



**COUNTRY
COMPARATIVE
GUIDES 2023**

The Legal 500 Country Comparative Guides

Mexico

INTERNATIONAL TRADE

Contributor

SMPS Legal



Fernanda Garza Magdaleno

Partner | fgarza@smps.com.mx

This country-specific Q&A provides an overview of international trade laws and regulations applicable in Mexico.

For a full list of jurisdictional Q&As visit legal500.com/guides

MEXICO

INTERNATIONAL TRADE



1. What has been your jurisdiction's historical level of interaction with the WTO (e.g. membership date for the GATT/WTO, contribution to initiatives, hosting of Ministerials, trade policy reviews)?

Mexico became a General Agreement on Tariffs and Trade ("GATT") member in 1986 and a founding member of the World Trade Organization ("WTO") in 1995, consistently extending most-favored-nation ("MFN") treatment to all its trading partners.

Actively engaging in numerous initiatives, trade policy reviews, and ministerial meetings, Mexico has played a pivotal role in global trade. As of November 2023, it has been involved in 25 disputes as a complainant, 15 as a respondent, and has acted as a third party in 112 WTO cases. Since joining GATT, Mexico has undergone six trade policy reviews, with the latest occurring in October 2022. Notably, Mexico hosted a Ministerial Conference in Cancun from September 10-14, 2003.

Mexico continues to be an enthusiastic participant in regular WTO activities, negotiations, and discussions on emerging trade-related issues. In 2016, it ratified the Trade Facilitation Agreement, committing to the immediate implementation of all agreed provisions. In 2021, Mexico established its National Trade Facilitation Committee.

Following the 2017 Trade Policy Review, Mexico has diligently submitted multiple notifications to the WTO, adhering to various agreement provisions. Since 2017 Mexico has not made frequent recourse to the dispute settlement mechanism.

2. Are there any WTO agreements to which your jurisdiction is not party (e.g. Government Procurement Agreement)? Is your jurisdiction seeking to accede to these agreements?

Mexico is not party to the Agreement on Government

Procurement, the Agreement on Trade in Civil Aircraft, or the Information Technology Agreement. Furthermore, Mexico does not hold observer status before the respective Committees associated with these agreements.

There is no evidence of ongoing efforts or activities aimed at acceding to these agreements, based on the author's current knowledge.

3. Is your jurisdiction participating in any ongoing WTO negotiations (e.g. E-Commerce Joint Initiative) and what has been its role?

Mexico actively engages in ongoing WTO negotiations, contributing to discussions and influencing policy formation. Currently, Mexico is involved in joint initiatives that explore emerging trade issues, including the integration of small and medium-sized enterprises into international trade, electronic commerce, investment facilitation, domestic regulation in services, and trade and environmental sustainability.

As part of its involvement in the Twelfth WTO Ministerial Conference, Mexico played a crucial role in the preparatory work. This included contributing to the development of ministerial declarations addressing gender equality and women's economic empowerment in trade, trade and environmental sustainability, medium and small enterprises, as well as sanitary and phytosanitary issues. Additionally, Mexico collaborated on a joint communication focused on investment facilitation for development.

In 2016, Mexico ratified the Trade Facilitation Agreement ("TFA"), which came into effect in 2017. Mexico promptly notified its commitment to implement all TFA provisions immediately. To execute the Agreement, Mexico established the National Trade Facilitation Committee in January 2021, which has been operational since March 2021.

Furthermore, Mexico has accepted the Protocol

amending the Agreement on Trade-Related Aspects of Intellectual Property Rights.

4. Has your jurisdiction engaged in the WTO dispute settlement system in the past 5 years? If so, in which disputes and in which capacity (as a party to a dispute or as a third party)?

As of November 2023, Mexico has been a party to 40 WTO disputes, with involvement as a complainant in 25 cases, and as a respondent in 15 cases. Additionally, Mexico has served as a third party in 112 WTO cases.

However, over the past five years, Mexico's participation in the WTO dispute settlement mechanism has notably decreased, likely influenced by the challenges faced by the mechanism due to the lack of appointment of Appellate Body members. This situation has significantly undermined the effective functioning of the dispute settlement mechanism. Since 2017, only one case has been lodged against trade measures adopted by Mexico, whereas Mexico has filed two complaints during this period. Furthermore, Mexico has participated as a third party in 29 trade disputes.

