

ARTICLE 1904
BINATIONAL PANEL REVIEW PURSUANT TO
THE NORTH AMERICAN FREE-TRADE AGREEMENT

In the matter of	)	
	)	
Antidumping Investigation of the Government of	)	No. Mex-94-1904-01
Mexico into Imports of Flat Coated Steel Products	)	
from the United States	)	
	)	
	)	
	)	
	)	

OPINION AND ORDER OF THE PANEL

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OPINION OF THE PANEL

I. INTRODUCTION

1. This Binational Panel was constituted pursuant to Article 1904 of the North American Free Trade Agreement ("NAFTA") to review a final anti-dumping determination published in Mexico's *Diario Oficial* on August 2, 1994 (the "Final Determination") and issued by the Department of Trade and Industrial Development ("SECOFI" or the "Investigating Authority"), as a result of Administrative Proceeding 36/92 conducted by the Unit of International Trade Practices of SECOFI. That Administrative Proceeding considered whether there was dumping of imports from the United States of flat coated steel products, covered by customs tariff classifications 7210.31.01, 7210.31.99, 7210.39.01, 7210.39.99, 7210.41.01, 7210.41.99, 7210.49.01, 7210.49.99, 7210.70.01 and 7210.70.99 of the Tariff Schedule of the General Tax Import Law of Mexico (the "Investigated Products").

A. THE ADMINISTRATIVE PROCEEDING

2. The proceeding was initiated by a provisional resolution issued by SECOFI, published in the *Diario Oficial* on December 24, 1992, and based on a complaint filed on December 4, 1992 by Industrias Monterrey, S.A. de C.V. ("IMSA").¹ Through notifications dated February 8, 1993, 26 U.S. exporters were notified of the provisional resolution, of the contents of an anti-dumping questionnaire and of a March 8, 1993 deadline for submitting responses for the questionnaire.² These notifications were issued in the name of the Dirección General de Prácticas Comerciales Internacionales and a Dirección de Cuotas Compensatorias of

¹ See Administrative Record, Version Confidential ("VC") Nos. 2 & 8.

SECOFI. Certain of the U.S. exporters submitted responses to the questionnaire on March 8, 1993.³

3. A resolution revising the provisional resolution was published in the *Diario Oficial* on April 28, 1993. Then, certain of the U.S. exporters filed additional information and comments.⁴

4. In early July 1993, certain of the U.S. exporters were notified about verification visits for the purpose of verifying information provided by these companies. Notifications dated July 6 and July 8, 1993 were issued in the names of the Unidad de Prácticas Comerciales Internacionales and a Dirección General Adjunta Técnica Jurídica of SECOFI. A notification dated July 14, 1993 was issued in the names of the Unidad de Practicas Comerciales Internacionales and a Dirección de Procedimientos y Proyectos of SECOFI.

5. The verification visits occurred in the United States during the last half of July 1993. Reports of the verification visits were prepared. Afterwards, SECOFI's anti-dumping investigation continued for almost another full year, and included a visit by the Investigating Authority with an unidentified consultant to IMSA's facilities in Mexico.

6. ANNEX A to this opinion is a chronology of key events in the proceeding before SECOFI, of events relating to the competence of administrative units and officials of SECOFI, as well as of the proceeding before the Panel.

7. As noted, the Final Determination was published in the *Diario Oficial* on August 2, 1994. In the Final Determination, SECOFI determined (1) that there was dumping of the

² See Administrative Record (VC) Nos. 32-57.

³ Id. Nos. 84, 97, 100, 105.

⁴ See Administrative Record (VC) Nos. 89, 90, 183, 236, 240, 242, 257, 289, 293, 296, 300, 303, 308, 310, 323, 336, 354, 370, 373, 375, 377, 383, 385, 394, 395, 411, 429, 444, 446, 450.

Investigated Products from certain companies in the United States, and (2) that the dumped imports from some of these companies presented a threat of injury to the domestic industry that produced like goods in Mexico. In particular, SECOFI determined the following price discrimination margins for exports of the Investigated Products:

Bethlehem Steel Corporation (" <u>Bethlehem</u> ")	0%
Inland Steel Company (" <u>Inland</u> ")	38.21%
LTV Steel Company (" <u>LTV</u> ")	5.4%
New Process Steel Corporation (" <u>New Process</u> ")	38.21%
USX Corporation (" <u>USX</u> ")	38.21%
<i>All Other Exporters</i>	38.21%

It was also determined that the exports by LTV and Bethlehem did not cause injury and did not represent a threat of material injury to the domestic industry, but that the exports by all other suppliers did present a threat of injury.

8. On September 1, 1994, two of the U.S. exporters, USX and Inland, filed with the Mexican Section of the NAFTA Secretariat a Request for Panel Review of the Final Determination. During October 1994 and pursuant to Rule 39 of the Rules of Procedure for Article 1904 Binational Panel Review, New Process, Bethlehem, USX, Inland, LTV, and IMSA all filed with the Mexican Section of the NAFTA Secretariat complaints presenting issues for panel review. This Binational Panel (the "Panel") was subsequently constituted under Article 1904 of NAFTA.

B. PREVIOUS ORDERS OF THE PANEL

9. The participants in this panel proceeding have filed several motions, which the Panel has decided in previous orders. Following is a summary of the motions that the participants have filed with the Panel, and of the previous orders that the Panel has issued in this binational panel review.

February 27, 1995

10. In response to a motion by SECOFI, the Panel unanimously denied SECOFI's request that the Complainants be compelled to file their brief on the merits in a single volume as opposed to its filing it in multiple volumes; denied SECOFI's request that Complainant's brief on the merits be amended to eliminate certain references that fall outside the administrative record; denied SECOFI's request that the Complainants be required to "clarify" their brief on the merits in certain respects; and denied SECOFI's request for an extension of time in which to file a responsive brief.

March 03, 1995

11. In response to a motion by Complainants to supplement the Public Record of certain documents omitted from it, to eliminate certain documents from the Confidential Record and place them in the Public Record, and finally to place certain non-Confidential summaries of certain Confidential Documents in the Public Record, the Panel unanimously ordered the following: a) that the Public Record be considered already supplemented with the documents omitted, b) that the Complainant's request to place in the Public Record certain Confidential documents be denied, and c) that the Complainants requests that non-Confidential summaries be placed on the Public Record be denied.

April 4, 1995

12. In response to a motion by IMSA requiring an extension of time in which to file a responsive brief, the Panel denied it because it had been filed out of time.

April 19, 1995

13. In response to a motion by SECOFI of lack of standing of Licenciado Luis Manuel Pérez de Acha, Licenciado Luis Rubio Barnetche and Claire E. Reade, the Panel ordered the recognition of Luis Manuel Pérez de Acha as counsel of record of Bethlehem, USX, LTV and Inland and Luis Rubio Barnetche as counsel of record of New Process to the extent that both counsel could demonstrate that they were attorneys at law with authorization to practice Law in Mexico. As to Claire E. Reade, the Panel ordered that she be recognized as providing legal advise but not as counsel of record of New Process

May 17, 1995.

In response to a motion by Bethlehem, and later to a motion by USX, LTV and Inland, the Panel unanimously ordered that SECOFI issue an authorization granting access to information contained in the Confidential Record to the counsel of record of Bethlehem, USX, LTV , Inland, New Process and IMSA without any requirement for the posting of a bond or financial guarantee.

June 9, 1995.

15. In response to a motion by the counsel of record of New Process requiring: a) access to certain documents which were absent from the Confidential Record, b) access to privileged information, c) that access be given to the Confidential Record for other legal counsel of New Process, and d) authorization to present a new brief within the following seven days after being allowed access to all the documents in the Confidential Record , the Panel ordered the following: a) to grant access to the only missing document (number 286) which (while the motion was pending) was included in the Confidential Record by the Investigating Authority, b) to deny access to New Process to privileged information because the company did not satisfy the requirements of the NAFTA's Panel Rules c) to deny access to the Confidential Record to other legal counsel of New Process , d) to grant all parties who had access to Confidential Information five days to file comments regarding document No.286.

May 30, 1996.

16. In response to the motion by the Investigating Authority to increase its time to present oral arguments at the second public hearing and to conduct a prehearing conference before the second public hearing, the Panel granted in part an increase in the time for oral argument to the Investigating Authority and denied the motion for a prehearing conference.

Additional Motions

17. In response to the motion filed on May 7, 1996 by the counsel of record of Bethlehem Steel, Inland, LTV and USX, to strike from the record certain documentation submitted by IMSA, the Panel hereby denies such petition, on the basis of Rule 10(1) and (4a) of the Panel Rules.

18. In response to the motion filed on May 30, 1996 by the counsel of record of Bethlehem Steel, Inland, LTV and USX, to supplement the record with certain documents, the Panel hereby denies the motion, on the basis of Rule 52(1) of the Panel Rules, since such documents are not part of the Administrative Record

19. The Investigating Authority and IMSA made submissions to the Panel on September 17, 1996, requesting this Panel to consider the decision issued on September 12, 1996 in case MEX-94-1904-03, (concerning imports of crystal and solid polystyrene from Germany and the United States). The Panel decided to delay the issuance of its opinion by one week, until September 27, 1996, in order to give the panelists an opportunity to review

that decision. However, this Panel, having reviewed the majority and concurring opinions in MEX-94-1904-03, notes that the factual situation in that case with regard to competence issues is quite different from the present case, and, in addition, respectfully disagrees with that panel's interpretation of the scope of Rule 7 of the NAFTA Rules of Procedure. Consequently, the Panel hereby denies the motion filed on September 23, 1996, by Bethlehem, Inland, LTV and USX in response to the motions filed on September 18, 1996 by IMSA and SECOFI, and requiring this Panel not to give any consideration to the decision issued in case MEX-94-1904-03.

C. PANEL HEARINGS AND BRIEFS

20 Participants in this Panel proceeding have submitted numerous briefs on the merits and participated at a public hearing held in Mexico City on April 21 and 22, 1995. Following the resignation of two Panelists to avoid questions regarding the possible appearance of a conflict of interest, and after the appointment of two new Panelists, a second public hearing was held in Mexico City on June 4, 1996.

21. The Panel has reviewed each of the issues presented for review and has fully considered each of the arguments presented with respect to these issues.

II. THE PANEL'S JURISDICTION AND STANDARD OF REVIEW

22. The status of this Panel and the scope of its authority are critical to this opinion. Thus, it is important to note at the outset that the Panel is not the Fiscal Tribunal, and does not have the same characteristics, attributions and jurisdiction as does the Fiscal Tribunal.⁵ While the Fiscal Tribunal's jurisdiction and competence are governed in their totality by Mexican law, including various provisions of the Fiscal Code, this Panel's jurisdiction and competence are governed by NAFTA, and by Mexican law only to the extent that NAFTA so provides in specifying the applicable standard of review and in the requirement of Article 1904(2) that the Panel is to apply Mexican law "to the extent that a court of the importing party would rely on such materials in reviewing a final determination of the competent investigating authority." As discussed below, this is a more specific and limited jurisdiction, which may cause the results of a review by the Panel to be different from a review by the Fiscal Tribunal.

