles | China | 93 08 09 | | |
| 75 | Rubber strips used for automotive industry | South Korea | 93 08 09 | | |
| 76 | Candles | China | 93 08 19 | | * 103% |
| 77 | Christmasday series | China | 94 07 14 | | |
| 78 | Cement | Venezuela | 93 08 19 | | |
| 79 | Hydrogen peroxide | USA | 93 12 23 | 97 09 02 | * 34.50% |
| 80 | Acid fluorite | China | 94 05 10 | | * 16% |
| 81 | Steel sheet | USA | 94 08 02 | | * not available |
| 82 | Sheet metal | USA | 94 08 02 | | * not available |
| 83 | Brass padlock | China | 94 09 22 | | * 0-181% |
| 84 | Beef | EU | 94 06 03 | | * 45.74% |
| 85 | Zipper | Colombia | 94 07 14 | | |
| 86 | Glass | USA | 94 11 11 | 97 12 02 | * 0-44,32% |
| 87 | Glass | Germany | 94 11 11 | | |
| 88 | Pork products | USA | 94 08 26 | | |
| 89 | Special steel | Brazil | 94 11 18 | 98 08 14 | * not available |
| 90 | Shoes | China | 93 12 30 | 97 05 27 | * 313% |
| 91 | Shoes | China | 93 12 30 | 97 05 27 | * 323% |
| 92 | Shoes (leather) | China | 93 12 30 | 97 05 27 | * 1105% |
| 93 | Shoes (cotton textile) | China | 93 12 30 | 97 05 27 | * 232%. Reference price 16,56 USD |
| 94 | Shoes (of other and parts of) | China | 93 12 30 | 97 05 27 | * 165% |
| 95 | Bicycles | China | 94 09 22 | | * 144% |
| 96 | Rims for bicycles | China | 94 09 22 | | * 279% |
| 97 | Tubes for bicycles | China | 94 09 22 | | * 279% |
| 98 | Textiles | China | 94 10 18 | | * 331-501% |
| 99 | Textiles | China | 94 10 18 | | * 331% |
| 100 | Textiles | China | 94 10 18 | | * 331-501% |

Table A 1.12

| Products | Country | Final res | Final rev | Size of Final Duty in Force |
|---|-------------|-----------|-----------|-----------------------------|
| 101 Textiles | China | 94 10 18 | | * 501% |
| 102 Textiles | China | 94 10 18 | | * 54% |
| 103 Confection | China | 94 08 18 | | * 0-533% |
| 104 Confection | China | 94 08 18 | | * 0-533% |
| 105 Confection | China | 94 08 18 | | * 379% |
| 106 Organic chemicals | China | 94 08 18 | 98 1114 | * 208.81% |
| 107 Tools | China | 94 11 11 | 98 1114 | * 312% |
| 108 Machines, electric equipment and material | China | 94 11 18 | 98 1114 | * 51,4-129% |
| 109 Reproduction of sound and images for TV | China | 94 11 18 | 98 1114 | * 51,4-129% |
| 110 Toys | China | 94 11 25 | | * 2,58-351% |
| 111 Games and recreation & sports articles | China | 94 11 25 | | * 2,58-351% |
| 112 Caustic soda | USA | 93 11 08 | | |
| 113 Refrigerators | S Korea | 94 11 11 | | |
| 114 Homopolymer | USA | 94 11 22 | | |
| 115 Cellulose | USA | 94 05 02 | | |
| 116 Pencil | China | 94 10 18 | | * 451% |
| 117 Sodium carbonate | USA | 94 03 28 | | |
| 118 Fish flour | Chile | 94 10 20 | | |
| 119 Paper | USA | 94 11 18 | | |
| 120 Valve | China | 94 10 18 | | * 4-105% |
| 121 Pen sharpeners | China | 94 11 18 | | * 145% |
| 122 Carbamide | Russia | 95 07 05 | | |
| 123 Carbamide | Byelorussia | 95 07 05 | | |
| 124 Carbamide | Ukraine | 95 07 05 | | * 41,56-57,23% |
| 125 Carbamide | Uzbekistan | 95 07 05 | | |
| 126 Carbamide | Tajikistan | 95 07 05 | | |
| 127 Carbamide | Lithuania | 95 07 05 | | |
| 128 Carbamide | Estonia | 95 07 05 | | |
| 129 Gasoline additives | USA | 95 07 05 | | |
| 130 Caustic soda | USA | 95 07 12 | | * 35.83% |
| 131 Steel rods | Brazil | 95 08 11 | | * 57.69% |
| 132 Steel rods | Spain | 94 10 10 | | |
| 133 Bags and suitcases | China | 94 11 25 | | |
| 134 Sheet metal | Canada | 95 12 29 | | |