The three cases in which Mexico has been involved as a Party, in the last five years are the following:

a) Case DS524: "Costa Rica: Measures concerning the importation of fresh avocados from Mexico" commenced on March 8, 2017, when Mexico initiated consultations with Costa Rica. The consultations were sought in response to certain measures imposed by Costa Rica, which were alleged to restrict the importation of fresh avocados from Mexico for consumption. Mexico contended that these measures contravened the Agreement on Sanitary and Phytosanitary Measures as well as GATT 1947. On May 29, 2020, both Mexico and Costa Rica notified the Dispute Settlement Body ("DSB") of their mutual decision to engage in arbitration proceedings pursuant to Article 25 of the Dispute Settlement Understanding ("DSU") in relation to this dispute. The Panel Report resulting from these proceedings was circulated to WTO Members on April 13, 2022.

b) Case DS551: "United States: Certain measures on steel and aluminium products" was initiated on June 5, 2018, when Mexico requested consultations with the United States. The consultations were prompted by certain measures implemented by the United States, ostensibly designed to regulate imports of steel and aluminium into the country. Mexico contended that these measures violated the Agreement on Safeguards

and the GATT 1994. Subsequently, on May 28, 2019, the United States and Mexico informed the DSB that they had reached a mutually agreed solution. This resolution involved the United States eliminating specific duties on steel and aluminium products originating from Mexico. The parties jointly notified the Panel of this mutually agreed solution through a written notification on May 28, 2019.

c) Case DS560: "Mexico: Additional duties on certain products from the United States" commenced on July 16, 2018, when the United States initiated consultations with Mexico. The consultations were sought in response to Mexico's imposition of heightened duties on specific products originating from the United States. Mexico argued that these measures contravened GATT Article I.1. On May 28, 2019, the United States and Mexico informed the DSB that they had reached a mutually agreed solution. This resolution entailed Mexico eliminating certain duties on products originating from the United States. Subsequently, on July 11, 2019, the Panel circulated its report to WTO Members.

5. Has your jurisdiction expressed any views on reform of the WTO, in particular, the dispute settlement system and the Appellate Body?

Mexico has consistently voiced its apprehension regarding the ongoing crisis confronting the WTO dispute settlement mechanism. Having submitted the proposal over 50 times, Mexico has advocated for the initiation of the selection process to address vacancies on the Appellate Body, representing the interests of 123 Members. The country underscores that concerns raised by one of its members regarding specific aspects of the Appellate Body's functioning should not be utilized as a pretext to hinder and disrupt the DSB and the broader dispute resolution process. Moreover, Mexico contends that there exists no legal justification for the current obstruction of the selection processes, which is resulting in tangible nullification and impairment of rights for numerous members.

6. What are the key bilateral and/or regional free trade agreements (FTAs) in force for your jurisdiction and from which dates did they enter into force?

Mexico has demonstrated a growing commitment to trade integration and liberalization since the 1990s through the establishment of FTAs. Its trade policy stands as one of the most open in the world.

Mexico is a trading partner with more than 50 countries, with agreements reaching into Europe, South America, and Africa. Mexico provides manufacturers with a strong trade and export platform to the U.S. and the world. Each agreement lays out unique terms to bring specific benefits to the countries involved. Below, is a list of Mexico's FTAs and the date in which they entered into force:

- Chile-Mexico Free Trade Agreement – August 1, 1999
- Mexico-European Free Trade Association States Free Trade Agreement -July 1, 2001
- Mexico-Uruguay Free Trade Agreement – July 15, 2004
- Japan-Mexico Economic Partnership Agreement -April 1, 2005
- Mexico-Bolivia Economic Complementation Agreement – June 7, 2010
- Mexico-Colombia Free Trade Agreement – January 1, 2011
- Mexico-Peru Free Trade Agreement – February 1, 2012
- Mexico-Israel Free Trade Agreement – February 1, 2012
- Central America-Mexico Free Trade Agreement – September 1, 2012
- Mexico-Panama Free Trade Agreement – July 1, 2015
- The Pacific Alliance – May 1, 2016
- Comprehensive and Progressive Trans-Pacific Partnership (CPTPP) – December 30, 2018
- United States-Mexico-Canada Agreement (USMCA) – July 1, 2020
- EU-Mexico Trade Agreement -July 1, 2000 and updated in 2020
- UK-Mexico Trade Continuity Agreement (TCA) – June 1st, 2021

Moreover, within the framework of ALADI, Mexico has established several partial trade agreements exclusively focused on the trade of goods. Notably, Mexico's agreement with MERCOSUR is specifically confined to the automotive sector. Among the more significant FTAs for Mexico are USMCA, the CPTPP, and the Pacific Alliance.

Between 2017 and 2022, three pivotal trade agreements came into effect for Mexico: the CPTPP in 2018, the USMCA in 2020, and the Trade Continuity Agreement with the United Kingdom in 2021. These agreements span both trade in goods and services. Noteworthy, the CPTPP and the USMCA encompass provisions addressing novel issues such as digital trade, Small and Medium-sized Enterprises (SMEs), trade in sustainable goods, and environmental considerations.

7. Is your jurisdiction currently negotiating any FTAs (or signed any FTAs that have not yet entered into force) and, if any, with which jurisdictions? What are your jurisdiction's priorities in those negotiations (e.g. consolidating critical mineral supply chains, increasing trade in financial services, etc.)? For both FTAs under negotiation and signed FTAs, when are they expected to enter into force?