23. Like any international arbitral panel, the jurisdiction of a binational panel under NAFTA is limited. It is a principle of international law that in any international arbitration, the members of the panel have a jurisdiction that is strictly limited to the terms under which a matter has been submitted to arbitration. As one commentator has stated:

Since the arbitrator derives his powers from the arbitration agreement he is bound by the wording of the agreement when deciding what authority he has to decide a particular dispute.

The arbitration agreement may use a formula that is narrow or broad, conferring jurisdiction to specific types of claims, or for specific damages only. . . .⁶

⁵ Pursuant to section XI of Article 11 Ley Orgánica del Tribunal Fiscal de la Federación, Diario Oficial, December 15, 1995, the Federal Fiscal Tribunal is charged with the domestic judicial review of final determinations in antidumping matters.

⁶ S. Jarvin, The Sources and Limits of the Arbitrator's Powers, 2 Arbitration International 140, 142-43 (1986).

24. In other words, to determine the jurisdiction of an international panel, one must look at the "wording" of the agreement or treaty under which the panel was constituted. One must determine what particular claims or issues have been submitted for review, and whether jurisdiction has been conferred with respect to the awarding of damages or other remedies.

25. These concerns are particularly significant where the international panel has been created by sovereign nations. As the International Court of Justice has stated:

The court is not departing from the principle, which is well-established in international law and accepted by its own jurisprudence as well as that of the Permanent Court of International Justice, to the effect that a State may not be compelled to submit its disputes to arbitration without its consent.⁷

26. In this Panel proceeding, "consent" for Panel review has been expressed by Canada, Mexico and the United States in the North American Free Trade Agreement ("NAFTA"). If this Panel was to decide any claim, apply any standard of review, or award any remedy in a manner that was not expressly provided for under NAFTA, this Panel would risk exceeding the "consent" conferred by the three sovereign nations that are parties to NAFTA.

27. Similarly, under international treaties to which Canada, Mexico and the United States are all parties, one of the few grounds for challenging the enforcement for an arbitration award is that:

Que la sentencia se refiere a una diferencia no prevista en el compromiso o no comprendida en las disposiciones de la cláusula compromisoria, o que contiene decisiones que exceden de los

The award deals with a difference not contemplated by or not falling within the terms of the submission to arbitration, or it contains decisions on matters beyond the scope of the submission to

⁷ Ambatielos Case (Greece v. United Kingdom), [1953] I.C.J. 10, 19.

términos del compromiso o de la arbitration. . . .⁸
cláusula compromisoria;

28. Additionally, international agreements and treaties are considered to be domestic law under the Mexican Constitution (Article 133). The Mexican Supreme Court has ruled that international agreements and treaties are self-executing, so that national authorities are bound by them without the need of any implementing legislation. Thus, for the purpose of its application in Mexico, NAFTA is to be directly interpreted according to the rules laid out by the Vienna Convention on the Law of Treaties, to which Mexico is a party and which is a part of Mexican domestic law.⁹

29. As discussed below, under NAFTA, the jurisdiction of this Panel is limited in three areas: (A) the claims and defenses that this Panel may review, (B) the standard of review to be applied to those claims and defenses, (C) the remedies that may be granted in the review.

⁸ Convention On The Recognition And Enforcement Of Foreign Arbitral Awards, New York, June 10, 1958, 330 U.N.T.S. 38 (1959), Article V(1)(c). A similar provision appears in another treaty to which Mexico and the United States are both parties. Inter-American Convention on International Commercial Arbitration, Panama, January 30, 1975, Organization of American States, Treaty Series No. 42, Article V(1)(c).

⁹ See “Contradicción de tesis” 3/92 and binding precedents 13/94 and 14/94. Semanario Judicial de la Federación, 8a. época. Jurisprudencia por contradicción de tesis, volume I, pp. 451 and 511.

A. JURISDICTION TO REVIEW CLAIMS AND DEFENSES

30. Our jurisdiction first of all has a temporal limit. A request for a Panel review must be made "within 30 days following the date of publication of the final determination in question in the official journal of the importing Party" ("dentro los treinta días siguientes a la fecha en que la resolución definitiva en cuestión se publique en el diario oficial de la Parte importadora").¹⁰ In this case, SECOFI's Final Determination was published on August 2, 1994. Requests for Panel review were filed within 30 days, on September 1, 1994. Therefore, the Panel concludes that the temporal requirement for it to exercise jurisdiction has been satisfied.

31. The Panel's jurisdiction is defined and circumscribed by NAFTA, Article 1904(6) requires this Panel to conduct its review in accordance with the procedures established under Article 1904(14). Those procedures are entitled: "North American Free Trade Agreement: Rules of Procedure for Article 1904 Binational Panel Review" ("NAFTA Panel Rules"). Rule 7 of the NAFTA Panel Rules limits the jurisdiction of this Panel as follows:

- | | |
|--|---|
| 7. La revisión ante un panel se limitará: | 7. A panel review shall be limited to |
| (a) a los alegatos de error de hecho o de derecho, incluyendo la declinatoria de competencia de la autoridad investigadora, comprendidos en las Reclamaciones presentadas ante el panel: | (a) the allegations of error of fact or law, including challenges to the jurisdiction of the investigating authority, that are set out in the Complaints filed in the Panel review; and |
| y | |
| (b) a los medios de defensa tanto adjetivos como sustantivos invocados en la revisión ante el panel. | (b) procedural and substantive defenses raised in the Panel review. |

¹⁰NAFTA, Article 1904(4).

32. In other words, if an issue has not been raised in a party's Complaint, or as a procedural or substantive defense during the Panel review, we have no jurisdiction to consider it.

33. Rule 7 has important implications for this Panel, that may not apply to a national court in Mexico. Rule 7 limits the jurisdiction of the Panel to issues that are raised by the party, and requires us to look individually at each Complaint and at each issue in each Complaint. For example, if the complaint of Exporter A presents the issue of the competence of an official but the Complaint of Exporter B does not present this issue, we may review this an issue only for Exporter A and not for Exporter B. In fact, this situation arose in this case, where some of the U.S. exporters presented the issue of competence in their Complaints, but New Process did not present the issue in its Complaint. We do not have jurisdiction to consider an issue that was not presented in a Complaint of a particular exporter, even though the same issue was presented in the Complaints of other exporters. We note that this is in contrast to the jurisdiction of the Tribunal Fiscal of Mexico, which under a recent amendment to Article 238 of the Fiscal Code, may declare, "*sua sponte*, because it is a matter of public order, the incompetence of the authority to render the challenged determination and the total absence of basis or motivation of this determination."

34. Rule 7 also means that we must analyze the Final Determination to determine which elements of the Final Determination, if any, are affected by each issue raised in the Complaint of each party. A Final Determination in an anti-dumping proceeding is based on many administrative acts and determinations that have occurred earlier in the anti-dumping proceeding. We do not have jurisdiction to review all of these administrative acts and

determinations (as incorporated in the Final Determination) unless they are challenged in a Complaint of a party. If a Complaint does not present a claim relating to an administrative act or determination on which a part of the Final Determination is based, the Panel may not have jurisdiction to review that part of the Final Determination.

On these matters, we respectfully disagree with the panel decision in Case No.Mex-94-1904-03. The majority in that panel suggested that the purposes of rule 7 were simply to assure (1) that major issues were brought to a panel's attention and (2) that participants would have a timely opportunity to respond all issues. Those purposes, however, do not appear in the text of NAFTA Article 1904 or in the text of the sovereign nations have established an arbitration or dispute resolution procedure, the arbitrators or panelists must be guided by the text of what sovereign nations have agreed upon. We cannot go beyond the text of Rule 7 to look for purposes by which we might expand the issues over which we have jurisdiction.

B. STANDARD OF REVIEW

36. The standard of review applicable to this proceeding is also determined by NAFTA. This Panel must apply the standard of review set out in NAFTA Article 1904(3) and Annex 1911. It is a two-part standard review. The first part is

el criterio establecido en el Artículo 238 del Código Fiscal de la Federación, o cualquier ley que lo sustituya, basado solamente en el expediente.

the standard set out in Article 238 of the Federal Fiscal Code ("Código Fiscal de la Federación"), or any successor statutes, based solely on the administrative record.¹¹

Article 238 of the Federal Fiscal Code states:

Se declarará que una resolución administrativa es ilegal cuando se demuestre alguna de las siguientes causales:

I. Incompetencia del funcionario que la haya dictado u ordenado o tramitado el procedimiento del que deriva dicha resolución.

II. Omisión de los requisitos formales exigidos por las leyes, que afecte las defensas del particular y trascienda al sentido de la resolución impugnada, inclusive la ausencia de fundamentación o motivación, en su caso.

III. Vicios del procedimiento que afecten las defensas del particular y trasciendan al sentido de la resolución impugnada.

IV. Si los hechos que la motivaron no se realizaron, fueron distintos o se apreciaron en forma equivocada, o bien si se dictó en contravención de las disposiciones

An administrative determination shall be declared illegal when any of the following grounds are demonstrated:

I. Lack of competence of the official who issued, ordered, or carried out the proceeding from which said resolution is derived.

II. Omission of the formal requirements provided by law, which affects an individual's defenses and impacts the result of the challenged resolution, including the lack of legal foundation or reasoning, as the case may be.

III. Procedural errors which affect an individual's defenses and impact the result of the challenged resolution.

IV. If the facts which underlie the resolution do not exist, are different or were erroneously weighed, or if (the resolution) was issued in violation of applicable legal provisions or if the correct provisions were not applied.

¹¹NAFTA: Annex 1911.

aplicadas o dejó de aplicar las debidas.

V. Cuando la resolución administrativa dictada en ejercicio de facultades discrecionales no corresponda a los fines para los cuales la ley confiera dichas facultades

El Tribunal Fiscal de la Federación podrá hacer valer de oficio, por ser de orden público, la incompetencia de la autoridad para dictar la resolución impugnada y la ausencia total de fundamentación o motivación en dicha resolución.

V. When an administrative determination issued in an exercise of discretionary powers does not correspond with the purposes for which the law confers said powers.

The Federal Fiscal Tribunal may declare sua sponte, because it is a matter of public order, the incompetence of the authority to render the challenged determination and the total absence of basis or motivation of this determination.¹²

38. Under the second part of the standard review, we may also consider:

los principios generales de derecho que de otro modo un tribunal de la Parte importadora aplicaría para revisar una resolución de la autoridad investigadora competente.

the general legal principles that a court of the importing Party otherwise would apply to a review of a determination of the competent investigating authority.¹³

39. Significantly, the first part of the standard of review specified by NAFTA, namely Article 238 of the Federal Fiscal Code, presents the Panel with several problems. The beginning of Article 238 states: "An administrative determination shall be declared illegal" ["Se declarará que una resolución administrativa es ilegal"]. How should we interpret the words "administrative determination" ("resolución administrativa")? An anti-dumping investigation normally consists of many administrative determinations that concern different subjects and that affect different parties. The text of Article 238 of the Fiscal Code does not state that the words "administrative determination" ("resolución administrativa") mean only the entire Final Determination. The Panel is not aware of any decision of the Fiscal Tribunal interpreting the words "administrative determination" ("resolución administrativa") in an anti-dumping context.