Table A 1.12

| Products | Country | Final res | Final rev | Size of Final Duty in Force |
|------------------------|-------------|-----------|-----------|-----------------------------|
| 135 Sheet metal | Brazil | 95 12 29 | | * 34.84% |
| 136 Hot rolled steel | Canada | 95 12 30 | | |
| 137 Hot rolled steel | Brazil | 95 12 30 | | * 9,09-22,29% |
| 138 Hot rolled steel | Venezuela | 95 12 30 | | * 45.54% |
| 139 Hot rolled steel | S Korea | 95 12 30 | | |
| 140 Hot rolled steel | Germany | 95 12 30 | | |
| 141 Hot rolled steel | Netherlands | 95 12 30 | | * 56.54% |
| 142 Cold rolled steel | Brazil | 95 12 27 | | * 16,13-22,52% |
| 143 Cold rolled steel | Canada | 95 12 27 | | |
| 144 Cold rolled steel | S Korea | 95 12 27 | | |
| 145 Cold rolled steel | Venezuela | 95 12 27 | | * 23.62% |
| 146 Cold rolled steel | Germany | 95 12 27 | | * 185.76% |
| 147 Cold rolled steel | Australia | 95 12 27 | | |
| 148 Rolled sheet metal | Brazil | 95 12 28 | | * 12,94-15,78% |
| 149 Rolled sheet metal | Canada | 95 12 28 | | * 108% |
| 150 Rolled sheet metal | S Korea | 95 12 28 | | |
| 151 Rolled sheet metal | Venezuela | 95 12 28 | | * 48.04% |
| 152 Rolled sheet metal | S Africa | 95 12 28 | | |
| 153 Pipes | USA | 95 10 11 | | * 82.41% |
| 154 Sulfuric acid | Japan | 96 05 27 | | * 91.10% |
| 155 locks | China | 95 08 14 | | * 236% |
| 156 Beef | USA | 96 04 25 | | |
| 157 Phosphate | USA | 95 12 11 | | |
| 158 Synthetic rubber | Brazil | 96 05 27 | | * 71,47-96,38% |
| 159 Bicycle tiers | India | 95 12 07 | | * 116% |
| 160 Rolled sheet metal | Armenia | 96 06 07 | | |
| 161 Rolled sheet metal | Azerbaijan | 96 06 07 | | |
| 162 Rolled sheet metal | Belorussia | 96 06 07 | | |
| 163 Rolled sheet metal | Estonia | 96 06 07 | | |
| 164 Rolled sheet metal | Georgia | 96 06 07 | | |
| 165 Rolled sheet metal | Kazakhstan | 96 06 07 | | |
| 166 Rolled sheet metal | Kyrgystan | 96 06 07 | | |
| 167 Rolled sheet metal | Latvia | 96 06 07 | | |
| 168 Rolled sheet metal | Lithuania | 96 06 07 | | |

Table A 1.12

| Products | Country | Final res | Final rev | Size of Final Duty in Force |
|---|--------------|-----------|-----------|---------------------------------------|
| 169 Rolled sheet metal | Moldova | 96 06 07 | | |
| 170 Rolled sheet metal | Tajikistan | 96 06 07 | | |
| 171 Rolled sheet metal | Turkmenistan | 96 06 07 | | |
| 172 Rolled sheet metal | Ukraine | 96 06 07 | | |
| 173 Rolled sheet metal | Uzbekistan | 96 06 07 | | |
| 174 Rolled sheet metal | Russia | 96 06 07 | | * 29.30% |
| 175 Metal connections | Brazil | 96 10 04 | | * 31,35%-124,48% |
| 176 Ammonium sulfate | USA | 97 05 26 | | * 57.91% |
| 177 Cellophane | USA | 97 05 28 | | * 30.60% |
| 178 Steel balls | Taiwan | 97 06 24 | | * 19.44% |
| 179 Gasoline additives | USA | 97 08 23 | | * 81% |
| 180 Baby carriage and walking-chairs for babies | Taiwan | 97 11 08 | | * 0-31,53% |
| 181 Baby carriage and walking-chairs for babies | China | 97 11 08 | | * 21,72-105,84% |
| 182 Fertilizer (furazolidona) | China | 97 12 23 | | * 117% |
| 183 High fructos corn syrup | USA | 98 01 23 | | * 63,75/55,37 - 100,60/175,50 USD/ton |
| 184 Apples | USA | 98 05 15 | | |
| 185 Paper | USA | 98 10 28 | | * 2,26-17,69% |
| 186 Steel sheet | Russia | 98 11 13 | | * 49,38-54,745 |
| 187 Steel sheet | Ukraine | 98 11 13 | | * 61,52-67,99% |
| 188 Peaches | Greece | 98 11 25 | | |

