MEXICO'S EXPERIENCE WITH THE USE OF ANTIDUMPING MEASURES

Introduction

Until the mid-1980s, the use of antidumping measures and other trade remedies was confined to a few developed countries such as Australia, Canada, the European Communities, New Zealand and the United States. However, during the last decade an increasing number of developing countries have resorted to such measures. Some analysts explain this phenomenon, at least partially, by the fact that many of these new users have recently undertaken substantive trade liberalization in the context of market-oriented reforms.

Mexico's experience is a case in point. In 1986, shortly after embarking in a process of trade liberalization, Mexico adopted legislation against unfair trade practices, thereby becoming one of the first developing countries to put in place a national trade defence system. Since then, Mexico has been an active user of the antidumping instrument.

The present paper will review Mexico's experience with the antidumping system. The first section will deal with the factors underlying the country's adoption and use of the instrument. The second section will briefly explain the implementation of Mexico's antidumping legislation and its incidence in terms of product sectors and countries affected, while the third section is concerned with some aspects of the internal administration of the system. Lastly, the paper offers some final comments drawing from Mexico's experience with the implementation of its trade defence system.

I. Background

1.1 Trade liberalization and the adoption of the trade remedy system

In the mid-1980s, Mexico undertook a process of macroeconomic reform and trade liberalization. The process put an end to almost fifty years of import substitution through the adoption of market-oriented policies and the opening of the economy to trade and foreign investment. Trade liberalization measures included, inter alia, the elimination of virtually all import licences and permits and a significant reduction of tariff duties and tariff dispersion.

The reforms were consolidated with the adoption of international commitments. In 1986, Mexico acceded to the General Agreement on Tariffs

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1 Subsidies and countervailing measures, Safeguard measures.
3 In contrast, Mexico has used countervailing duties (against subsidized imports) and safeguards sparingly. Since the Mexico's trade remedy legislation came into force only 18 countervailing investigations and one safeguard investigation have been conducted.
and Trade (GATT) and, in 1993 it subscribed the North American Free Trade Agreement with Canada and the United States. More recently, Mexico has concluded free trade agreements with its major trading partners, including several Latin American nations, the European Union, the EFTA countries and Israel. In 1995, Mexico became a founding Member of the World Trade Organization (WTO).

In the same year of its accession to the GATT, the Mexican Government enacted legislation to provide relief for national producers against unfair trade practices such as dumping and subsidies. Shortly thereafter, Mexico conducted its first antidumping investigation, which concluded with the imposition of antidumping duties in 1987. From that year onwards, the number of investigations increased steadily, reaching a peak in the period 1992-1994. Since then, it has substantially fallen and remained stable.

The sharp increase in the number of investigations during the first years of the implementation of the antidumping system in Mexico coincides with the period of consolidation of the trade reform initiated in the mid-1980s. The rapid transition from a closed economy protected by import permits and very high tariffs to an open economy with more intense trade and greater exposure to international competition explains, in part, the extensive use of antidumping remedies.

Undoubtedly, some sectors of the domestic industry, long time accustomed to high levels of protection, faced serious difficulties to adjust to the new competitive environment and might have sought some kind of relief through the initiation of antidumping investigations. Also, in anticipation of NAFTA’s entry into force, fears of facing competition with the most powerful economy in the world, the United States, might have prompted national producers to request the launching of antidumping cases. Nevertheless, other macroeconomic and cyclical factors seem to be more closely associated with the increased use of the antidumping instrument during those years.

1.2 Other factors explaining the use of antidumping measures

It has been suggested that other factors underlying Mexico’s frequent use of trade remedies are the following: the appreciation of the country’s real exchange rate during the period 1988-1993; the growth in domestic aggregate demand; and the tendency in high-fixed cost industries to dispose of surpluses at low prices in world markets during periods of low activity.

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5 As part of Mexico’s trade liberalization reform, the percentage of the value of imports subject to prior import permits declined from 100% to 20% between 1982 and 1988. During the same period, the average tariff rate was reduced from 27% to 10%. The ratio of foreign trade in goods to GDP increased from 33% in 1981 to 38% in 1993. Gustavo A. Baez, México y el Sistema contra Prácticas Desleales de Comercio Internacional, Mexico, 2000, (Mimeo).
The continuous appreciation of the real exchange rate between 1988 and the end of 1994 is probably the main factor contributing to the intensive use of the antidumping system during the first years of its implementation. The reason is simple, as the real exchange rate appreciated, it reduced the competitiveness of national producers and, at the same time, increased the incentive to purchase imports. However, following the December 1994 financial crisis and the subsequent devaluation of Mexico’s currency (123% in one year), imports were discouraged and dropped significantly. This situation was reflected by a sensible reduction in the number of antidumping cases initiated in 1995 (less than 85% with respect to 1994).