Yes, Mexico is currently engaged in negotiations for a FTA with the Republic of Korea. The commencement of these negotiations is quite recent, dating back to March 1, 2022. As a result, no specific date for their conclusion and entry into force has been determined.

The Mexico-Korea FTA aims to address the challenges and capitalize on the opportunities of the 21st century by establishing an institutional framework that reduces barriers to trade in goods and services, while facilitating mutual investment and technological exchange. This FTA holds the objectives of enhancing cooperation on emerging trade-related issues, including supply chain resilience, environmental sustainability, and digital transformation.

It's worth noting that the rest of the FTAs negotiated with other countries, as detailed in the response to question 6, have already entered into force.

8. Which five countries are the biggest trading partners for your jurisdiction in relation to each of exports and imports and which goods or services are particularly important to your jurisdiction's external trade relationships?

According to Mexico's latest trade policy review at the WTO (on 2022), the composition of its top five trading partners in 2021 reveals a notable trend. In terms of exports, the United States of America dominated, accounting for 80.7%, followed by the European Union at 3.7%, Canada at 2.6%, China at 1.9%, and Brazil at 0.7%. Conversely, in terms of imports, the United States remained the primary source, contributing 43.8%, trailed by China at 20%, the Republic of Korea at 3.8%, Japan at 3.4%, and Malaysia at 2.5%. These figures underscore the significant influence of the United States as Mexico's foremost trading partner.

Concerning the primary export and import products for Mexico, it is noteworthy that the composition of Mexican

exports is predominantly comprised of manufactured goods, constituting over 85% of total exports in 2021. Agricultural products accounted for 5.0%, while mineral products (primarily petroleum products) and extractive industries represented 7.5%. Machinery and electrical appliances, along with transport equipment, continued to be the leading manufactured export products, contributing to 58.8% of total exports in 2021. The maquila sector retained its significant role in Mexican foreign trade, with almost 60% of exports in 2021 benefiting from this regime. Import structures closely mirror those of exports, with machinery and electrical appliances (35.7% of imports in 2021) and transport equipment (8.0% of total imports) being predominant.

To address the specific question, the primary goods exported by Mexico up to 2021 were: (i) electrical machinery and apparatus (34.8%), (ii) transport material (24%), (iii) mineral products (7.5%), (iv) base metals (5%), and (v) instruments and apparatus (4.2%). The primary goods imported included: (i) electrical machinery and apparatus (35.7%), (ii) base metals (9.6%), (iii) mineral products (9.1%), (iv) transportation material (8%), and (v) chemical products (7.7%).

9. What are the three most important domestic and three most important international developments that are likely to have the biggest impact on your jurisdiction's trade profile and priorities?

Some of the noteworthy recent domestic developments in the customs and foreign trade domain include:

(a) The establishment of the Mexican National Customs Agency ("ANAM") in 2021, replacing the General Customs Administration. Since 2022, ANAM has taken over the responsibility for customs clearance for both imports and exports. Despite this institutional shift, the fundamental requirements for importing and exporting, as well as the procedures for determining the customs value of imported goods, have not undergone substantial changes since the last review in 2017.

(b) Mexico has implemented measures over the last five years to facilitate trade, such as:

(i) Introduction of electronic customs clearance, transitioning to a paperless customs system, allowing for the filing of electronic import/export declarations.

(ii) Establishment of conditions to implement customs clearance with consolidated import/export declarations.

(iii) Ongoing improvements to the Mexican Foreign Trade

Single Window ("VUCEM").

(iv) In 2021, the creation of the National Trade Facilitation Committee to implement the WTO Trade Facilitation Agreement.

On the international front, noteworthy developments include:

(a) The negotiation and adoption of FTAs in recent years, with notable examples being the USMCA, the CPTPP and the Pacific Alliance.

(b) Mexico has experienced an influx of foreign direct investment due to the wave of nearshoring, contributing to further integration into global value chains. This trend has played a significant role in enhancing Mexico's position in the international economic landscape.

10. Has your jurisdiction taken any specific domestic measures to address sustainability issues in international supply chains, for example in relation to forced labour, human rights and environmental issues? Is it seeking to address these issues in any FTAs or other international agreements?

Under President Lopez Obrador's leadership, Mexico has experienced a notable regression in environmental and climate policies, marked by a strong emphasis on fossil fuels under the banners of energy security and fiscal responsibility. This prioritization of "energy sovereignty" has led to outdated power generation technologies, hindering the advancement of renewable energy. Non-compliance with existing regulations, fueled by a high degree of informality among businesses, further complicates the situation.