* compensatory duty in force

Total number of concluded investigations:

188

94 (see 1/ in table A 1.3)

where there has been a final review it is

Total number of final duties imposed:

83

assumed a duty has been in force

Total number of final duties in force:

The final countervailing duties were retrieved from SECOFI's homepage, www.secofi.gob.mx (*cuotas compensatorias*). The figures describe the active duties and their levels by Dec. 1999. This is why, in some cases, relevant information was unavailable. A likely explanation is that the duties have been eliminated in these cases.

Source: *Informe de Labores*, SECOFI, pp. 87-92, and Secofi's homepage.

Appendix 2

A 2 Some Additional Information about Mexico

Official Title: *Estados Unidos Mexicanos*

Capital: Mexico City, D.F.

Currency: Mexican Peso (Mex\$)

Political System: Federal republic of 31 states and one federal district.

Regional Agreements with: Venezuela, Colombia, Costa Rica, Bolivia, Canada and USA.

Mexico is also reinforcing its regional agreements within the Americas, the EU and within the Asia-Pacific Economic Cooperation (APEC). Some complications have been noted in the Mexico's trade regulations due to the different regimes applied in the regional agreement.

Exports: *Maquiladoras* contributed 39 percent of total exports in 1995. Main destinations were NAFTA (85,9 %), Latin America (5,4%), EU (4,2%) and Japan/Asia (2,4%).

Imports: *Maquiladoras* contributed 36 percent of the total imports in 1995. Main imports 1995 were machinery and transport equipment, agricultural products, chemicals, iron and steel, petrochemicals, petroleum products, processed food, drink, and tobacco. Main sources were NAFTA (76,4%), Japan/Asia (10,1%), EU (9,3%), and Latin America (2,6%).

The *Maquiladoras* are in-bond manufacturers and make, assemble or process components and raw materials brought in 'in-bond' from the USA and then re-export them duty-free. The *Maquiladoras* use exemption from taxes on imports on its intermediate goods to manufacture products for rapid re-export almost exclusively to the US market. Most *Maquiladoras* are US owned companies and typically the *maquila* plants lie close to the US border.

Important industries: Hydrocarbons, maquiladors, motor vehicle and parts, minerals and mining, food, liquor, tobacco and electronics. The greatest weaknesses identified in the WTO Trade Policy Review of Mexico (1997) affecting the manufacturing sector in Mexico was the limited availability of labor skills, high-quality suppliers, and an efficient transportation system.

Sources: WTO Trade Policy Review Mexico 1997, Americas Review 1998, Mexico

Appendix 3

A 3 NAFTA's Binational Panel Review

The request for a binational panel review can be made by involved members, and also by a person who is entitled under the law of the importing member to commence domestic procedures for judicial review of that final determination. The involved countries are the importing member and the member whose goods are the subject of the final determination.

The request for a panel shall be made in writing to the other involved member within 30 days of notification. This notification can be made directly by the importing member to the other involved member or by publication in the official journal of the importing member. Where the competent investigation authority of the importing party has imposed provisional measure in an investigation the other involved member may provide notice of its intention to request a panel under Article 19 of the NAFTA and a panel shall be established at that time. A failure to request a panel within the time specified above will preclude review by a binational panel.

The *binational panel*¹ is to consist of five people in total. The involved member countries each appoint two panelists and each involved member has the right to disqualify up to four panelists chosen by the other member country. The fifth panelist is to be agreed upon by both the involved member countries. A panelist may not appear as counsel before another panel.

The panelists are normally appointed from a roster consisting of at least 75 people. Each member of the NAFTA shall have at least selected 25 people each for this roster under consultation with each other. All people in the roster are to be citizens of Canada, Mexico or the United States, are to the fullest extent practicable judges or former judges and may not be affiliated with a member country and under no circumstances should they take instructions from a member country. The members are to maintain the roster and it can be amended when necessary after consultations.