¹² The last paragraph of Article 238 was inserted through amendment published in the Diario Oficial on

Nor does NAFTA Article 1904 or Annex 1911 tell us that we must interpret the words "administrative determination" ("resolución administrativa") to mean only the entire Final Determination.

40. NAFTA Articles 1904(1), (2) and (5) indicate that this Panel may review only a final anti-dumping or countervailing duty determination. In reviewing a Final Determination, however, we review only the portions of the Final Determination that are implicated by an issue raised in a Complaint of a party.¹⁴ Since neither the text of Fiscal Code Article 238 nor the text of NAFTA Article 1904 say that we must declare illegal the entire Final Determination, it appears that this Panel would have the power to declare illegal under Article 238 some of the "administrative determinations" that are included in (or provide the basis for) portions of the Final Determination, and not others. In addition, the limitations on our jurisdiction under NAFTA and the fact that a final anti-dumping determination includes many subordinate administrative determinations indicate that we should interpret the words "administrative determination" ("resolución administrativa") in Article 238 to mean each of the subordinate "administrative determinations" that are included in (or that provide the basis for) portions of the Final Determination.¹⁵

December 15, 1995, and entered into force on January 1, 1996.

¹³ NAFTA, Article 1904(3).

¹⁴ See Part II/A of this Opinion.

¹⁵ The "contradiccion de tesis" 3/92, on which the binding precedents 13/94 14/94 (cited above) are based, state that where there are overlapping national and international legal rules, for example, the rules that limit the Panel's jurisdiction and those that confer on the Federal Fiscal Tribunal the power to declare illegal an administrative determination, the rules that should prevail are those specific to the issue at hand. In the present case, this suggests that Article 238 of the Federal Fiscal Code has to be interpreted in light of the specific rules that are applicable to a Panel review, including Rule 7 of the NAFTA Panel Rules.

41. The proper application of the standard of review, and any other applicable provisions of Mexican law, is made more difficult by several factors. First, the Panel recognizes Article 238 was originally written for review of administrative decisions relating to taxation and other fiscal matters. Such fiscal matters typically involve a claim by the government against an individual regarding that individual's obligation to pay taxes to the state. By contrast, an antidumping proceeding is more complex. It involves matters affecting the entire economy of the country, trade relations between two nations, domestic producers and their employees, importers of foreign goods, and the exporters of those goods. Notwithstanding these differences, the NAFTA Parties have directed that the same standard of review, Article 238, be applied. The challenge for a Binational Panel is to apply the required standard of review to a multidimensional proceeding under Mexico's anti-dumping laws.

42. Second, as far as this Panel is aware, until now the Federal Fiscal Tribunal has not reviewed a final determination by SECOFI in an anti-dumping proceeding under Article 238 of the Federal Fiscal Code. Article 238 has never been applied by the Federal Fiscal Tribunal to review such a final determination. Moreover, there are only a few amparo decisions of Mexican courts. Those amparo courts have jurisdiction that is different from, and broader than, the jurisdiction of either this Panel or the Fiscal Tribunal. Also, for other reasons discussed later in this Opinion, the amparo decisions do not provide the Panel clear guidance either for applying this standard of review or for fashioning an appropriate remedy.

43. This Panel is of course aware that two earlier panels have issued decisions reviewing two Mexican final antidumping determinations ("Panel 02" and "Panel 03").¹⁶ However, the Panel 02 and 03 decisions, while providing useful guidance, are not binding precedents for this Panel. As NAFTA Article 1904(8) provides, "the decision of a panel under this Article shall be binding on the involved Parties with respect to the particular matter between the Parties that is before the panel" but not for other grounds. Thus, this Panel may make a decision that differs from the decision of Panel 02 and 03.

¹⁶ See MEX-94-1904-02, In the Matter of the Mexican Antidumping Investigation into Imports of Cut-to-Length Plate Products from the United States, August 30, 1995; and MEX-1904-03, In the Matter of Crystal and Solid Polystyrene from the United States, September 12, 1996.

C. POWERS TO GRANT REMEDIES AND ARTICLE 239

44. The jurisdiction of an international arbitration or dispute resolution panel, in this case as defined by NAFTA, may limit the powers of the panel to grant certain remedies as a result of its decision. As discussed above, the jurisdiction and powers of an international panel are defined by the agreement under which the matter was submitted to the panel, and the panel may not exercise powers that are not specified under that agreement. This Panel has jurisdiction to grant only those remedies that are authorized by NAFTA Article 1904(8). This provision of NAFTA states:

8. El panel podrá confirmar la resolución definitiva o devolverla a la instancia anterior con el fin de que se adopten medidas no incompatibles con su decisión.

8. The panel may uphold a final determination, or remand it for action not inconsistent with the panel's decision.

45. Therefore, unlike the Federal Fiscal Tribunal, this Panel lacks the jurisdiction "to declare a challenged resolution to be a nullity" ("Declarar la nulidad de la resolución impugnada").¹⁷ Federal Fiscal Code, Article 239/II. Jurisdiction to declare "nullity" does not exist under NAFTA Article 1904(8).

46. The U.S. exporters have argued to this Panel that we should consider Article 239 of the Federal Fiscal Code to be an integral part of our standard of review under Article 238, through the second part of the standard of review as a "general legal principle." A previous panel in Case No. MEX-94-1904-02 accepted this viewpoint. We respectfully disagree, because in our view, the incorporation of Article 239 into the standard of review would constitute an

¹⁷ Article 239, section II, Federal Fiscal Code. However, although the Federal Fiscal Tribunal, in contrast with the Panel's powers, may declare illegal and void a Final Determination, it may only do so with respect to the particular plaintiff ("relative effects of the decision").

inappropriate expansion of our own jurisdiction and powers. As indicated earlier, we are bound by the powers and jurisdiction provided under NAFTA Article 1904(8). That provision permits this Panel to affirm a Final Determination of SECOFI, or remand the Final Determination for further proceedings, but it does not provide the authority to nullify the Final Determination, as is specifically provided to the Fiscal Tribunal under Article 239 of the Federal Fiscal Code.

47. For this reason, we reject the reasons that have been presented to us for including Article 239 in the standard of review as a statement of the powers of the Panel. We fully appreciate the desirability of having panels and national courts decide cases in a similar manner, as a means of promoting consistency and uniformity in decisions. We understand that the Federal Fiscal Tribunal would apply Articles 238 and 239 together, and in appropriate circumstances might nullify a Final Determination. However, if the Parties to NAFTA wished this Panel to have the authority to grant the same remedies to the parties before it that the Federal Fiscal Tribunal may grant under Article 239, they presumably would have included Article 239 in the standard of review, and would have written NAFTA Article 1904(8) differently, so as to avoid a conflict between Article 1904(8) and Article 239.

48. In other words, we are convinced that under the current text of NAFTA this Panel does not have the same jurisdiction and the same powers as have been conferred on the Federal Fiscal Tribunal. We must act within, and only within, the express limits of the jurisdiction and powers conferred on us.¹⁸

49. In the remainder of this opinion, the Panel considers each of the individual issues presented in the Complaints of the U.S. exporters, and defenses raised during this Panel review.

The Panel applies the above standard review to each of those issues and defenses; it considers the extent to which "administrative determinations" incorporated within the Final Determination should be "declared illegal" ("se declarará ilegal") under the standard of review; and it orders remedies permitted under NAFTA Article 1904(8).

III. COMPETENCE OF OFFICIALS BEFORE APRIL 1, 1993

50. In their Complaints, Bethlehem, Inland, LTV and USX each claimed that the officials who carried out the anti-dumping proceeding between December 24, 1992 and April 1, 1993 lacked competence. During the Panel review (but not in its Complaint), New Process also raised this issue. However, since New Process did not raise the claim of lack of competence in its Complaint, this Panel lacks jurisdiction under Rule 7 of the NAFTA Panel Rules to consider this claim by New Process. As discussed above, under Rule 7 of the NAFTA Panel Rules, our jurisdiction is to look individually at each Complaint, and individually at each issue in each Complaint.

51. USX, Bethlehem, Inland and LTV raised issues of competence individually through their Complaints in this Binational Panel proceeding. These U.S. exporters say that officials who carried out the anti-dumping proceeding between December 24, 1992 and April 1, 1993 performed certain administrative acts in the conduct of the proceeding at a time when they lacked competence to carry out those acts. They claim that under Article 16 of the Mexican Constitution the official carrying out those actions must have competence to do so. Under

¹⁸ For similar reasons, Article 237 of the Federal Fiscal Code is not part of the standard of review we must apply as part of our jurisdiction.

Article 16, that competence requires that the acting authority be legally created by law or regulation and that the entity must only act in accordance with the express authority granted by Mexican law. They argue that since these requirements were not fulfilled in this situation, the Final Determination should be declared illegal under Article 238/I of the Federal Fiscal Code.

52. The challenge to the jurisdiction (competence) of the investigating authority raised by the U.S. respondents has a dual dimension: a constitutional dimension and a legal dimension. Mexican courts have drawn this distinction. The "constitutional competence" is derived from the provisions of the Constitution and is protected by the *amparo* trial implementing the constitutional guaranty established by Article 16.¹⁹ "Legal competence" relates to ordinary legal provisions or decrees issued by the Legislative Power ("Ley Reglamentaria"). Since the Panel sits in place of the Federal Fiscal Tribunal (not an *amparo* court), it considers violations of legal competence arising under Article 238(1) of the Federal Fiscal Code and any laws or regulations relevant to SECOFI that establish the competence of SECOFI officials, but only "indirectly" violations of the individual guarantees recognized in Article 16(1) of the Constitution.²⁰

¹⁹ Article 16(1) of the Constitution provides that "No person shall be disturbed ('molestado') in his person, family, domicile, documents or possessions, except by virtue of a written order issued by a competent authority stating the legal grounds and justification for the action taken."

²⁰ See judicial precedent: "Nullity hearing before the Tax Court of the Federation, Resource must be exhausted before placing the matter before a Constitutional hearing ... ". Tercer Tribunal Colegiado en materia administrativa del Primer Circuito. Semanario Judicial de la Federación, 7a. época, vols. 121-126, sexta parte, p. 109. Amparo en revisión 1049/78. Alicia Bernal Sánchez. 8 de marzo e 1979. Unanimidad de votos. Ponente: Sergio Hugo Chapital Gutiérrez.

53. In view of this dual dimension of competence, one question is whether this Panel is empowered to decide constitutional issues raised by the parties.²¹ Neither NAFTA, Chapter 19 nor the NAFTA Panel Rules provide a clear answer to this question. Nevertheless, as the Panel may apply Mexican law "to the extent that a court of the importing party would rely on such materials", the Panel may reasonably look for guidance to the regulations, administrative practice and judicial precedents in which a party has raised constitutional arguments before the Federal Fiscal Tribunal.