Since 2018, policy rollbacks and the dismantling of governance institutions have derailed Mexico's clean energy targets. Key measures, such as canceling long-term electricity auctions in 2019 and initiating the Dos Bocas oil refinery construction, have impeded the shift to renewable energy. The government's 2020 energy bill obstructed private investment in renewables, favoring state-owned fossil-fuel power plants. Budget allocations heavily favoring natural gas transportation in 2021 and 2022, along with the acquisition of a Texas oil refinery by PEMEX in 2021, underscore a misalignment with climate objectives. The dissolution of the National Institute for Climate Change in 2021 raises concerns about Mexico's commitment to addressing climate change internationally.

Recently, Mexico has been more effective in addressing sustainability issues within international supply chains through FTAs than through domestic initiatives. The so-called “21st century” agreements, which go beyond traditional FTA regulations, include provisions not directly linked to trade or services. Recent years have witnessed sustainability provisions in FTAs that impose specific obligations on particular value chains to foster more sustainable trade. An exemplary case is the USMCA, a high-standard trade agreement that modernizes trade relations, prioritizes labor and environmental protections, and introduces innovative rules for the automotive industry, linking tariffs to adherence to labor standards.

From a value chain perspective, one notable innovation centers on the automotive industry, a sector of heightened scrutiny within the value chain due to concerns raised about NAFTA and its repercussions. In response, the USMCA introduces a requirement mandating that a minimum of 40% of the content in designated vehicles must originate from high-wage facilities paying an average of \$16 per hour. Failure to meet this criterion triggers a 2.5% duty when these vehicles are imported into any other USMCA country. This marks the inaugural inclusion in a FTA of a clause linking tariffs to compliance with labor standards and establishes the first agreement specifying a defined wage level for workers.

Furthermore, in response to USMCA obligations, Mexico introduced an Agreement in February 2023, regulating goods imported using forced or compulsory labor. This mechanism, aligned with Article 23.6 of the USMCA, allows investigations and restrictions on goods produced with forced labor, emphasizing Mexico’s commitment to labor standards and ethical trade practices. The Guide for the Instrumentation to Restrict the Importation of Goods Produced with Forced or Compulsory Labor outlines the procedure, stages, and criteria for such investigations. Manufacturing companies in Mexico must now establish traceability processes to comply with these new importation regulations.

11. Is your jurisdiction taking any specific domestic measures to promote near-shoring/on-shoring for strategic goods (i.e. domestic subsidies, import tariffs, or export restrictions)? Is it seeking to address these issues in any FTAs or other international agreements?

Mexico has implemented several initiatives to boost exports, particularly focusing on the manufacturing

sector, through tariff and tax concessions. Key programs include the IMMEX, established in 2006, and the Import Tax Refund Program for Exporters, commonly known as drawback. Under IMMEX, companies can temporarily import various goods duty-free for the production of export products. Beneficiary companies, mainly in manufacturing, have significantly contributed to Mexican trade, accounting for over half of exports and imports from 2016 to 2021. To qualify for IMMEX, companies must demonstrate substantial foreign sales, and they can also benefit from the Import Tax Refund Program, which allows the recovery of duties on imported inputs for export production.

The Import Tax Refund Program, or drawback, enables companies to recover duties paid on imported inputs used in the production of goods for export. This recovery extends to goods returned in the same state or imported for repair, alteration, and subsequent export. Additionally, Mexico promotes competitiveness through Sector Promotion Programs (PROSEC), facilitating preferential tariff importation of inputs and machinery required for specific goods. Each PROSEC specifies preferential tariff rates for listed inputs by tariff line. Beyond domestic programs, Mexico’s FTAs include provisions for tariff reduction rules and incentives related to the importation and exportation of goods, further enhancing the country’s trade competitiveness.

In summary, Mexico’s export promotion strategies encompass programs like IMMEX and drawback, facilitating duty-free importation of goods for export production. The manufacturing sector, particularly IMMEX beneficiary companies, plays a vital role in Mexican trade. Sector Promotion Programs and provisions in FTAs contribute to Mexico’s overall goal of enhancing competitiveness in the global market.

12. What is the legal regime governing trade sanctions in your country? Has it evolved in response to ongoing geopolitical developments, such as the on-going crisis in Ukraine?

Mexico’s legal regime governing trade sanctions is primarily influenced by its international agreements and domestic legislation. Traditionally, Mexico has imposed trade sanctions only in response to breaches of obligations by other States on trade issues that adversely impact Mexico.

Mexico has followed the so-called “Estrada Doctrine” since 1930. The “Estrada Doctrine” refers to a foreign policy principle adopted by Mexico in the 1930s and is named after Genaro Estrada, who was the Secretary of

Foreign Affairs of Mexico at that time. The Estrada Doctrine reflected Mexico's commitment to self-determination and non-intervention in the internal affairs of other nations. Therefore, Mexico has historically avoided to retaliate against other States on trade-related grounds as a response to its opposition to geopolitical conflicts. On March 1, 2022, the Mexican President López Obrador made a public statement expressing that Mexico was not going to impose any economic sanctions on Russia for invading Ukraine.