Similarly, Mexico’s domestic aggregate demand expanded continuously from 1987 to the end of 1994, during which time the Mexican market increasingly absorbed export surpluses from main trading partners, particularly the United States. But as a consequence of the financial crisis, the national market contracted dramatically (-14%) in 1995 and lost its attractiveness as a receptor of export surpluses from other countries. This, in turn, was mirrored by the sharp reduction in antidumping investigations.

The fact that the expansion of the domestic demand took place at a time when the international markets of certain commodities such as steel, base chemicals, plastics, pulp and paper were experiencing a cyclical recession, is another factor that contributed to the increased use of antidumping measures during the early 1990s. The reason is that such capital-intensive industries tend to dispose of their surpluses at prices below their normal value or below costs during periods of slow economic activity in an attempt to recoup their high fixed-costs. This happened between 1990 and 1993 as Mexican demand was expanding, and explains the concentration in these sectors of antidumping investigations initiated during those years in Mexico as well as worldwide.

To sum up, the opening of the Mexican economy since the mid-1980s, coupled with the appreciation of the real exchange rate and the expansion of domestic demand during a cyclical downturn in world markets of certain major commodities, made the Mexican market an attractive receptor of foreign, often low-priced goods. This, in turn, led to the imposition of antidumping measures in order to restore the conditions of fair competition between national producers and their foreign counterparts.

1.3 The international context

According to international standards, Mexico has become one of the most active users of antidumping remedies. In the period between 1987 and 1997, having initiated a total of 188 cases, Mexico was the 4th major user of antidumping measures, sharing this rank with Canada, and only after the

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8 G. A. Báez, Ibid., p. 6.
9 Ibid., p. 8. For an explanation of the impact of the cyclical nature of certain commodity industries on the use of antidumping measures worldwide, see J. Miranda et al., supra, note 1, p. 16 and 19.
United States, Australia and the European Unions, all of which are traditional users of these remedies.\textsuperscript{10}

However, Mexico’s experience as a "new" user of the antidumping instrument is not unique among emerging economies. Several developing countries and economies in transition that have recently embarked in trade and economic reform show a similar trend. During the above-mentioned period, Argentina, Brazil, South Africa, India, Korea and Turkey ranked also among the major users of the instrument. Other new users are Poland, Colombia, Indonesia and Malaysia. Most of these countries adopted trade defence regimes for the first time during the last decade.

Since the mid-1980s, the use of antidumping measures by emerging economies has grown steadily. Whereas in 1987 the new users accounted for 12\% of the world's total number of antidumping investigations, their share increased sharply as of 1993, reaching 54\% that year and 49\% in 1997.\textsuperscript{11} This increase coincided with a drop in the number of cases initiated by developed countries. However, even if there has been a rebound in the antidumping activity by the traditional users in recent years, the emerging economies have become prominent players in this area and will probably continue to be so in the future, as they pursue further trade liberalization and engage more intensively in international trade.

II. IMPLEMENTATION OF MEXICO'S ANTIDUMPING SYSTEM

2.1 Legal framework

In 1993, the Government of Mexico enacted the Foreign Trade Act (\textit{Ley de Comercio Exterior}, hereafter LCE) and its Regulations, which superseded the 1986 legislation on unfair trade practices.\textsuperscript{12} Currently, Mexico’s trade defence regime comprises: the LCE and its Regulations; the WTO Agreement on Implementation of Article VI of the GATT 1994 (the Antidumping Agreement) and the WTO Agreement on Subsidies and Countervailing Measures.\textsuperscript{13}

Additionally, several bilateral and regional free trade agreements concluded by Mexico contain provisions on antidumping and countervailing duties. In the case of NAFTA, the agreement provides for review procedures and a special dispute settlement mechanism for antidumping and countervailing duty matters.