54. The Federal Fiscal Tribunal is not authorized by the Constitution or the Organic Law of the Federal Fiscal Tribunal or the Federal Fiscal Code, to directly decide on the constitutionality of an act, because the Federal Fiscal Tribunal is a tribunal of an administrative character.²² On the other hand, two theses issued by the Federal Fiscal Tribunal that have been provided to this Panel, establish that in order to determine the nullity of action of an administrative entity, the Federal Fiscal Tribunal should support its decision by reference to the Constitution.²³ However, this Panel need not decide whether it has the authority to review constitutional issues under Mexican law, because the standard of review set out in Article 238 limits the review to issues of legality.

²¹ In the United States, Panels do not have such jurisdiction. See 19 U.S.C. § 1516a(g)(4)(B), NAFTA, Statement of Administrative Action 101. Where a participant in an antidumping or countervailing duty proceeding wishes to contest a final determination on constitutional grounds, the statute reserves jurisdiction over such issues to a three-judge panel of the Court of International Trade. This is done to ensure that binational panels do not decide constitutional issues, and thereby raise the concern that such issues be decided other than by an Article III court.

²² See Article I of the Ley Orgánica del Tribunal Fiscal de la Federación, Diario Oficial, December 15, 1995.

²³ See Review 1649/87, Boletín del Tribunal Fiscal de la Federación, 3a. época, año III, num. 26, Feb. 1990, p. 30; Review 310/86, Boletín del Tribunal Fiscal de la Federación, 3a. época, año I, num. 4, Apr. 1988, p. 11.

55. As we attempt to apply Article 238, we note that the issues of competence presented to this Panel raise new and complex questions involving anti-dumping proceedings under Mexican law. Most of the precedents in fiscal and administrative matters involve proceedings against a single person or company. There are some precedents involving recent amparo proceedings. These decisions, however, have not addressed all of the legal considerations that this Panel believes are relevant to the analysis. Similarly, the decisions of the Binational Panels in Cases Nos. MEX-94-1904-02 and MEX-94-1904-03, do not fully address these considerations.

56. The Panel believes that the issues of competence presented to us require an analysis of (A) the specific administrative acts that occurred before April 1, 1993, (B) the competence of the officials who performed these administrative acts, (C) the legal duties and interests of exporters in an antidumping proceeding that exist independently of any incompetent acts, including the right of exporters to present evidence and to have the evidence considered by the Investigating Authority, (D) the guidance from past amparo and Panel decisions, and (E) whether any "administrative determinations" within the Final Determination were derived from or based on proceedings carried out by incompetent officials. As discussed below, this analysis requires that the claim of competence presented by Inland be decided differently from the claims of competence presented by the other U.S. exporters.

A. THE SPECIFIC ACTS AT ISSUE

57. The anti-dumping proceeding was initiated by the provisional resolution published in the *Diario Oficial* on December 24, 1992. Before December 24, 1992, there were no "proceedings" within the meaning of Article 238, Section I, of the Federal Fiscal Code. Therefore, the Panel did not consider any of the acts that occurred before December 24, 1992. Also, the U.S. exporters agree that the act initiating the proceeding on December 24, 1992 was performed by an official of SECOFI who was competent. Therefore, the act of initiating the proceeding also is not challenged.

58. On April 1, 1993 SECOFI published in the *Diario Oficial* an Internal Regulation establishing the competence of new units within SECOFI. We review here those official acts that occurred between December 24, 1992 and April 1, 1993. The specific acts as shown in the administrative record are of the following types:

1. There are several resolutions acknowledging the receipt of various pleadings and submissions from U.S. exporters, IMSA and other interested persons.²⁴

2. There was a series of notifications sent to 26 U.S. Exporters on February 8, 1993.²⁵ These notifications informed U.S. exporters of the initiation of the anti-dumping proceeding and enclosed an anti-dumping questionnaire. In addition, these notifications purported to state a deadline by which responses to the questionnaire must be submitted and warned of certain consequences if responses were not submitted.

²⁴ See Administrative Record (VC) Nos. 10, 13, 17, 19, 21, 58, 60, 62, 65, 67, 71, 73, 76, 78, 83, 88, 94, 96, 99, 101, 104, 107, 111, 113 and 119.

²⁵ Id. Nos. 32-57.

3. The last type of official act during this period were documents denying a procedural request from a particular party. Generally, these were denials of requests for an extension of time in which to submit responses to the questionnaires.²⁶

59. The U.S. exporters have focused on the second and third categories. All of the above documents in these categories begin by identifying the following General Directorate and Area Directorate of SECOFI:

DIRECCION GENERAL DE PRACTICAS
COMERCIALES INTERNACIONALES.
DIRECCION DE CUOTAS COMPENSATORIAS.

60. Almost all of these documents were signed by Miguel Angel Velázquez Elizarrarás as "the Director," and on behalf of either the Dirección General de Prácticas Comerciales Internacionales ("DGPCI") or the Dirección de Cuotas Compensatorias ("DCC").

B. COMPETENCE OF THE OFFICIAL ACTING FOR DGPCI AND DCC

61. The U.S. exporters claim that neither DGPCI or DCC existed before April 1, 1993, and that, therefore, Mr. Velázquez (who claimed to be acting on behalf of DGPCI or DCC) was incompetent. In its brief, SECOFI does not deny that DGPCI did not lawfully exist. Instead, SECOFI argues that the existence of DGPCI is irrelevant, because DCC was lawfully created and because the director of DCC was the person who processed the investigation administratively.²⁷

²⁶ These are identified in the administrative record as Nos. 64 and 75.

²⁷ As discussed in Part III/D of this Opinion, previous amparo decisions state that DGPCI was the administrative unit that carried out this part of the investigation, and conclude that DGPCI was not lawfully created.

62. The parties differ about the legal status of DCC. The U.S. exporters claim that DCC, like DGCPI, was never legally established. SECOFI claims that DCC was properly established as an Area Directorate under a General Directorate different than DGPCI, through a 1988 General Manual of Organization published in the *Diario Oficial*.

63. 1. It is important to understand the legal context of this issue of competence. The Ley Orgánica de la Administración Pública Federal ("LOAPF"), which establishes the different departments and ministries, including SECOFI, specifies the jurisdiction and powers of subordinate entities within each ministry and secretariat. Articles 14, 16 and 18 of this Law stated, at the relevant time:

Artículo 14. Al frente de cada Secretaría habrá un Secretario de Estado, quien para el despacho de los asuntos de su competencia se auxiliará por los subsecretarios, oficial mayor, directores, subdirectores, jefes y subjefes de departamento, oficina, sección, mesa, y por los demás funcionarios que establezca el reglamento interior respectivo y otras disposiciones legales.

Artículo 16. Corresponde originalmente a los titulares de las Secretarías de Estado y Departamentos Administrativos el trámite, y resolución de los asuntos de su competencia, pero para la mejor organización del trabajo podrán delegar en los funcionarios a que se refieren los artículos 14 y 15, cualesquiera de sus facultades, excepto aquellas que por disposición de la ley o del reglamento interior respectivo, deban ser ejercidas precisamente por dichos titulares...

Los propios titulares de las Secretarías de

Article 14. At the head of each Ministry, there shall be a Minister of state who will be assisted in matters under his jurisdiction by undersecretaries, a chief of staff, directors, deputy directors, and by directors and subdirectors of areas, offices, sections and subsections, and all other authorized persons mentioned in the appropriate internal regulation and in other legal provisions.

Article 16. The Secretaries of State and the heads of the Administrative Departments are responsible for the processing and resolution of matters within the jurisdiction of their respective ministries and agencies. However, in order to better organize their work, they may delegate any of their powers to the officials referred to in Articles 14 and 15, except for those powers that by law or in accordance with the respective internal regulation must be exercised personally by the Secretaries of State and the heads of the Administrative Departments. . .

Estado y Departamentos también podrán adscribir orgánicamente las unidades administrativas establecidas en el reglamento interior respectivo, a las subsecretarías, oficialía mayor, y a las otras unidades de nivel administrativo equivalente que se precisen en el mismo reglamento interior. Los acuerdos por los cuales se deleguen facultades o se adscriban unidades administrativas se publicarán en el Diario Oficial de la Federación.

Artículo 18. En el reglamento interior de cada una de las Secretarías de Estado y Departamentos Administrativos, que será expedido por el Presidente de la República, se determinarán las atribuciones de sus unidades administrativas, así como la forma en que los titulares podrán ser suplidos en sus ausencias.

The Secretaries of State and the heads of the Administrative Departments may allocate organically the administrative units established in their respective internal regulations to the Undersecretaries, Chief of Staff, and other administrative units at an administrative level equivalent to those set out in such internal regulations. The agreements through which the powers are either delegated or granted to administrative units shall be published in the "Diario Oficial de la Federación."

Article 18. The functions of the administrative units of the Ministries and administrative departments, together with the manner in which they can be substituted during absences, are determined by the internal regulations of each Ministry or Administrative Department., which will be issued by the President of the Republic.

64. Thus, if an administrative unit within SECOFI is exercising powers, the functions of the unit must come from a "law" or from an "internal regulation" issued by the President of the Republic.²⁸ A delegation of powers to an administrative unit must be published in the *Diario Oficial*.²⁹ Secretaries of State may delegate their powers, except those that must be exercised personally, to the heads of administrative units that have been lawfully created and to other officials within those same units.³⁰

65. The LOAPF is based on, and implements, Article 90 of the Federal Constitution of Mexico, which states: "Federal Public Administration shall be centralized and decentralized

²⁸ LOAPF, Article 16, 18.

²⁹ LOAPF, Article 16.

according to the Organic Law issued by Congress, which shall distribute the business of the administrative order of the Federal Government, which shall be under the charge of the Secretaries of State and Administrative Departments...."

66. In addition, Article 89 of the Constitution confers related powers on the President of the Republic:

Artículo 89.—Las facultades y obligaciones del Presidente son las siguientes:

I. Promulgar y ejecutar las leyes que expida el Congreso de la Unión, proveyendo en las esfera administrativa a su exacta observancia; ...

Article 89.—The power and duties of the President are the following:

I. To promulgate and execute the laws enacted by the Congress of the Union providing for their exact observance in the administrative sphere; ...

67. Mexico's Supreme Court of Justice of the Nation has ruled that only a Law, or the President of Mexico acting through an Internal Regulation, may create those internal units in each ministry or secretariat in charge of exercising the powers bestowed on a public body:³¹

FACULTAD REGLAMENTARIA. INCLUYE LA CREACION DE AUTORIDADES Y LA DETERMINACION DE LAS QUE ESPECIFICAMENTE EJERCITARAN LAS FACULTADES CONCEDIDAS. Está dentro de la facultad concedida al Presidente de la República por el artículo

THE REGULATORY POWER ENCOMPASSES THE POWER TO CREATE AUTHORITIES AND TO DETERMINE WITH PRECISION THOSE THAT WILL EXERCISE GIVEN POWERS. It is within the regulatory power bestowed by Article 89 Section 1 of the Constitution on the

³⁰ LOAPF, Article, 14, 16.