Here are key aspects of the legal framework governing trade sanctions in Mexico:

International Agreements:

WTO: Mexico is a member of the WTO, and its trade sanctions are influenced by WTO agreements. The WTO sets rules for international trade and provides a framework for resolving disputes.

FTAs, such as the USMCA: The USMCA for instance, includes provisions related to trade sanctions. The USMCA has specific chapters addressing trade remedies, dispute settlement mechanisms, and labor and environmental standards.

Domestic Legislation:

Foreign Trade Law: This Law provides the legal basis for the regulation of international trade. It empowers the executive branch, particularly the Ministry of Economy, to impose restrictions or measures related to foreign trade.

13. Does your jurisdiction use trade remedies and, if so, what remedies are most commonly used? And in which jurisdictions and on which products are they most commonly applied?

Yes. The Foreign Trade Law and its Regulations, as well as the WTO Agreements, regulate the use and application of trade remedies: anti-dumping duties, countervailing duties and safeguard measures. From these set of remedies, anti-dumping duties are the most frequently used.

During the period from 2017 to 2021, Mexico initiated 28 antidumping investigations, with a notable focus on products originating from China (39.3%), the European Union (14.3%), the United States (10.7%), Japan (7.1%), and the Republic of Korea (7.1%).

As of December 2021, Mexico had maintained 78 anti-dumping duties and 2 price undertakings. The impact of

these duties was predominantly on base metals, constituting 66.7% of all measures. China was the most significantly affected, accounting for 44.9% of these measures, followed by the EU and the United States, each representing 10.3%, and Ukraine with 6.4%. The average duration of an anti-dumping measure in force as of December 2021 was 8 years and 7 months.

14. What is the key legislation relating to anti-dumping duties, countervailing duties and safeguards? What are the authorities responsible for investigating and deciding whether these remedies are applied?

The regulatory framework governing the application of antidumping, countervailing and safeguard measures is the Foreign Trade Law and its Regulations, as well as the WTO Agreements. The existence of price discrimination (dumping) or subsidies, of injury, of a causal relationship between both, and the imposition of measures is determined through an investigation in accordance with the administrative procedure set forth in the Foreign Trade Law and its Regulations, as well as in the WTO Agreements.

Title Five of the Foreign Trade Law establishes the regulations applicable to the importation of merchandise under conditions of price discrimination or subsidies in the exporting country, which cause injury to a domestic industry of identical or similar merchandise. Title Six of the Foreign Trade Law contains the provisions related to safeguard measures. These measures temporarily regulate or restrict imports of goods identical, similar or directly competitive to those of domestic production to the extent necessary to prevent or remedy serious injury to the domestic industry in question and facilitate the adjustment of domestic producers.

The Ministry of Economy's International Trade Practices Unit ("UPCI") is the authority in charge of carrying out investigations on dumping, subsidies, and safeguards, as well as proposing the application (or not) of countervailing, antidumping and safeguard measures. The opinion of the Foreign Trade Commission is considered before applying duties. The UPCI also participates in the Consultative Council on International Trade Practices, a body made up of representatives of the public and private sectors, whose purpose is to formulate methodological and technical recommendations of a public and general nature in relation to investigations on unfair international trade practices and safeguards.

15. What is the process for a domestic business and/or industry to seek trade remedies (i.e. key documentation, evidence required, etc.)? How can foreign producers participate in trade remedies investigations in your jurisdiction?

The procedures for investigating unfair international trade practices and safeguard measures can be initiated *ex parte* or *ex officio*. Legally constituted organizations and producing individuals or legal entities can file party requests using official forms. An *ex officio* investigation is initiated when the Ministry of Economy has sufficient evidence of price discrimination, subsidies, injury, and a causal relationship.

The administrative investigation must prove that dumped or subsidized imports are causing or threatening to cause injury to the domestic industry, following applicable regulations. The UPCI determines injury or the threat of material injury to the domestic industry, considering all relevant factors. The petitioners must represent at least 25% of the total production of identical or similar merchandise by the domestic industry.

The procedure followed during an investigation is outlined below:

- The Ministry of Economy has 25 days to accept the request and initiate the investigation. If there is sufficient evidence, the Ministry of Economy will declare the initiation through a resolution. Within 17 days, it may request further evidence (prevention) from the applicant, due within 20 days from prevention receipt.
- If the UPCI deems the information satisfactory, it issues the initial resolution. If the required elements are not provided in time and form, the request is rejected, and the applicant is notified.
- If an investigation is initiated, the Ministry of Economy notifies interested parties, granting them 23 days from questionnaire response receipt to present arguments, information, and evidence. Interested parties include petitioning producers, importers, exporters of the investigated merchandise, and foreign legal entities with a direct interest.
- The Ministry of Economy issues a preliminary resolution within 90 days from the day following the publication of the initiation resolution, published in the Official Gazette and notified to known interested parties.