\textsuperscript{10} J. Miranda et al. \textit{Ibid.}, Table 1, p. 7.
\textsuperscript{11} \textit{Ibid.}
\textsuperscript{12} The new law and its regulations were notified to the WTO Committee on Anti-Dumping Practices in May 1995: WTO documents G/ADP/N/1/MEX/1, G/ADP/N/1/MEX/1/Corr.1 and G/ADP/N/1/MEX/1/Corr.2; and to the Committee on Subsidies and Countervailing Measures: G/SCM/N/1/MEX/1 and G/SCM/N/1/MEX/1/Corr.1.
\textsuperscript{13} Under the Mexican Constitution, international treaties are self-executive and require no further legislative act to become Mexican law. Therefore, although the LCE was enacted before the WTO Agreements on Antidumping and Subsidies and Countervailing Measures came into force, no amendments were made to the LCE. In the event of any inconsistency, the provisions of the WTO Agreements will prevail over the LCE.
The LCE and its Regulations establish a trade defence system against dumped and subsidized imports with the aim of ensuring fair competition between Mexican producers and foreign exporters. To that effect, the legislation stipulates detailed administrative procedures for the conduct of investigations and the application of antidumping and countervailing measures. It also establishes procedures for the imposition of safeguard measures to provide temporary relief against legitimate imports that cause or threaten to cause serious injury to the domestic industry.

Mexico's Ministry of Economy has authority to conduct antidumping, countervailing and safeguard investigations and to determine any countervailing duties\(^\text{14}\) that might arise. This is done through the Unit on International Trade Practices (Unidad de Prácticas Comerciales, UPCI). Under the LCE and its Regulations, UPCI is responsible for investigating the existence of dumping or subsidies, injury or threat thereof to the domestic industry, and the causal relation between them. It is also responsible for proposing the appropriate remedies where the outcome of the investigation so requires.

With respect to dumping, the legislation defines what is to be understood by dumped imports and establishes specific methodology for determining dumping margins, injury and the causal link. It also stipulates the conditions and procedures for initiating an investigation, including the standing of petitioners\(^\text{15}\) and the information to be provided in the application, as well as specific time-limits for the different stages of the investigation. These normally include: the public notice of initiation, the gathering of information and evidence from the parties involved, the adoption of a preliminary determination, conciliatory meetings, verification visits, consideration of possible price undertakings, public hearings and the final determination.

The LCE requires the Ministry of Economy to seek the opinion of the Foreign Trade Commission (Comisión de Comercio Exterior, COCEX) before issuing a final determination. COCEX, which is composed of several government departments and agencies,\(^\text{16}\) may suggest modifications to the proposed antidumping duties on account of the public interest. The Ministry of Finance is responsible for collecting the duties.

In addition, the LCE provides for interaction between the antidumping authorities and the competition policy agency. The Federal Competition Commission (Comisión Federal de Competencia, CFC) may issue opinions concerning the antidumping decisions. In turn, the Ministry of Economy may

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\(^{14}\) Under the LCE, the term countervailing measures (cuotas compensatorias) is used to refer to duties applied in both antidumping and subsidy investigations.

\(^{15}\) Although as a general rule investigations are initiated upon request by the petitioning industry, the Ministry of Economy may also initiate ex officio proceedings.

\(^{16}\) The Foreign Trade Commission comprises the following Ministries: Foreign Affairs, Finance, Social Development, Economy, Agriculture and Health, as well as the Central Bank and the Federal Competition Commission.
report to the CFC any instances in which it considers that competition regulations have been breached.

The Ministry of Economy shall hold, upon request, technical information meetings with interested parties after the issuance of preliminary and final determinations in order to explain the methodology employed in its findings and other technical matters.

Administrative procedures may be challenged before the Ministry of Economy. Under the law, all interested parties have the right of appeal to seek the reversal or modification of the investigating authority's decisions with respect to final determinations and other rulings. For acts concerning the actual levying of antidumping duties, appeals must be filed with the Ministry of Finance. The rulings concerning such appeals can be challenged before the Federal Fiscal Court.

The LCE incorporates provisions regarding the duration and review of antidumping measures. These shall expire after five years from the date of their application (sunset clause), if no interested party has requested their review and if the Ministry of Economy has not initiated one ex officio. Antidumping measures may be reviewed annually upon request by an interested party or at any time by the Ministry of Economy. The reviews are subject to the same procedural requirements as the initial investigations.

For the purpose of transparency and equity, the legislation provides for the publication of all administrative rulings related to an investigation and stipulates the information that must be contained in the public notices. It also allows for adequate opportunities for exporters, importers and national producers to submit the requested information in a timely manner and to defend their interests at the different stages of the proceedings.