³¹ Segunda Sala. Semanario Judicial de la Federación. 8a. época, tomo III, primera parte, p. 277. Amparo en revisión 6458/85. Francisco Javier Vázquez Balderas. 10. de febrero de 1989. 5 votos. Ponente: Manuel Gutiérrez de Velasco. Secretaria: Rosalba Becerril Velázquez. Amparo en revisión 1129/88. Compañía Mexicana de Ingeniería, Sociedad Anónima. 8 de junio de 1988. Unanimidad de votos. Ponente: Atanasio González Martínez. Secretaria: Alicia Rodríguez Cruz de Blanco (8a. época, tomo I, primera parte 1, p. 223). Amparo en revisión 480/84. Compañía Minera Río Colorado, S. A. 23 de agosto de 1984. Unanimidad de 4 votos. Ausente: Santiago Rodríguez Roldán. Ponente: Carlos del Río Rodríguez. Secretaria: Diana Bernal Ladrón Guevara (7a. época, vols. 187-192, tercera parte, p. 65)

89, fracción I, de la Constitución, crear autoridades que ejerzan las atribuciones asignadas por la ley de la materia a determinado organismo de la administración pública; igualmente, se encuentra dentro de dicha facultad el determinar las dependencias u órganos internos especializados a través de los cuales se deben ejercer las facultades concedidas por la ley a un organismo público Además, al tratarse de un organismo que forma parte de la administración pública, aun cuando sea un organismo descentralizado, es precisamente el Presidente de la República, titular de esa administración pública, quien constitucionalmente está facultado para determinar los órganos internos que ejercerán las facultades otorgadas por la ley, a efecto de hacer posible el cumplimiento de ésta.

President of the Republic, to create authorities which exercise the powers assigned by an applicable law to a particular organ of public administration. Similarly, it is within that power to determine the entities or specialized internal bodies through which the powers given to public bodies are to be exercised. . . . Furthermore, where a body which is part of the public administration is involved, even if it is a decentralized entity, it is precisely the President of the Republic, head of public administration, who is empowered by the constitution to determine the internal organs which will exercise the powers granted by the law, in order to carry out such law.

68. Under this jurisprudence, there is a serious question of whether DCC was lawfully created as an "authority" that could carry out any portion of the anti-dumping investigation with respect to third persons. DCC is not mentioned in any Law or in any Internal Regulation issued by the President of the Republic. Similarly, DGPCI was not established by any Law or Internal Regulation. Thus, neither of the two entities listed on the documents issued on behalf of the Investigating Authority before April 1, 1993 was lawfully established in the manner prescribed by the LAOPF.

69. 2. SECOFI argues that DCC was established by a General Manual of Organization published in the *Diario Oficial* in 1988 ("1988 Manual"). This 1988 Manual describes DCC as an Area Directorate not under DGPCI, but under a different General Directorate called the Dirección General de Servicios al Comercio Exterior ("DGSCE").

SECOFI claims that when the director of DCC (Mr. Velazquez) signed the various administrative acts between December 24, 1992, and April 1, 1993, DCC was a legally created authority of DGSCE. In this regard, DGSCE was properly established by an Internal Regulation. Article 16, Section 12 of the 1989 Internal Regulation of SECOFI (published in the *Diario Oficial* on June 5, 1989) states that DGSCE had the powers to:

Estudiar y proponer con la participación de las Direcciones Generales de Política de Comercio Exterior y de Negociaciones Comerciales Internacionales, la aplicación y monto de las cuotas compensatorias y cuotas antidumping, a mercancías que se importen en condiciones de prácticas desleales de comercio internacional, así como las salvaguardas cuando procedan en los términos establecidos por la Ley Reglamentaria del Artículo 131 de la Constitución Política de los Estados Unidos Mexicanos en materia de comercio exterior.

Investigate and recommend with the participation of the General Directorate on Foreign Trade Policy and International Trade Negotiations, the application and amount of anti-dumping and countervailing duties, on goods imported through unfair international trade practices . . . under the terms of the Law Regulating Article 131 of the Political Constitution of the United Mexican States.

70. One problem with this argument is that it is doubtful whether a General Manual of Organization may lawfully create an administrative "authority" that may externally perform administrative acts that affect the interests of private persons. Article 19 of the Ley Organica de Administracion Publica Federal (LOAPF) discusses manuals of organization:

Artículo 19 El titular de cada Secretaria de Estado y Departamento Administrativo expedirá los manuales de organizacion, de procedimiento y de servicios al público necesarios para su funcionamiento los que deberán contener información sobre la estructura orgánica de la dependencia y las funciones de sus unidades administrativas, así como sobre

Article 19 The head of every Secretariat of State and administrative department will issue manuals of organization, of proceedings and public services necessary for it to function; these shall contain information about the organic structure of the department and the functions of its administrative units, as well as the systems of communication

los sistemas de comunicación y coordinación y los principales procedimientos administrativos que se establezcan. Los manuales y demás instrumentos de apoyo administrativo interno, deberán mantenerse permanentemente actualizados. Los manuales de organización general deberán publicarse en el *Diario Oficial de la Federación*.

and coordination and the principal administrative proceedings to be established. The manuals and other internal administrative tools shall be updated permanently. The manuals of general organization shall be published in the *Diario Oficial de la Federación*.

71. There is a thesis that suggests that a General Manual of Organization may create administrative units at least internally within a ministry.³²

AUTORIDAD ADMINISTRATIVA, COMPETENCIA DE LA. TRATÁNDOSE DE DIRECTORES DE ÁREA O FUNCIONARIOS DE MENOR RANGO, NO SON APLICABLES LAS NORMAS QUE PREVIENEN LAS FACULTADES DE SUS SUPERIORES JERARQUICOS. Con arreglo a los artículos 14 al 19 de la Ley Orgánica de Administración Pública Federal, el despacho de los asuntos propios de cada Secretaría de Estado corresponde originalmente al titular del ramo, quien podrá auxiliarse de unidades administrativas que deberán estar previstas en el Reglamento Interior, cuya expedición es del resorte del Ejecutivo de la Unión o, en su caso, en el Manual de Organización General publicado en el Diario Oficial de la Federación. En este sentido, para satisfacer el requisito de competencia tratándose de un Director

ADMINISTRATIVE AUTHORITY, COMPETENCE, WHENEVER THERE ARE DIRECTORATES OF AREA OR OFFICIALS BELOW IN THE HIERARCHY THE NORMS THAT GRANT AUTHORITY TO THEIR SUPERIORS ARE NOT APPLICABLE. According to articles 14 to 19 of the Ley Orgánica de la Administración Pública Federal, the conduct of activities of each Secretariat of State is assigned to the head of such Secretariat, who may use administrative units established in an Internal Regulation issued by the Executive of the Union, or as the case may be, in a Manual General de Organización published in the Diario Oficial de la Federación. In this sense, in order to satisfy the competence requirement for a Directorate of Area, it is not enough that the Internal Regulation provides for the authority of the General

³² Cuarto Tribunal Colegiado en Materia Administrativa del Primer Circuito. Semanario Judicial de la Federación. 8a. época, tomo III, segunda parte-1, p. 141. Amparo en revisión 673/85. Porfirio Mayorquín Ibarra. 12 de enero de 1988. Unanimidad de voto. Ponente: Gerardo David Góngora Pimentel. Secretaria: Adriana Leticia Campuzano Gallegos.

de Area, no basta que en el Reglamento Interior se prevean las atribuciones de la Dirección General a la que se haya adscrito, pues el ámbito competencial así consagrado no puede interpretarse de manera extensiva al grado de autorizar la actuación de cualquier funcionario dependiente de aquélla. Al respecto, es de especial importancia advertir que una unidad administrativa supone la existencia de un órgano, es decir, la reunión de una persona física (titular) y un conjunto de facultades (competencia), por lo cual para efectos de la garantía de legalidad del Artículo 16 Constitucional, cada una de esas unidades administrativas al actuar conserva una individualidad propia no compartida con los demás

Directorate on which the Directorate of Area depends. This is because competence established in that manner cannot be interpreted as being so extensive as to authorize the performance of any officer depending on the former [entity]. In this respect, it is important to point out that an administrative unit presupposes the existence of an [official] organ, that is to say, the combining of a physical person (holder) and a bundle of attributions (competence), in order to satisfy the guarantee of legality established in Article 16 of the Constitution; each one of such administrative units when performing [acts of authority] keeps its own individuality which it does not share with the others.

72. The following thesis indicates that although a Manual may create administrative units internally, an Internal Regulation may be necessary for an administrative unit like DCC to act in its own name externally.³³

REGLAMENTO INTERIOR DE LA SECRETARIA DE COMERCIO Y FOMENTO INDUSTRIAL, NO PREVE CON CARACTER DE AUTORIDAD AL DIRECTOR DE PRODUCTOS MANUFACTURADOS E INDUSTRIA BASICA. El Reglamento Interior de la Secretaria de Comercio y Fomento Industrial, no prevé, la existencia legal del Director de Productos Manufacturados e Industria Básica, y no puede considerarse que el

INTERNAL REGULATIONS OF THE SECRETARIAT OF COMMERCE AND INDUSTRIAL DEVELOPMENT. DO NOT PROVIDE FOR THE OFFICIAL POST OF DIRECTOR OF MANUFACTURED PRODUCTS AND BASIC INDUSTRY. The Internal Regulations of the Secretariat of Commerce and Industrial Development do not provide for the legal existence of the Director of Manufactured Products and Basic Industry. The general

³³ Cuarto Tribunal Colegiado en Materia Administrativa del Primer Circuito. Semanario Judicial de la Federación. 8a. época, tomo III, segunda parte 2, p. 654. Amparo en revisión 474/89. Ciba Geigy Mexicana, S.A. de C.V. 16 de marzo de 1989. Unanimidad de votos. Ponente: Hilario Bárcenas Chávez. Secretario: Emiliano Hernández Salazar.

Manual General de Organización a que alude el artículo 8o. del reglamento citado, publicado en el Diario Oficial de la Federación el 20 de octubre de 1986, reformado por otro publicado en el mismo diario de 19 de septiembre de 1988, donde se menciona una dependencia de nombre similar a la que nos ocupa, le de vida jurídica ya que solo tiene funciones de orientación para las dependencias en, él indicadas y al público en general, de lo que se advierte que no puede tener carácter legislativo. En consecuencia, se debe concluir que el director en comento no existe con el carácter de autoridad, por lo que, con fundamento en lo dispuesto por el artículo 27, fracción VI, del Reglamento Interior de la Secretaría de Comercio y Fomento Industrial es al Director General de Precios a quien le corresponde el tramitar y dictaminar las solicitudes para fijar o modificar precios y tarifas.

organization manual referred to in Article 8 of the regulations cited, published in the *Diario Oficial* de la Federación on October 20, 1986, amended by another manual published in the same Diario on September 19, 1988, where a unit with the same name as the one we are dealing with is mentioned, gives [the unit] legal existence only for the purpose of its orientation in relation to the entities mentioned in it and to the public in general. From this it can be concluded that it does not have legislative character. As a consequence, the conclusion that should be drawn is that the director in question does not exist as an official. Thus, based on Article 27, Fraction VI of the Internal Regulations of the Secretariat of Commerce and Industrial Development, the General Director of Prices is the one in charge of processing and resolving the applications to set or change prices and tariffs.