- The draft final resolution is submitted to COCEX for opinion and published in the Official Gazette within 210 days from the day following the initiation resolution's Official Gazette publication. The Ministry of Economy may impose a definitive measure, revoke provisional measures, or declare the investigation concluded without measures.
- Interested parties may request a conciliation process during the investigation.

The Ministry of Economy determines the antidumping and countervailing measures, which may be less than the margin of price discrimination or the amount of the subsidy, if they are sufficient to discourage the importation of goods under conditions of unfair international trade practices. The definitive measures will be in force for the time and to the extent necessary to counteract the injury to the domestic industry.

The Ministry of Economy determines antidumping and countervailing measures, which may be less than the margin of price discrimination or subsidy amount. Definitive measures remain in force for the necessary duration to counteract injury to the domestic industry, usually up to five years, extendable through a sunset review. Annual reviews can also occur at the request of an interested party or *ex officio*. The Ministry of Economy may accept an undertaking from the exporter or interested government, suspend or terminate the investigation, and publish the resolution in the Official Gazette. Undertakings of two exporters were reviewed during a specific period.

Generally, these measures are eliminated within five years of their entry into force, unless before the end of such term the Ministry of Economy has initiated a sunset review procedure to determine whether their elimination would result in the recurrence or continuation of dumping and injury and may extend the measure for an additional five years. On the other hand, an annual review procedure may be carried out at the request of an interested party or *ex officio*, under which both dumping, or the amount of subsidy and injury are analyzed.

The Ministry of Economy may accept an undertaking from the exporter or the interested government, issue the appropriate resolution, and declare the administrative investigation suspended or terminated; such resolution is notified to the interested parties and published in the Official Gazette. During the last five years, the undertakings of two exporters were reviewed.

16. Does your jurisdiction have any special regulations or procedures regarding investigation of possible circumvention or evasion of trade remedies? What are the consequences of circumventing or evading trade remedies?

The Foreign Trade Law outlines various actions that are considered as circumvention of countervailing duties or safeguard measures, including:

- Introducing inputs, parts, or components into the national territory with the intent to produce or assemble merchandise subject to countervailing duty or safeguard measures.
- Importing merchandise subject to countervailing duty or safeguard measures into the national territory with inputs, parts, or components integrated or assembled in a third country.
- Bringing merchandise into the national territory from the same country of origin as the merchandise subject to countervailing duty or safeguard measures, with relatively minor differences.
- Importing merchandise subject to countervailing duty or safeguard measures with a lower duty or measure than the corresponding one.
- Engaging in any other conduct leading to the non-payment of the countervailing duty or safeguard measure.

Goods imported under these conditions are required to pay the antidumping duty or be subject to the corresponding safeguard measure.

The Ministry of Economy has the authority to investigate circumvention or evasion of trade remedies either *ex officio* or at the request of an interested party. If circumvention or evasion is confirmed, the affected goods must pay the countervailing duty or be subject to the relevant safeguard measure. Additionally, the Ministry of Economy may impose administrative sanctions, such as fines or the temporary suspension of import operations.

Between 2017 and 2021, two investigations into the circumvention of antidumping measures were initiated, resulting in the confirmation of circumvention and the application of corresponding measures in both cases.

17. What are the substantive legal tests in

your jurisdiction for the application of remedies? Does your jurisdiction apply a lesser duty rule and/or a public interest test in anti-dumping investigations? Are there any other notable features of your jurisdiction's trade remedies regime?

The procedures for investigating unfair international trade practices begin when there's sufficient evidence of price discrimination, injury, and a causal relationship. While these duties can be less than the margin of price discrimination, they must be sufficient to discourage the importation of goods under unfair trade conditions.

The Ministry of Economy in Mexico assesses various factors to determine the presence of material injury to the domestic industry due to dumped goods. These factors include evaluating the import volume, examining the impact on prices of domestic goods, and considering the overall effect on the domestic industry, encompassing economic factors such as sales, profits, production volume, and more. Additionally, other relevant elements may be considered.

In the context of a threat of injury to the domestic industry, factors like a significant increase in the importation of dumped merchandise, the exporting country's capacity, potential impact on domestic prices, and the existence of the investigated merchandise are taken into account. It's emphasized that no single factor alone is conclusive, and a collective evaluation of all factors must suggest that additional dumped exports are imminent, leading to injury without antidumping duties.

The Ministry of Economy in Mexico will calculate individual margins for price discrimination or subsidies for foreign companies that provide sufficient information. These individual margins will be used to determine specific antidumping duties. The Ministry of Economy will establish an antidumping duty based on the margin for price discrimination obtained from the best available information based on known facts.