In recognition that antidumping and countervailing measures can have an adverse impact on the competitiveness of Mexican industries, which depend on imported inputs, the LCE contains provisions to prevent such adverse effects, including a lesser duty rule\(^\text{17}\) and a public interest clause.\(^\text{18}\) It also allows the Ministry of Economy to terminate an investigation without the imposition of duties upon acceptance of price undertakings from foreign exporters, if such undertakings eliminate the injury caused by the dumped or subsidized imports.

Additionally, NAFTA contains provisions regarding review and dispute settlement for antidumping and countervailing duty matters. Although the

\(^{17}\) Under this provision, the Ministry of Economy may determine antidumping or countervailing duties for an amount less than the dumping margin or the amount of the subsidy, if a lesser duty is sufficient to eliminate the injury or threat of injury caused by unfair imports.

\(^{18}\) In determining the application of antidumping or countervailing duties, the Ministry of Economy shall take into account their impact on other productive processes and consumers and avoid, to the extent possible, any adverse effects on them. Similarly, in proposing the adoption of safeguard measures, the Ministry shall consider their effect on the consumers, on the competition in the domestic market and on the productive sectors involved, as well as other factors related to the public interest or the national security.
Parties reserved their right to maintain their own trade defence laws and practices, the agreement established a special mechanism whereby independent binational panels may review final antidumping and countervailing determinations adopted by a Party. If so requested by a person entitled to judicial review, binational panels shall be constituted to decide whether a determination is consistent with the domestic legislation of the Party applying the measure. In order to allow for the implementation of this engagement, the LCE was amended to incorporate provisions on judicial review and alternative dispute settlement mechanisms. Changes were also made to the Federal Fiscal Code with regard to the review of determinations and the organs involved in alternative dispute settlement mechanisms.

The latest reform to Mexico's trade defence legislation was introduced in December 2000. A provision of the LCE's Regulations was amended to provide specific criteria for determining the existence of a market economy (as opposed to a centrally-planned economy) in antidumping and countervailing duty investigations. The purpose of the reform is to have greater clarity for the treatment of economies in transition in the investigations.

2.2 Incidence of Antidumping Measures

a) Number and nature of measures

For the past fifteen years, Mexico has made active use of its trade defence system, with antidumping actions being by far the most frequently used type of remedy. Between 1987 and 2000, the Mexican authorities conducted 234 investigations, of which 215 were for dumping, 18 for subsidies and one for safeguards. The latter concluded without the imposition of remedial actions. (See Table 1, p. 8). Of the total number of investigations, 179 resulted in the imposition of provisional duties and 118 led to definitive duties. The ratio of cases in which a definitive duty was imposed to the number of completed investigations is 56%. (See Table 2, p. 8).

<table>
<thead>
<tr>
<th>Type of Investigation</th>
<th>Number of Investigations</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dumping</td>
<td>215</td>
<td>91</td>
</tr>
<tr>
<td>Subsidies</td>
<td>18</td>
<td>8</td>
</tr>
<tr>
<td>Safeguards</td>
<td>1</td>
<td>1</td>
</tr>
<tr>
<td>Total</td>
<td>234</td>
<td>100</td>
</tr>
</tbody>
</table>

Source: Secretaría de Economía, Informe de Labores 2000, El Sistema Mexicano de Defensa contra Prácticas Desleales de Comercio Internacional, Mexico, Table A.2, p. 112.

Table 2

Total Number of Duties Imposed*

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19 This mechanism is established in Chapter 19 of NAFTA.
1987-2000

<table>
<thead>
<tr>
<th>Type of duties</th>
<th>Number of Duties</th>
<th>Percentage</th>
</tr>
</thead>
<tbody>
<tr>
<td>Provisional</td>
<td>179</td>
<td>60</td>
</tr>
<tr>
<td>Definitive</td>
<td>118</td>
<td>40</td>
</tr>
<tr>
<td>Total</td>
<td>297</td>
<td>100</td>
</tr>
</tbody>
</table>

*Includes antidumping and countervailing duties.

Note: of the 234 investigations initiated during the period, in 170 cases duties have been imposed in at least one stage of the investigation. However, the real impact of definitive duties is obtained by dividing the 118 final duties by the actual number of investigations concluded (209), i.e. 56.4% of the cases concluded have resulted in the imposition of a duty. Source: Secretaría de Economía, Informe de Labores 2000, El Sistema Mexicano de Defensa contra Prácticas Desleales de Comercio Internacional, Mexico, Table A. 9, p. 117.