The competent investigation authority that issued the final determination in question has the right to appear and be represented by counsel before the panel. Each member shall provide that other persons, who would have had the right to appear and be represented in a domestic judicial review proceeding concerning the determination of the competent

¹ 'Establishment of Binational Panels', chapter 19, Annex 1901.2 of the NAFTA

investigating authority, shall have the right to appear and be represented by counsel before the panel.

The panel's decision under chapter 19 of the NAFTA is binding on the involved members and the panel may uphold a final determination or remand it for action not inconsistent with the panel's decision. Members cannot in its domestic legislation provide for an appeal from a panel decision to its domestic courts. However if an involved member claims that a member of the panel was guilty of gross misconduct, bias or a serious conflict of interest, or otherwise materially violated the rules of conduct, it can ask for an extraordinary challenge procedure².

Upon the request for an extraordinary challenge procedure involved members will establish a committee, according the regulations set forth in the 19th chapter, Annex 1904.13, who will provide for a decision in the matter within 90 days of its establishment. The committee can deny the challenge if it feels the grounds for an extraordinary challenge procedure is not met, vacate the original panel decision or remand it for decision not inconsistent with the committee's decision. A new binational panel will be established if the original decision is vacated.

² 'Extraordinary Challenge Procedure', chapter 19, Annex 1904.13 of the NAFTA.

Appendix 4

A 4 Additional Information: Federal Executive Branch, SECOFI, & Foreign Trade Commission

The Authority of the Federal Executive Branch³:

- To create, increase, decrease or suppress tariffs, by decrees published in the DOF, in accordance with the provisions of Article 131 of the Constitution of the United Mexican States;
- To regulate, restrict or prohibit the export, import, distribution or transport of goods, when it is deemed imperative, by decrees published in the DOF, in accordance with the provisions of Article 131 of the Constitution of the United Mexican States;
- To establish measures to regulate or restrict the export or import of goods by means of agreements issued by SECOFI or, if applicable, together with a competent authority, and published in the DOF;
- To establish measures to regulate or restrict the distribution or transport of foreign goods through Mexican territory coming from and destined for foreign countries by means of agreements issued by a competent authority and published in the DOF;
- To carry out international trade negotiations through SECOFI without prejudice to the authorities which correspond to other entities of the Federal Executive Branch; and
- To coordinate, through SECOFI, the participation of the units and entities of the Federal Government and the governments of the states in foreign trade promotion activities, as well as coordinating actions in this matter with the private sector.

Authority of SECOFI⁴

- To research, project and propose tariff changes to the Federal Executive Branch;
- Process and resolve investigations relative to protection measures, as well as to propose the measures which result from said investigations to the Federal Executive Branch

³ Article 4 of the Foreign Trade Act.

⁴ Article 5 of the Foreign Trade Act

- To research, project, establish and amend non-tariff regulatory and restrictive measures for exports, imports, distribution and transport of goods;
- To grant advance permits and assign export and import quotas;
- To establish the country of origin marking requirements;
- To process and resolve investigations regarding unfair international trade practices, as well as determining the compensatory duties which result from said investigations;
- To act as a consultant to Mexican exporters involved in foreign investigations regarding unfair international trade practices and protection measures;
- To coordinate the international trade negotiations with the competent entities;
- To issue the provisions of an administrative nature in compliance with the international agreements or treaties relative to trade matters to which Mexico is a party;
- To establish export promotion mechanisms; and
- To carry out other actions which are entrusted to SECOFI by laws and regulations.

The following offices make up the Foreign Trade Commission⁵:

1. Department of Foreign Relations (*Secretaría de Relaciones Exteriores*)
2. Department of Finance and Public Credit (*Secretaría de Hacienda y Crédito Público*)
3. Department of Social Development (*Secretaría de Desarrollo Social*)
4. Department of Trade and Industrial Development (*Secretaría de Comercio y Fomento Industrial*)
5. Department of Agriculture and Water Resources (*Secretaría de Agricultura y Recursos Hidráulicos*)
6. Department of Health (*Secretaría de Salud*)
7. Bank of Mexico (*Banco de México*)
8. Federal Competition Commission (*Comisión Federal de Competencia*)

⁵ Article 2 of the Regulations of the Foreign Trade Act

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Secretaría de Comercio y Fomento Industrial (SECOFI)
Unidad de Prácticas Comerciales Internacionales (UPCI)
Insurgentes Sur 1940, Piso 11, Col. Florida, Álvaro Obregón, C.P. 01030, México, D.F.
www.secofi.gob.mx
e-mail: upci@secofi.gob.mx

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