18. Is there a domestic right of appeal against the authority's decisions? What is the applicable procedure?

Yes, there is an internal remedy available against decisions issued by the Ministry of Economy or the Ministry of Finance and Public Credit in matters of foreign trade, and it is known as the appeal for revocation.

In cases involving decisions that impose definitive antidumping duties, the appeal is submitted to the

Ministry of Finance and Public Credit. The deadline for filing the appeal for revocation is 30 business days from the effective date of the notification of the contested resolution.

The aim of the appeal for revocation is to either revoke, modify, or confirm the contested resolution. The procedural aspects of handling the appeal for revocation are governed by the Federal Tax Code.

If the appeal for revocation is resolved in favor of the appellant, the contested resolution will be either revoked or modified. On the contrary, if the resolution is not in favor of the appellant, they have the option to contest it before the Federal Court of Tax and Administrative Justice.

The Federal Court of Tax and Administrative Justice specializes in tax and customs matters, serving as a jurisdictional body. It is imperative to exhaust the appeal for revocation before challenging the resolution in the Federal Court of Tax and Administrative Justice.

19. Has your jurisdiction's imposition of any trade remedies been challenged at the WTO? If so, what was the outcome? A general explanation of trends can be provided for jurisdictions involved in significant trade remedies dispute settlement.

There have been several cases in which the imposition of anti-dumping duties on Mexico by another WTO Member has been challenged at the WTO. However, one of the most relevant cases is DS295 "Mexico - Antidumping Measures on Rice". This case is relevant because in it the United States (complaining party) not only claimed the application of domestic law in the particular anti-dumping investigation, but also made "as such" claims against the Foreign Trade Law and the Federal Code of Civil Procedures. The case involves anti-dumping measures imposed against long grain white rice from the United States.

On 2005, the Appellate Body ruled that various provisions of the Foreign Trade Law and the Federal Code of Civil Procedures were inconsistent with Mexico's obligations under the Antidumping Agreement and the Agreement on Subsidies and Countervailing Measures. Consequently, Mexico was obliged to amend its laws in compliance with this decision.

20. What authorities are responsible for

enforcing customs laws and regulations and what is their role?

The General Customs Administration, a branch of the Tax Administration Service, was until 2021 the entity in charge of, among other things, facilitating and controlling the entry and exit of goods into or out of the national territory, and enforcing the customs and tax provisions that regulate such entry or exit.

In 2021, the National Customs Agency of Mexico ("ANAM") was created and replaced the General Customs Administration. Like its predecessor, ANAM is in charge of the direction, organization and operation of customs and inspection services, to apply and ensure compliance with the legal regulations governing the entry and exit of goods into or out of the national territory, as well as collecting tariffs and other duties relating to foreign trade operations.

The Ministry of Economy also has an impact on the entry and exit of goods into or out of Mexican territory, as it establishes measures to regulate or restrict the import or export of goods, as well as the circulation or transit of foreign goods through Mexican territory. Likewise, several authorities participate in this process, such as the Ministries of Health, National Defense, Environment and Natural Resources and Agriculture and Rural Development, since they are in charge of granting permits, licenses, authorizations or certificates to import (or export).

As a result of the aforementioned changes, since 2022 customs clearance for the import (and export) of goods is carried out before ANAM. This entity is specifically responsible for checking the data contained in the import and export declarations, declarations or manifestations, including verification of origin, as well as collecting taxes and customs clearance fees, and verifying compliance with non-tariff regulations and restrictions. ANAM is also responsible for seizing or retaining goods whose legal stay in the country is not evidenced, and for keeping them in custody as a depository.

21. Can importers apply for binding rulings from the customs authority in advance of an import transaction? How can customs decisions be challenged?

Yes. After adhering to the Trade Facilitation Agreement, Mexico has a uniform and single format for an advance ruling procedure ("Advance Ruling Format E/13"). The ruling may be requested by an importer in its territory, an exporter, producer, and other persons with a

justifiable cause. Information is available in the Tax Administration Service webpage, including laws and procedures.

22. Where can information be found about import tariffs and other customs charges?

The General Import and Export Tax Law is the legal instrument that contains the tariff codes of all goods that may be subject to import or export, as well as the general rates (most favored nation) of import and export taxes on goods.