Graphic 1 in the following page shows the evolution of Mexico's use of trade remedies. As mentioned earlier, during the first years following the establishment of the system, the number of investigations rose steadily until it reached a peak in 1993, with the initiation of 83 cases, of which 70 for dumping. These figures reflect the high number of investigations initiated against Chinese goods during the period 1993-1994. After that, the number of investigations has substantially declined, while the number of duties in force has shown moderate decrease owing to the outcome of review procedures.

In 2000, only 3 investigations were launched, and no more than for 4 new cases had been initiated as of October 2001. During the current year, no provisional or definitive duties have been imposed, while 19 antidumping duties have been eliminated as a result of sunset review procedures. Though the number of new investigations has fallen substantially, the number of measures in force remains relatively high. According to the latest semi-annual report submitted by Mexico to the WTO Antidumping Committee, as of 30 June 2001, there were 62 antidumping duties in force and 4 price undertakings.\(^{20}\) The corresponding report to the Committee on Subsidies and Countervailing measures indicates that there was only one countervailing duty and no price undertakings in force on the same date.\(^{21}\)

\(^{20}\) G/ADP/N/78/MEX (7 August 2001).

\(^{21}\) G/SCM/N/75/MEX (7 August 2001).
Most of the measures imposed as a result of the investigations are in the form of *ad valorem* duties (78% of the cases), although specific duties are also applied (22% of the cases). *Ad valorem* duty levels vary considerably. They range from 4% to 1,105%, with duties over 100% applying in many cases.

b) Measures by countries

Between January 1987 and March 2001, the countries most affected by Mexican antidumping investigations were: the United States (65 cases), China (39) and Brazil (23). Together, these three countries accounted for 55% of all investigations conducted during that period (see Graphic 3, p. 11).

Products from individual members of the European Union (EU) were the object of 23 investigations, while 4 investigations were initiated against imports from the EU as a group.\(^{22}\) Imports from Russia were the target of 6 investigations, while proceedings were also conducted with respect to products from Ukraine, the Republic of Belarus, Lithuania, Estonia and other economies in transition. It is worthwhile noting that investigations involving economies in transition are relatively recent and may reflect the increasing presence of these countries in world markets. Other countries that have faced antidumping procedures are Venezuela, South Korea, Chinese Taipei, Canada, Japan, Colombia, Hong Kong/China, India and Chile.\(^{23}\)

As graphic 3 shows, the ratio of investigations that led to the imposition of antidumping duties is substantially higher for China than for the rest of the countries. Consequently, in terms of the number of actual duties imposed, China is by far the most affected country.

c) Measures by sector

An analysis by sector shows that, over the period 1987-2000, Mexico's antidumping system mainly affected basic metal products (in particular steel); chemicals and plastics; textiles and clothing, as well as machinery and equipment. Other affected products included footwear, toys and other light-manufactured goods, meat and wood products.

With respect to basic commodities (steel, chemicals, plastics, etc.), as pointed out above, the important number of investigations may be associated with the cyclical downturn in world prices for these commodities during the early 1990s. In the light-manufactured goods sector (textiles, footwear and others), the high incidence of antidumping actions may be partially explained by the intensive competition from low-priced imports, mainly from China, and the need to protect labour-intensive industries in Mexico from its effects. Indeed, antidumping duties applied to textile, clothing and leather products provided relief to approximately 2,700 Mexican firms, which generate 177,000 jobs.\(^{24}\)

\(^{22}\) Individual EU Members involved in the investigations during the period 1987-2000 were: Germany (7 cases); Spain (6); the Netherlands (2); Denmark (2); Greece (2); Belgium (2); and France (1).


\(^{24}\) Secretaría de Economía, Informe de Avances del Programa de Política Industrial y Comercio Exterior, November 2000; available at www.se.gob.mx/PPICE.
Investigations and duties by country affected
January 1987 - March 2001

Source: Secretaría de Economía, Informe de Labores 2000, El Sistema Mexicano de Defensa contra Practicas Desleales de Comercio Internacional, Graphic A.5, p. 120.

Graphic 3

Investigations and duties by sector
January 1987 - March 2001

As Table 3 shows, intermediate goods were involved in 82 of the cases investigated between 1987 and 2000, and accounted for 77% of the duties imposed during that period. Consumer goods were subject to 41 investigations, accounting for 20% of the duties applied, while capital goods were concerned only in 5 cases.

