

# WORLD TRADE ORGANIZATION

G/ADP/Q1/MEX/12  
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Committee on Anti-Dumping Practices  
Committee on Subsidies and Countervailing Measures

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## NOTIFICATIONS OF LAWS AND REGULATIONS UNDER ARTICLE 18.5 AND ARTICLE 32.6 OF THE AGREEMENTS

### Additional Follow-Up Questions posed by the UNITED STATES<sup>1</sup> Regarding the Notification of MEXICO<sup>2</sup>

The following communication, dated 13 May 2004, is being circulated at the request of the Delegation of the United States.

1. Has Mexico yet initiated any cases that are being conducted in accordance with the 2003 amendments to the Foreign Trade Act (the "Decree")? If so, please list those cases.
2. Are revisions being made to the Regulations of the Foreign Trade Act to reflect the 2003 amendments? If so, when does Mexico anticipate that the revised Regulations will be notified to the WTO?
3. In its responses to questions from the United States and other countries, Mexico has asserted that international treaties apply automatically. Furthermore, in its reply to Chile, Mexico asserted that "[p]ursuant to the Mexican legal system, international agreements (such as the Anti-Dumping Agreement) take precedence over federal laws.<sup>3</sup> What are the specific sources in Mexican law that establish the supremacy of international treaties over federal laws? How is this consistent with Article 133 of the Mexican Constitution, which appears to place federal laws and international treaties on an equal footing.<sup>4</sup>
4. With regard to Article 31 of the Decree, has Mexico ever made antidumping determinations on the basis of third country prices? If so, did the administering authority use the "highest [representative] price" in its calculation of normal value? Please identify all cases in which this was done.

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<sup>1</sup> G/ADP/Q1/MEX/9-G/SCM/Q1/MEX/9

<sup>2</sup> G/ADP/N/1/MEX/1/Suppl.2-G/SCM/N/1/MEX/1/Suppl.1-G/SG/N/1/MEX/1/Suppl.1

<sup>3</sup> G/ADP/Q1/MEX/10-G/SCM/Q1/MEX/10, p.7, reply to Question 17.

<sup>4</sup> Artículo 133. Esta Constitución, las leyes del Congreso de la Unión que emanen de ella y todos los tratados que estén de acuerdo con la misma, celebrados y que se celebren por el Presidente de la República, con aprobación del Senado, serán la Ley Suprema de toda la Unión. CONSTITUCIÓN POLÍTICA DE LOS ESTADOS UNIDOS MEXICANOS.

Article 133. This Constitution, the laws of the Congress of the Union which flow from it and all treaties that may be in accord with the same, executed by the President of the Republic, with the approval of the Senate, shall be the Supreme Law of the whole Union. MEX. CONST.

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5. The United States appreciates Mexico's clarification of some issues previously raised regarding Article 86 and notes that Mexico has pointed out that the administering authority's application of Article 86 is discretionary, rather than obligatory. However, assuming that Article 86 was not enacted with the intention that it never be used, the United States would appreciate Mexico's further clarification of how this provision would, if applied, be consistent with Article 6.5 of the Anti-dumping Agreement, which prohibits disclosure of confidential information without the specific permission of the party submitting it? If the administering authority determined to report the possible existence of monopolistic practices to the antitrust authority, what documentation would it provide to the antitrust authority? In this circumstance, would the administering authority have an obligation or option of also notifying the party suspected of monopolistic practices?

6. In its response to question 10, Mexico stated:

Under Article 40 of the Foreign Trade Act, when all of the producers are related to the exporters or importers, Mexico may take as the domestic industry the manufacturers of the goods produced during the immediately preceding stage in the same continuous line of production, and will do so provided that the goods in question meet the criteria set out in Article 2.6 of the Anti-Dumping Agreement. This Article is therefore consistent with the provisions of the Anti-Dumping Agreement.

(emphasis in original). Could Mexico indicate:

- (a) the considerations its authority examines in deciding whether to exercise its discretion to define the manufacturers of the goods produced during the immediately preceding stage in the same continuous line of production as the domestic industry; and
  - (b) whether, in determining whether "the goods in question meet the criteria set out in Article 2.6 of the Anti-Dumping Agreement", its authority disregards that there is a domestically-produced article produced at the same stage of production as the imported articles under investigation.
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