73. Another precedent also supports this view:³⁴

MANUAL GENERAL DE ORGANIZACION DE LA SECRETARIA DEL TRABAJO Y PREVISION SOCIAL. NO PUEDE EQUIPARARSE A UN REGLAMENTO O LEY.

INAPLICABILIDAD DEL. El Subdirector "B" de Sanciones de la Dirección General de Asuntos Jurídicos de la Secretaría del Trabajo y Previsión Social no es competente para emitir actos

GENERAL MANUAL OF ORGANIZATION OF THE SECRETARIAT OF LABOR AND SOCIAL WELFARE (SECRETARIA DE TRABAJO Y PREVISION SOCIAL) CANNOT BE LIKENED TO REGULATIONS OR LAW, INAPPLICABILITY OF. Vice-Director "B" of Sanctions of the General Directorate for Legal Matters of the Secretariat of Labor and Social Welfare

³⁴ Cuarto Tribunal Colegiado en Materia Administrativa del Primer Circuito. Semanario Judicial de la Federación. 8a. época, tomo X, octubre, p. 373 Amparo directo 654/92. Ganaderos y Productores de Leche Pura, S.A. de C.V. 4 de junio de 1992. Unanimidad de votos. Ponente: José Méndez Calderón. Secretaria: Silvia Martínez Saavedra.

de molestia en ausencia de los Directores General de Asuntos Jurídicos y de Sanciones de la citada dependencia, ya que en el Manual General de Organización de la Secretaría del Trabajo y Previsión Social que invoca para apoyar y justificar su competencia, este instrumento carece de toda fuerza legal pues dichos manuales de organización a que se refiere el artículo 19 de la Ley Orgánica de la Administración Pública Federal, no tienen naturaleza normativa, sino su papel simplemente es de ser una fuente de información actualizada de la organización y atribuciones de la estructura interna de cada Secretaría de Estado, pero sin que dicha información que sumariamente se publica en el Diario Oficial de la Federación pueda equipararse al carácter normativo que tienen los reglamentos interiores de las secretarías, que se prevén en el artículo 18 de la Ley Orgánica de la Administración Pública Federal; pero tampoco tienen un valor regulador jurídico ya que el papel de los manuales es solo contar con información actualizada de tipo meramente administrativo, pues ni la pluricitada Ley Orgánica de la Administración Pública Federal, que prevé su existencia, ni ninguna otra ley o dispositivo reglamentario le dan carácter normativo alguno. En consecuencia, el Manual de Organización que se cita no puede ser fuente de competencia de ninguna autoridad. Además, de acuerdo con el sistema legal vigente, los órganos administrativos y sus atribuciones deben recogerse en principio en los reglamentos interiores de las secretarías de Estado, y siendo en la especie que dicha Subdirección "B" de sanciones no

is not competent to issue actos of molestia during the absence of the General Director of Legal Matters and Sanctions of that section. The General Manual of Organization of the Secretariat of Labor and Social Welfare that he relies on to support and justify his competence lacks any legal force because those organization manuals that Article 19 of the Federal Public Administration Act (Ley Organica de Administracion Publica Federal) refers to are not rule-making by nature. They only play a role as a source of updated information regarding the organization and attributions of each State Secretariat's internal structure, but that information which is summarized and published in the *Diario Oficial de la Federacion* cannot be likened to the rule-making status of the Internal Regulations of the Secretariats, provided for in Article 18 of the Federal Public Administration Act; nor do they have a regulatory legal effect since the role of manuals is to set out updated information of a purely administrative nature. Neither the cited Federal Public Administration Act, which provides for its existence, nor any other law or regulation gives it a rule-making function in any sense. Therefore, the Manual of Organization cited cannot be a source of any official's competence. Apart from it, according to the law in effect, administrative bodies and their competence, in principle, must be provided for in the State Secretariat's Internal Regulations, and since the under-Directorate "B" of Sanctions is not provided for in Article 3 of the Internal Regulations of the Secretariat of Labor and Social Welfare, the body does not exist.

se encuentra prevista en el artículo 3 del Reglamento Interior de la Secretaría del Trabajo y Previsión Social, el órgano en cuestión es inexistente.

74. There is a second problem with the argument that the 1988 Manual gave DCC the authority to act externally. The 1988 Manual, which listed DCC as an Area Directorate under DGSCE, was abrogated by a 1989 General Manual of Organization ("1989 Manual"). The second transitory provision of the 1989 Manual, published in the *Diario Oficial* on June 5, 1989, states:

Se aboga el Manual General de Organización de la Secretaría de Comercio y Fomento Industrial (SECOFI), publicado en el *Diario Oficial* de la Federación el 19 de septiembre de 1988.

The General Manual of Organization of the Secretariat of Commerce and Industrial Development (SECOFI), published in the *Diario Oficial* of the Federation on September 19, 1988, is hereby abrogated.

75. Thus, the only organizational document that referred to DCC was repealed.

76. One may argue that the word "abrogated" should not be read literally. The 1989 Manual did not list any Area Directorates. Certainly, it was not the intent of the 1989 Manual to abolish all of SECOFI's Area Directorates from the 1988 Manual. In fact, many Area Directorates continued to function internally within SECOFI. However, the Mexican legal system requires that competence toward third parties be based on certain formal legal acts. These formal legal acts are a first line of protection for private citizens against abuses of governmental authority.³⁵ When the 1989 Manual was "abrogated," there was no longer any

³⁵ See José Ovalle Favela, Los Derechos del Pueblo Mexicano a través de su Constitución, 4a. ed., Cámara de Diputados-Porrúa, 1994, pp. 163-171, y Efraín Polo Bernal, Breviario de Garantías Individuales, México, Porrúa, 1993 pp. 172-173.

published document that even purported to create DCC. Although DCC may have existed internally within SECOFI, it was no longer legally established by any legislative or regulatory act. It could not act externally in its own name as an "authority."

77. There is a final argument. Although DCC did not exist as an independent "authority" within SECOFI, DCC could be viewed as an informal part of DGSCE. Its "director," when administering this anti-dumping proceeding, was simply acting as a delegate for the director of DGSCE. As discussed in Part IV/A/2 of this Opinion, there is an "Acuerdo Delegatorio" that SECOFI published in the *Diario Oficial* on September 12, 1985 and that delegates certain powers to Area Directors and other persons.

78. The problem with saying that Mr. Velázquez acted as a delegate of the Director of DGSCE is that there is no evidence that DGSCE did anything in this anti-dumping proceeding. No document lists the name or initials of DGSCE. The administrative file does not even refer to DGSCE. At the hearing and in its brief, SECOFI did not argue that DGSCE or its director was actually involved in this anti-dumping proceeding. SECOFI attached as an annex to its brief two documents appointing Mr. Velázquez as an Area Director of DCC and later as an Adjunct Director of the Unidad de Prácticas Comerciales Internacionales.³⁶ These appointment documents, however, also do not mention DGSCE. Thus, it cannot be said that, before April 1, 1993, Mr. Velázquez was acting as an official of DGSCE.

³⁶ See Constancia Única de Movimiento de Personal dated October 1, 1990 and Constancia Única de Movimiento de Personal dated March 1, 1993 in the Annex to the Brief of the Investigating Authority, March 3, 1995.

79. For these reasons, the administrative acts in question between December 24, 1992 and April 1, 1993 were not by a competent official, because the administrative unit that purported to act was not lawfully created.³⁷ As discussed above, the most important of these administrative acts were the February 8, 1993 notifications and questionnaires sent to the U.S. exporters, and certain later acts denying extensions of time (particularly to Inland).

C. THE LEGAL DUTIES AND INTERESTS OF THE U.S. EXPORTERS

80. To analyze the legal significance of the incompetent acts of DCC in terms of this Panel's limited jurisdiction, we next consider (1) determinations incorporated in the Final Determination that will not be affected if acts of DCC are declared illegal; (2) legal duties of U.S. exporters and how they relate to the full antidumping proceeding; and (3) legal interests of U.S. exporters that are not affected by incompetent acts of DCC.

81. **1.** As noted, on February 8, 1993 an official of an incompetent entity, DGPCI or DCC, sent notifications and questionnaires to 26 U.S. exporters.³⁸ The Final Determination indicates that of these 26 exporters, only three U.S. exporters responded in a timely and complete manner to the questionnaires (Bethlehem, LTV and USX) and that another four U.S. exporters responded in an untimely or incomplete manner (Inland, New Process,

³⁷ Panelist Vega has decided to concur with the other members of this Panel in recognizing that the administrative actions taken by the DCC between December 24, 1992 and April 1, 1993 were not by a competent official, despite the fact that in a previous opinion he had argued the opposite. See his dissenting vote in case MEX-94-1904-02. His view changed mainly because he became persuaded that according to the strict interpretation of NAFTA Article 1911 and Annex 1911, which defines as a "competent investigating authority" in the case of Mexico the "designated authority within the Secretariat of Trade and Industrial Development", it was the DGPCI, and Mr. Velázquez as its delegate, that actually conducted the antidumping investigation during the period at issue, and not the DGSCE, that had formally the powers to do so, but did not participate.

³⁸ See Administrative Record (VC) Nos. 32-57.

Mitsui & Company, Inc. and World Metals Inc.). This means that the remaining 19 U.S. exporters did not respond at all.³⁹

82. The 19 U.S. exporters who did not respond to the notifications and questionnaires from DCC were placed in the category of "all other exporters." In the Final Determination, "all other exporters" were subjected to an anti-dumping margin and duty rate of 38.21%.⁴⁰

83. These 19 U.S. exporters, in essence, treated the notifications and questionnaires as voluntary, in that they did not believe themselves obligated to respond and did not in fact respond. The legal consequence of disregarding the notifications and questionnaires was to be grouped with "all other exporters" and to have one's exports subjected to a 38.21% rate of duty.

84. No U.S. exporter who was among the "all other exporters" has presented a Complaint to this Panel challenging the treatment of "all other exporters." Under Rule 7 of the NAFTA Panel Rules, this Panel has no jurisdiction to review the treatment of "all other exporters." Whatever we decide with respect to Bethlehem, Inland, LTV and USX, it will not affect the category of "all other exporters" or their 38.21% rate of duty.⁴¹

85. USX, Bethlehem, LTV and Inland are now asking this Panel (1) to declare the Final Determination illegal under Article 238/I of the Federal Fiscal Code, because the notifications and questionnaires sent to them were sent by an incompetent official, and (2) to direct SECOFI to terminate the effects of the anti-dumping duty order as it affects them.

³⁹ See Final Determination, ¶ 26 and 27.

⁴⁰ See Final Determination, ¶ 123.

⁴¹ We also note that, from the information collected during SECOFI's general investigation, there was legal authority to determine a rate of duty for all other exporters "based on the facts which were available." Final Determination, ¶ 123; 1979 GATT Anti-dumping Code, Article 6(8).

86. However, this Panel believes that the consequence of acts by an incompetent official is not to declare illegal all portions of the Final Determination that mention Bethlehem, Inland, LTV or USX. The reason for our conclusion involves an analysis of the legal duties and interests of a foreign exporter in an anti-dumping proceeding.