<table>
<thead>
<tr>
<th>Type of good</th>
<th>Number of Investigations (A)</th>
<th>Percentage in (A)</th>
<th>Number of duties Imposed (B)</th>
<th>Percentage In (B)</th>
</tr>
</thead>
<tbody>
<tr>
<td>Consumer goods</td>
<td>41</td>
<td>16</td>
<td>19</td>
<td>20.22</td>
</tr>
<tr>
<td>Intermediate</td>
<td>188</td>
<td>82</td>
<td>73</td>
<td>77.65</td>
</tr>
<tr>
<td>Capital goods</td>
<td>5</td>
<td>2</td>
<td>2</td>
<td>2.13</td>
</tr>
<tr>
<td><strong>Total</strong></td>
<td><strong>234</strong></td>
<td><strong>100</strong></td>
<td><strong>94</strong></td>
<td><strong>100.00</strong></td>
</tr>
</tbody>
</table>

*Includes antidumping and countervailing duties.

Source: Secretaría de Economía, Informe de Labores 2000, El Sistema Mexicano de Defensa contra Prácticas Desleales de Comercio Internacional, México, Table A. 12, p. 121

In terms of tariff lines covered by antidumping actions, the textiles and clothing sector is the most affected. Of the total number of tariff lines subject to duties (i.e 1,383), textile and clothing products account for close to 60% (818 lines), followed by chemicals (20%), machinery and equipment (6.3%) and footwear (4%). Antidumping measures apply to a wide range of products from China, whose imports subject to duties are covered under 1,310 tariff lines of the Mexican Tariff Schedule. For imports from other countries the number of tariff lines affected is no more than 20, and less than 10 in most cases.

III. Internal Administration of the Trade Defence System

3.1 Functions of the Unit on International Trade Practices (UPCI)

The Unit on International Trade Practices (UPCI) is the specialised agency of the Mexican Government charged with the administration of the trade defence system. It was established in 1993 under the Ministry of Trade and Industrial Development, now the Ministry of Economy.

The LCE and its regulations define UPCI's functions and responsibilities. Its main function is to operate the trade defence system in an efficient and timely manner to provide protection to the domestic industry against unfair trade practices.\(^{25}\) To this end, UPCI carries out investigations in the areas of dumping and subsidies and recommends to the Minister of Economy the application of antidumping or countervailing duties, where it is demonstrated that the dumped or subsidized imports cause or threaten to cause material

injury to the domestic industry. UPCI is also in charge of conducting safeguard investigations and proposing remedial action where appropriate.

Specifically, UPCI is responsible for the entirety of an investigation: i.e looking into the existence of dumping or subsidies, injury or threat of injury, and the causal link between them. This differs from the practice of a few countries, where two separate agencies are responsible for the findings of dumping (or subsidy) on the one hand, and injury, on the other.\(^{26}\)

UPCI carries out all the administrative procedures of an investigation, including, *inter alia*, issuing the public notices of initiation, preliminary and final determinations; gathering information from the parties involved; carrying out conciliation meetings; conducting *in situ* verifications; considering and approving price-undertakings; and establishing verification mechanisms to ensure compliance in coordination with the customs authorities.

Other functions of UPCI include: acting as an advisory unit to other government agencies in all matters relating to unfair trade practices, including the formulation of legislative reforms; participating in international negotiations in this area; and defending the resolutions of the Ministry of Economy before dispute settlement panels under the various international agreements subscribed by Mexico. Additionally, UPCI provides assistance to Mexican exporters involved in unfair trade investigations in foreign markets.

In order to carry out its responsibilities effectively, UPCI employs over 100 professionals, specializing in different areas relevant to the work of the Unit (lawyers, economists, accountants, industrial engineers, statisticians, etc.) Its annual budget is distributed in an on-going basis among its different departments according to their needs and priorities.

### 3.2 UPCI's structure

UPCI is headed by the Unit's Directorate and is organized in six core divisions (called deputy general directorates), which are the following: 1) Dumping and Subsidy Investigations; 2) Injury Investigations and Safeguards; 3) Accounting and Finance; 4) Technical Assistance; 5) Legal Affairs; and 6) International Legal Proceedings, all of which report to the head of the Unit. There is also a department for information dissemination and contacts with the private sector (see chart below).