23. Does your jurisdiction have any of the following features: a. Authorised Economic Operator (AEO) or equivalent programme? b. Mutual recognition arrangements (MRAs) with other jurisdictions in relation to their AEO programmes? c. Suspension of duties on any goods imports (for example, for goods for which there is no domestic production)? d. Allowing goods imports valued below a certain amount to enter duty free (de minimis shipments)?

a) The Authorized Economic Operator (AEO) serves as a certification tool affirming that a company's processes adhere to safety standards and that its controls and procedures are robust enough to ensure compliance with customs regulations. This certification, obtained through meeting the AEO standard, leads to enhanced efficiency in supply chain processes. The benefits include a more competitive product or service, positively impacting the organization's image, brand positioning, and export volumes. Notably, in Mexico, companies involved in outsourcing logistics services and general bonded warehouses have been eligible for AEO registration since 2018.

b) A Mutual Recognition Agreement represents a collaborative mechanism among Customs Administrations globally. It allows validations and authorizations granted to an Authorized Economic Operator in one country to be acknowledged by other nations. This reciprocity extends the benefits, enabling the Operator to receive favorable treatment in countries where such agreements are in place. Mexico has entered into Mutual Recognition Agreements with various countries, including a multilateral agreement with Chile, Peru, and Colombia under the Pacific Alliance framework.

c) The Eighth Rule mechanism permits the importation of goods into Mexican territory with a reduced tariff on the

general import tax. This applies when there is no domestic production insufficiency, and the imported inputs are utilized in a productive process.

d) Unlike some other countries, Mexico does not have a de minimis mechanism, which would allow the importation of goods below specific values at preferential rates.

24. What free trade zones and facilities such as bonded warehouses are available in your jurisdiction?

Under the "Bonded Warehouse" or "Depósito Fiscal" customs regime, both domestic and foreign goods can be temporarily stored in a bonded warehouse, subject to accreditation by tax and customs authorities in adherence to the stipulations outlined in relevant legislation. This regime allows for the deferral of the determination of the specific regime assigned to the stored goods. However, it is essential that foreign trade taxes and countervailing duties are predetermined, and compliance with non-tariff regulations at the customs office of dispatch is ensured.

Merchandise designated for the fiscal deposit regime falls under the custody, conservation, and responsibility of the General Warehouse from the moment a quota letter is issued through its electronic system linked to the Tax Administration Service (SAT). The goods are permitted to remain in storage for a maximum period of twenty-four months. During this time, they may undergo processes such as conservation, exhibition, labeling, packaging, examination, demonstration, and sampling. It is crucial, however, that the nature or taxable bases of the goods are not altered or modified for any reason.

Conversely, the Strategic Bonded Warehouse or "Recinto Fiscalizado Estratégico" regime allows for the temporary introduction of foreign, domestic, or nationalized merchandise into strategic bonded warehouses. This is permitted for handling, storage, custody, exhibition, sale, distribution, processing, transformation, or repair purposes. Goods under this regime serve one of two purposes: either to be definitively imported, if of foreign origin, or to be definitively exported, if of national origin.

25. What are the domestic scrutiny and transparency arrangements before and during negotiations for a trade agreement? What domestic ratification procedures are required once a trade agreement is concluded?

The process for concluding a treaty in Mexico involves several sequential stages: negotiation, drafting and adoption of the text, signature, internal approval, consent of the State to be bound, and entry into force.

In the Mexican context, delegations tasked with negotiating bilateral treaties typically comprise officials from substantive agencies responsible for the treaty's subject matter, alongside representatives from the Ministry of Foreign Affairs. Occasionally, private experts in the relevant field may be appointed as advisors to contribute their expertise to the negotiations.

The adopted text, though not legally binding on the states at this point, is considered the final version. However, before adoption, negotiators must secure authorization from the pertinent authorities. Once the treaty text is finalized, the Ministry of Foreign Affairs submits the treaties to the Senate of the Republic. Each treaty is accompanied by a memorandum providing background information, explaining its contents, outlining the reasons for its conclusion, and detailing the anticipated benefits.

During the legislative process, the Senate thoroughly examines, discusses, and approves treaties. Upon approval, the Senate issues a decree, published in the Official Gazette of the Federation, signaling its consent. It is important to note that this decree does not yet signify approval of the treaty text.

Following Senate approval, the Executive Branch authorizes the publication of the decree containing the

treaty in the Official Gazette. This decree is co-signed by the Secretary of the Interior. After the approval decree is published, the Executive Branch is then empowered to ratify the treaty. To achieve this, an instrument of ratification is prepared, signed by the President of the Republic, and co-signed by the Secretary of Foreign Affairs.

26. What are the domestic procedures for local traders to request the government take action against measures of other jurisdictions that are inconsistent with WTO and/or FTA rules?

The various free trade agreements entered into by Mexico, along with the Dispute Settlement Understanding within the multilateral trading system, encompass the regulations governing the initiation of a Panel for the resolution of trade disputes arising from the imposition of trade measures by a third country.

Within the framework of the WTO Dispute Settlement Mechanism, both the request and the procedural steps are exclusively undertaken by the State Parties. Conversely, within the context of Free Trade Agreements (FTAs), the initiation of a dispute resolution process varies based on the mechanisms delineated in each agreement. In certain instances, the affected party may directly instigate the dispute, while in others, it is incumbent upon the government to which the domestic producer belongs to initiate proceedings.

Contributors

Fernanda Garza Magdaleno
Partner

fgarza@smmps.com.mx