87. 2. There is no legal duty or requirement that any foreign exporter participate in an anti-dumping proceeding, as evidenced in this case by the fact that 19 of 26 potential respondents did not in fact participate. An anti-dumping proceeding can occur without the participation of any foreign exporters. By its nature, an anti-dumping proceeding is not a governmental action against the U.S. exporters or any other person. Instead, it is a general investigation to determine facts regarding the possible existence of unfair trade practices. Article 11 of the Foreign Trade Regulatory Act Implementing Article 131 of the Constitution of the United Mexican States requires SECOFI to "proceed with its administrative investigation of the unfair international trade practices" ("continuará la investigación administrativa sobre la práctica desleal de comercio internacional"). Article 13 of the Regulation Against Unfair International Trade Practices states that it is the "responsibility" of SECOFI to carry out "an investigation into the possible presence of unfair international trade practices" ("La investigación sobre prácticas desleales de comercio internacional, que estará a cargo de la Secretaría"). This viewpoint is also supported by the following precedent:⁴²

SECRETARIA DE COMERCIO Y
FOMENTO INDUSTRIAL. AMPARO
IMPROCEDENTE CONTRA LAS

SECRETARIAT OF TRADE AND
INDUSTRIAL DEVELOPMENT. AND
AMPARO SUIT CANNOT BE

⁴² Cuarto Tribunal Colegiado en Materia Administrativa del Primer Circuito. Semanario Judicial de la Federación, 8a. época, tomo: X, diciembre, p. 363, Amparo en revisión 334/92, Fibras Sintéticas, S.A de C.V. 14 de mayo de 1992. Unanimidad de votos. Ponente: José Méndez Calderón. Secretario: Benito Alva Zenteno.

RESOLUCIONES DEFINITIVAS
PRONUNCIADAS POR LA, EN
MATERIA DE DUMPING,
APLICACION DE LA FRACCION V,
DEL ARTICULO 73 DE LA LEY DE
AMPARO.

Cuando se reclame a través del juicio de amparo resoluciones pronunciadas por la Secretaría de Comercio y Fomento Industrial en materia de dumping, así como violaciones al procedimiento administrativo respectivo, dicho juicio resulta improcedente porque con las mismas no se afectan los intereses jurídicos del gobernado... el artículo 27 del citado reglamento estatuye que durante el período de investigación las partes que hubieren acreditado su interés en el resultado de la misma podrán ofrecer toda clase de pruebas con excepción de la confesional o aquellas que atenten contra el orden público, la moral o las buenas costumbres. (La investigación antidumping es un procedimiento) en el que la Secretaría de Comercio y Fomento Industrial, ya sea de oficio o a través de una denuncia, es la única encargada de investigar y determinar la existencia o inexistencia de dumping, esto es de la práctica desleal de comercio internacional consistente en la importación al mercado nacional de mercancías extranjeras a un precio inferior a su valor normal; pues debe decirse que la intención original del legislador, al emitir la ley de la materia, no fue la de favorecer los intereses particulares de una persona física o moral determinada, sino de regular y promover el comercio exterior, la economía del país, la estabilidad de la producción nacional, o de realizar cualquier otro propósito similar en

BROUGHT AGAINST FINAL
DETERMINATIONS IN DUMPING
MATTERS ISSUED BY THE,
APPLICATION OF SECTION V OF
ARTICLE 7-3 OF AMPARO.

It is contrary to law to resort to a juicio de amparo to challenge final resolutions in matters of dumping issued by the Secretariat of Commerce and Industrial Development, as well as violations during an administrative proceeding, because the legal interests of the citizen are not affected. . . . Article 27 provides that during the period of investigation the interested parties are allowed to offer any kind of evidence, with the exception of witnesses or evidence not permitted because of public order, public morals or good custom. In this proceeding, SECOFI, ex-officio or through a complaint, is exclusively in charge of investigating and determining the existence or non-existence of dumping, which is the practice of introducing goods in the market below their normal value. The law's original intention is not to favor the particular interests of any moral or physical person, but to regulate and to promote foreign commerce, the national economy and to achieve any other similar goal or benefits for the country as provided in Article 131 of the Constitution regarding foreign commerce. Therefore, just because Articles 13 of the Law and 27 of the Regulations provide that domestic producers or complainants may submit any kind of evidence with the exceptions mentioned above, this only means that they only assist the investigating authority to determine whether dumping has or has not occurred.

beneficio del mismo (del país) según lo
dispone el artículo 1 de la Ley
Reglamentaria del artículo 131
Constitucional en materia de comercio
exterior... Por lo tanto, el hecho de que
las disposiciones de las que emana el
acto reclamado concretamente los
artículos 13 de la Ley y el 27 del
Reglamento, establezcan que los
denunciantes o productores nacionales
puedan ofrecer toda clase de pruebas
salvo las que en el segundo de dichos
preceptos se prohíben, solamente
significa que tales personas físicas o
morales actúan, en todo caso, como
coadyuvantes de la autoridad
administrativa para la determinación de
si existe o no práctica dumping.

88. Therefore, an anti-dumping investigation is very different from a fiscal investigation. In an anti-dumping investigation, the U.S. exporters need not participate. The Investigating Authority conducts its own administrative investigation and the participation of individual exporters is not mandated. By contrast, in a fiscal investigation, the person who is the target of the investigation is forced to participate and has a legal duty to cooperate.

89. The Panel recognizes, of course, that the choice facing foreign exporters when an antidumping investigation is initiated is not an easy one. The very filing of such an investigation constitutes a threat to future exports to the importing nation, as high antidumping duties, particularly those imposed through an "all other exporters" rate for non-participants in the investigation, may have the effect of closing the export market. Alternatively, if the foreign exporter decides to participate in the investigation in order to defend its position, as did now those before this Panel, it faces a difficult and extremely costly administrative and legal burden. However, as a matter of law, participation is in fact voluntary on the part of the foreign

manufacturer, even though it may not legally be denied the right to participate, as discussed below.

90. In summary, Bethlehem, Inland, LTV, USX or any of the other 26 exporters could have refused to participate without affecting the other aspects of the anti-dumping investigation. SECOFI still had a duty to "proceed with an administrative investigation of the unfair international practices. . .".⁴³ However, in the absence of their participation, Bethlehem, Inland, LTV and USX would presumably have been subject to the "all other exporters" rate for the deposit of dumping duties.

91. **3.** Let us next consider the legal interests and rights of U.S. exporters in an anti-dumping investigation. Those legal interests and rights involve three aspects of an anti-dumping investigation: (1) the initiation of the investigation, (2) the exporter's right to present evidence and arguments and to have its evidence and arguments fairly considered by the Investigating Authority as part of its general investigation; and (3) the Final Determination which imposes any anti-dumping duties.

92. Bethlehem, Inland, LTV and USX do not object to the initiation of this anti-dumping investigation. The parties agree that the provisional resolution of December 24, 1992 was issued by a competent official of SECOFI. Yet, it was the initiation of the investigation, by the provisional resolution, that exposed the products of the foreign exporters to possible anti-dumping duties (to be paid by Mexican importers). The initiation also presented each U.S. exporter with some decisions, i.e., should the exporter voluntarily participate in the proceeding, or present any particular evidence or arguments, or otherwise protect and defend its interests?

⁴³ See Foreign Trade Regulatory Act Implementing Article 131, Article 11.

93. If an exporter decides to participate in an anti-dumping proceeding, it has a legal interest (and legal right) to present evidence and to have its evidence considered. The following legal provisions support this view.

94. Article 27 of the Regulations Against Unfair International Trade Practices gives to exporters and other interested persons the right to present "all classes of evidence" ("toda clase de pruebas") in an anti-dumping investigation. Article 23 of the same Regulations gives exporters a right "to obtain information made available to the Secretariat by any of the parties concerned," ("obtener la información facilitada a la Secretaria por cualquiera de las partes afectadas").

95. Part I of the Agreement On Implementation Of Article VI Of The General Agreement On Tariffs And Trade ("1979 GATT Anti-dumping Code") has similar provisions. Article 6, paragraph 1 of the 1979 GATT Anti-dumping Code requires that foreign suppliers "be given ample opportunity to present in writing all evidence that they consider useful in respect to the anti-dumping investigation in question." Article 6, paragraph 2 requires the investigating authority to "provide opportunities for . . . exporters . . . to see all information that is relevant to the presentation of their cases. Article 6, paragraph 7 requires that "all parties shall have a full opportunity for the defense of their interests."⁴⁴

⁴⁴ International treaties like the 1979 GATT Antidumping Code to which Mexico is a party are self-executing in Mexico, in that they become part of the law of Mexico without the need for additional implementing legislation. Thus, Article 133 of the Federal Constitution of Mexico states:

Article 133.—This Constitution, the laws of the Congress of the Union which emanate therefrom, and all treaties made, or which shall be made in accordance therewith by the President of the Republic, with the approval of the Senate, shall be the Supreme Law throughout the Union.

See Contradicción del Tesis 3/92, Pleno de la Suprema Corte de Justicia, sesión del 2 de marzo de 1994 (international treaties are to be directly applied even if inconsistent with pre-existing internal rules).

96. In addition, each U.S. exporter has a right to have the evidence it submits taken into account by the Investigating Authority before the Final Resolution is issued. This principle has been recognized in the following decision of a Mexican court involving an anti-dumping proceeding:

De igual manera tiene razón la quejosa en cuanto aduce que la resolución reclamada viola, en su perjuicio, la garantía de audiencia consagrada en el artículo 14 constitucional, que establece el derecho que tienen los gobernados a ser oídos, previamente a la privación de sus posesiones o derechos, lo que involucra no sólo el derecho de que se les dé oportunidad de defensa en cuanto al conocimiento de los hechos, a la posibilidad de formular alegatos y de ofrecer y desahogar pruebas, sino también al derecho que tienen a que esos alegatos y pruebas sean tomados en cuenta antes de que se emita el acto de autoridad.

In the same manner, the complainant is right inasmuch as they state that the contested resolution violates, to their prejudice, the guarantee of a hearing granted in Article 14 of the Constitution, which establishes the right which the governed have to be heard, prior to the seizure of their possessions or rights, which involves not only the right which gives them the opportunity to defend themselves relative to the knowledge of facts, the possibility of formulating claims and to offer and present evidence, but also the right which they have that these claims and evidence be taken into account before any ruling is issued by the authority.⁴⁵

97. This legal interest of foreign exporters in presenting evidence -- and in having it considered -- is subject to one limitation. If a valid questionnaire has been issued by the Investigating Authority, the exporter must respond to the questionnaire; otherwise, his evidence may be disregarded. Article 6, paragraph 8 of the 1979 GATT Anti-dumping Code states that if "any interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period," a resolution "may be made on the basis of the facts available."

⁴⁵ Primer Tribunal Colegiado Materia Administrativa del Primer Circuito. Amparo en revisión 2011/94. Degussa Corporation, S.A. de C.V., November 24, 1994.