Their functions are as follows:\(^{27}\)

1) Dumping and Subsidy Investigations Division: conducts and coordinates the investigations to determine the existence of dumping or subsidies.

\(^{26}\) For example, in the United States the Department of Commerce is responsible for the findings of dumping or subsidy, while the International Trade Commission (ITC) is in charge of injury determinations. Some observers argue that the dual system favours the independence of the procedures, however international experience in not conclusive as to the merits of one system over the other.

\(^{27}\) See UPCI's web site, *supra*, note 26.
2) Injury Investigations and Safeguards Division: is charged with investigating the injury or threat of injury caused to the domestic industry by dumped or subsidized imports or by a substantial increase in legitimate imports, and recommends the appropriate remedial action.

3) Accounting and Finance Division: provides the technical support on accounting matters required to carry out the investigations and ensures the quality of verification procedures.

4) Technical Assistance Division: offers technical advice to the private sector and to other divisions and departments of the Ministry of Economy on matters related to unfair trade practices, and is in charge of establishing and ensuring compliance with quality standards.

5) Legal Affairs Division: is responsible for ensuring that all administrative proceedings and resolutions are consistent with the legislation and international rules, and intervenes in cases of appeals and judicial proceedings.

6) International Legal Proceedings Division: is in charge of the defence of Mexico's interests in international dispute settlement procedures concerning unfair trade practices and safeguards; participates in international negotiations on these matters and provides advice to Mexican exporters involved in investigations abroad.

UPCI
ORGANIC STRUCTURE

UPCI's role in defending Mexico's export interests abroad has become increasingly important. The Unit provides technical and legal support to Mexican companies, including direct advice to exporters (e.g., in preparing questionnaires) and analysis of foreign countries' trade defence legislation and practices. It should be noted that these services are offered free of charge.

In 2000, UPCI provided assistance to 79 companies and associations with respect to 32 antidumping cases against Mexican imports in the United States, Argentina, Australia, Brazil, Ecuador, India, Israel, Panama, Peru, and the European Union. The Unit also supported 19 companies or organizations involved in 4 subsidy investigations conducted by the United States; and 77 firms and associations in 17 safeguard procedures initiated by Brazil, Chile, El Salvador, India, Panama, Russia, the United States, and Venezuela.

Over the years, UPCI has become a highly professional institution, dealing simultaneously with a considerable number of investigations and increasingly complex cases. The Unit has placed special emphasis on the efficiency and quality of its services and on the development of human resources. In 2000,

UPCI obtained the ISO 9000 certification, thereby becoming the first trade defence institution in the world to have received this certificate for the high quality of its procedures and practices. This reinforces the legal certainty and transparency of the system to the benefit of both domestic users and trading partners and adds to UPCI’s image as a serious institution.

Internationally, UPCI has built itself a reputation of efficiency and accountability, in particular among other Latin American nations that are in the process of establishing or implementing their own trade defence regimes. In this context, Mexico has offered technical assistance to several countries in the region to help them set up or reinforce specialized government agencies for the operation of their trade defence systems.  

Nevertheless, in some instances Mexico’s trade defence measures have been challenged before international panels. Under NAFTA, 11 cases (all but one related to antidumping measures) were reviewed by binational panels and 3 antidumping were brought to the WTO Dispute Settlement mechanism. This situation, however, is not unique to Mexico as demonstrated by the many antidumping cases brought against other Members before WTO panels. As for the NAFTA cases, in all but one the panels affirmed, at least partially, the determination of the Mexican investigating authority or recommended certain modifications. Other cases were terminated at the request of the exporters. Overall, the results of these proceedings can be said to be satisfactory to Mexico.

IV. Final comments

Any attempt to evaluate the application of a particular trade defence system should not be limited to the number of cases nor to arguments related to the choice between liberal and protectionist policies. Rather, it should also take into account the economic and competitive conditions of the country in question as well as the manner in which investigations are carried out and duties applied.

In Mexico’s case, several macroeconomic factors (i.e. appreciation of the exchange rate and expansion of domestic demand when world prices for certain commodities were at a cyclical low) played an important role in the use of the antidumping instrument during the first years of its implementation.

This trend also coincided with the period of consolidation of Mexico’s profound trade reform initiated during the mid-1980s. As Mexico opened up to foreign competition and the relative importance of international trade increased, so did the probability of requests for antidumping investigations. The association between trade liberalization and the increased use of trade defence measures in not exclusive to Mexico, as the performance of other emerging economies has shown.

29 Different forms of assistance have been provided to: Costa Rica, Guatemala, El Salvador, Dominican Republic, Peru, Colombia and Argentina.
Another factor to be considered in analysing a country's trade defence regime is the extent of regional integration in which it is involved. Within the most advanced integration schemes, where all barriers to the mobility of factors (including labour) are eliminated, it becomes possible to substitute anti-trust laws for trade defence systems (such as in the European Union and the economic integration agreement between Australia and New Zealand); however, this is not the case in less advanced integration schemes. Although Mexico subscribed NAFTA and other free trade agreements with its major trading partners, none of these instruments envisaged the creation of a single market or the free movement of factors. Under such conditions, and due to market rigidities, countries such as Mexico will find it difficult to do away with trade remedy instruments, necessary to restore fair competition conditions in the event of unfair trade practices.\(^{30}\)

On the other hand, the Mexican authorities acknowledge that the imposition of antidumping duties can have serious effects on the competitiveness of Mexican firms, in particular where such duties are applied to capital and intermediate goods, thereby increasing their production costs. This can undermine the competitive position of national producers both in the domestic market and in foreign markets, eroding the benefits of preferential access under free trade agreements. That is why the Mexican legislation on unfair trade practices incorporates provisions such as the lesser duty rule, the public interest clause, *de minimis* thresholds and price-undertakings. Other factors suggesting the Mexican authorities' desire to minimize the adverse effects of contingency measures on the country's economy are: the fact that capital goods only account for 2% of the duties imposed, and that major intermediate goods (basic metals and chemicals) show a lower-than-average ratio of duties applied to the number of investigations conducted (38%).

With respect to the relatively high number of investigations carried out by Mexico, several considerations should be taken into account. First, being the world's twelfth largest importer of goods,\(^{31}\) Mexico is more likely to initiate a greater number of investigations than countries with smaller imports; however, on a trade-weighted basis, Mexico uses the antidumping instrument in a less intensive manner than some other major users of trade remedies.\(^{32}\) Second, an important number of the requests for initiation of antidumping investigations never prosper, either because they do not meet the legal conditions required and are thus rejected by the investigation authority or because they are withdrawn by the petitioners themselves. Besides, a significant share of the investigations concludes without the imposition of

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\(^{30}\) G.A. Baéz, *supra* note 4, p. 9.

\(^{31}\) In 1999, the value of Mexico's merchandise imports amounted to US$148.7 billion, representing 25 of world's total merchandise trade. WTO, *International trade statistics 2000*, Table 1.5, p. 19.

\(^{32}\) A comparative analysis of countries' ratios between their share in the total number of cases and their share in import values among all countries using antidumping measures between 1987 and 1997, shows that Mexico's ratio is lower than that of other countries with smaller import values (Australia, Argentina, New Zealand and South Africa). This means that, on a trade-weighted basis, these countries were more intensive users of the instrument than Mexico during the said period. See J. Miranda et al., *supra*, note 1, Appendix, Table1, p. 65.
antidumping duties. Between 1987 and 2000, this proportion was 44% of the total number of concluded investigations.

As regards the main countries affected by Mexico's trade remedy investigations, i.e. the United States, China and Brazil, it is worthwhile noting the following. All three countries, together with Korea and Japan, ranked among the five most investigated countries worldwide during the period 1987-1997. The United States, which accounted for 28% of the cases initiated by Mexico, is by far the country's main trade partner, supplying over three-quarters of Mexico's total imports. China has increased its market share in international markets substantially in last several years and has become the main target of anti-dumping actions in many countries. Brazil, which accounts for 10% of the cases initiated by Mexico, is one of the country's main trade partners in Latin America and presumably still applies certain trade support measures to increase exports.

On the institutional side, it is fair to say that Mexico's trade defence regime has evolved into an ever more structured and professional system. Over the years, a number of administrative and legal measures have been taken to improve its efficiency, increase transparency in the procedures and broaden the participation of all parties concerned. In addition, professional training programs are undertaken on a continuous basis to ensure the quality of the investigations. Overall, both the Mexican Government and the users are satisfied with the functioning of the system. In this regard, a major consideration of the Mexican authorities is to ensure that investigations are conducted in a transparent, neutral and fair manner and in accordance with the domestic legislation and international rules.

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33 Ibid., Table 2, p. 10.