98. These legal provisions indicate that we should analyze (1) the validity of the notifications and questionnaires that DCC sent to the U.S. exporters on February 8, 1993, separately from (2) the evidence that the U.S. exporters presented in the anti-dumping proceeding. If we assume that the February 8, 1993 notifications and questionnaires were of no legal effect, the U.S. exporters no longer had a duty to respond to those questionnaires as a condition to submitting their own evidence. Nevertheless, they were free to submit their own evidence, and to have their evidence considered, whether or not it was in the form of a response to the invalid questionnaires.

99. Significantly, the administrative record does not show that any U.S. exporter objected to, or did not wish to submit, any of the evidence that the U.S. exporters eventually submitted. In fact, the administrative record shows that Bethlehem, Inland, LTV and USX each voluntarily filed notices of appearance in the anti-dumping proceeding on January 18 and January 22, 1993, more than two weeks before the February 8 notifications and questionnaires were sent.⁴⁶ Moreover, USX asked for a questionnaire.⁴⁷ Next, when they submitted evidence in the form of responses to the questionnaires, the U.S. exporters made no objection regarding any of the material they submitted. After they submitted this evidence, the U.S. exporters continued to submit more evidence to the Investigating Authority.⁴⁸

100. Thus, the administrative record shows that the U.S. exporters voluntarily exercised their right to submit evidence. As discussed, they had a legal right to submit this evidence. The invalidity of the February 8, 1993 notification and questionnaires did not destroy

⁴⁶ See Administrative Record (VC) Nos. 11, 12 and 16.

⁴⁷ Id. No. 22.

⁴⁸ See Administrative Record (VC) Nos. 89, 90, 183, 236, 240, 242, 257, 289, 293, 296, 300, 303, 308, 310, 323, 336, 354, 370, 373, 375, 377, 383, 385, 394, 395, 411, 429, 444, 446, 450.

or limit the legal right and interest of these U.S. exporters to submit their own evidence in this general investigation, and to have this evidence considered in a fair manner.

D. GUIDANCE FROM PAST AMPARO AND PANEL DECISIONS

101. To help us determine the legal significance of the incompetent acts of DCC and DGPCI, the participants have also called our attention to certain decisions of Mexican courts. Unfortunately, they provide only limited guidance to this Panel.

102. There have been three decisions in amparo proceedings in which U.S. steel exporters were granted protection under the Amparo Law from a final resolution in an anti-dumping proceeding.⁴⁹ These proceedings challenged the competence of verification visits ordered by the director of DCC before April 1, 1993.

103. One of these amparo decisions has recently been upheld on appeal.⁵⁰ The court in this appeal upheld an amparo based on the illegality of verification visits where the orders were purportedly issued by DGPCI and signed by the director of DCC. The appeals court stated that the relevant administrative unit that issued the verification orders was DGPCI and noted that this administrative unit lacked competence because it was not listed in the applicable Internal Regulation of SECOFI. The appeals court also ruled that U.S. exporters had legal interests affected by the final resolution in an anti-dumping proceeding.⁵¹

⁴⁹ Juzgado Cuarto de Distrito en materia administrativa. Amparo Decision Nos. 193/93, 194/93 and 195/93 (1994).

⁵⁰ Quinto Tribunal Colegiado en Materia Administrativa del Primer Circuito. Amparo en revisión 3005/94 (Amparo Decision No. 194/93), June 24, 1996.

⁵¹ The legal interests of U.S. exporters in anti-dumping proceedings have also been recognized in another decision. Primer Tribunal Colegiado en Materia Administrativa del Primer Circuito (amparo en revisión-2011/94),

104. As discussed above, this Panel agrees that DGPCI, as well as DCC, lacked competence to issue the notifications and questionnaires of February 8, 1993.⁵² Similarly, we agree with the earlier binational panel decision in Case No. MEX-94-1904-02, that the notifications and questionnaires of February 8, 1993 were not issued by an official of a competent administrative unit of SECOFI. We also note that the recent binational panel decision in case No. MEX-94-1904-03 did not attempt to analyze the specific competence of DGPCI or DCC before April 1, 1993. With all due respect, however, we also believe that the amparo decisions and the majority in the earlier binational panel decisions did not fully analyze all of the matters that we have considered here. The previous binational panel decision are not binding on us, but were only "binding on the involved Parties with respect to the particular matter between the Parties that [was] before the panel" ("obligatorio para las Partes implicadas con relación al asunto concreto entre esas Partes que haya sido sometido al panel").⁵³

Degussa Corporation, S.A. de C.V., November 24, 1994. Another decision has reached the opposite result, concluding that U.S. exporters do not have legal interests in an anti-dumping proceeding. Segundo Tribunal Colegiado en Materia Administrativa del Primer Circuito amparo en revisión 2762/94 (Amparo Decision 193/93), Bethlehem Steel Corporation and USX Corporation, July 13, 1995.

⁵² As discussed in Part IV/A of this Opinion, this case differs from the earlier amparo decisions because the orders for the verification visits in our case were not issued by DGPCI or DCC as they were in the amparo proceedings.

⁵³ NAFTA Article 1904(9).

105. Significantly, the decision in Case No. MEX-94-1904-02 does not in our view correctly analyze whether the Final Determination is actually derived from an incompetent act or from other evidence or dispositions that were generated by the incompetent act. That is an issue to which we now turn.

E. PARTS OF THE FINAL DETERMINATION DERIVED FROM THE INCOMPETENT ACTS

1. Key Terms In Article 238/I.

106. Under Article 1904(1), (2) and (5) and Annex 1911 of NAFTA, this Panel may review only the Final Determination. This Panel may not review any intermediate act in the anti-dumping proceeding, unless it is incorporated in some way in the Final Determination. At the same time, under Article 238/I of the Federal Fiscal Code, the Panel must determine whether an "administrative determination" that is being reviewed is "derived from" a proceeding carried out by an incompetent official.⁵⁴ We must interpret three key terms in Article 238/I: (a) "administrative determination" ("resolución administrativa"); (b) "proceeding" ("procedimiento"); and (c) "derived from" ("deriva de").

107. **a. Administrative Determination.** As discussed in Part II/B of this Opinion, the words "administrative determination" ("resolución administrativa") in Article 238 should not be interpreted to mean only the Final Determination. Instead, these words refer to any "administrative determination" ("resolución administrativa") that is included

⁵⁴ A similar concept appears in Mexican decisions. For example:

Cuando un acto envuelva un error que lo haga inconstitucional, todos los actos que se deriven or que lo condicionen son de origen inconstitucionales y el tribunal no deberia darle ningun valor...

When an act or deed involves an error that makes it unconstitutional, all the acts derived from it or based on it, or in any way conditioned by it by origin are unconstitutional and the tribunal should not give any legal value to it

Amparo directo. 504/75, Montacargas de Mexico, 8 de octubre de 1975. Unanimidad de votos.

in (or provides the basis for) portions of the Final Determination. Thus, the Panel must look separately at each "administrative determination" (1) that is included in or provides the basis for some portion of the Final Determination, and (2) that has been challenged in a Complaint of a party.

108. **b. Proceeding.** The word "proceeding" ("procedimiento") in Article 238/I must be interpreted to mean an administrative activity that includes some administrative disposition -- like a demand for information or records, the setting of a deadline, the denial of an extension of time, the rejection of a filing. There are three reasons for this view. First, the word "proceeding" ("procedimiento") must be more limited than the entire anti-dumping investigation. Article 238/I refers only to one official ("el funcionario") who carries out the proceeding; however, in an anti-dumping investigation, there are many officials who carry out many administrative actions. This suggests that each administrative action is a "proceeding." Second, since the Panel cannot annul an incompetent act, subsequent acts within the proceeding are not directly affected, as would be otherwise the case with a decision by the Federal Fiscal tribunal to annul an incompetent act and all other subsequent acts based on it. Third, under our limited jurisdiction, this Panel must determine if a particular administrative determination within the Final Determination (or on which the Final Determination is based) "derives from" ("deriva de") a "proceeding" carried out by an incompetent official. If a particular "proceeding" during an anti-dumping investigation has been carried out by an incompetent official, this does not mean that all administrative determinations on which the Final Determination is based should be declared illegal.

109. Therefore, an anti-dumping investigation should be viewed as having several proceedings, and each proceeding should be viewed as having at least one administrative disposition. For example, the sending of the notifications and questionnaires on February 8, 1993 should be viewed as a "proceeding" separate from the verification visits, the initiation of the investigation, or the determination of dumping margins (each of which is also a "proceeding"). Our duty under Article 238/I is to determine if an "administrative determination" that has been challenged in a party's Complaint and that is included in (or is the basis for) a portion of the Final Determination is "derived from" any particular "proceeding" carried out by an incompetent official.

110. c. **Derived From.** We are also of the view that there must be some logical link between the act of an incompetent official and an administrative determination in the Final Determination. Article 238/I requires that an administrative resolution be "derived from" ("deriva de") a proceeding carried out by an incompetent official. Not every "proceeding" during an anti-dumping investigation becomes a basis for an administrative determination in the Final Determination. For example, acts of notification, a determination to receive a particular document, or an inquiry to verify information from a party (i) may be carried out by an official who lacks competence, but (ii) may not be part of the basis for the Final Determination.

111. In Part III/C of this Opinion, this Panel has suggested that the effect of the February 8, 1993 notifications and questionnaires on the Final Determination must be analyzed separately from the evidence that the U.S. exporters chose to submit (which evidence of course was a partial bias for the Final Determination). It is this Panel's view that if the administrative

record demonstrates that a foreign exporter or exporters voluntarily chose to submit evidence, as they had a right to do under the GATT Antidumping Code and under Mexican law, the fact that some of that evidence was provided in response to a questionnaire originally sent by an incompetent official, does not automatically require that the Final Determination be declared illegal, even though the Final Determination is clearly derived from the evidence supplied by the exporter. In effect, the voluntarily submitted evidence stands on its own, distinct from the incompetent and therefore illegal acts of the Investigating Authority.

112. Thus, we must review the Final Determination with great care to determine whether the challenged portions of the Final Determination are "derived from" (1) a "proceeding" carried out by an incompetent official, or (2) evidence that the U.S. exporters voluntarily submitted. With this background, we consider the position of each of the U.S. exporters, beginning with Inland.

2. Effect On Inland.

113. The February 8, 1993 notifications contained a warning of consequences if information was not submitted by a certain time. Where a notification establishes a time limit for presenting information, it potentially affects the exporter's legal interest in presenting evidence.

114. Inland did not submit responses to the questionnaire before the time limit stated in the notification. Inland submitted questionnaire responses later in the proceeding.⁵⁵ SECOFI rejected the responses because (i) Inland did not submit responses before the deadline stated in

⁵⁵ See Administrative Record (VC) No. 244.

the February 8, 1993 notification, and (ii) Inland also did not submit the responses within 30 days of the resolution revising the provisional resolution.⁵⁶

115. Inland was also one of the U.S. exporters that requested an extension of time of the original deadline.⁵⁷ This request for a time limit extension was denied.⁵⁸ This denial also interfered with Inland's legal interest in presenting evidence and in having the evidence considered.

116. Thus, for Inland, a portion of the Final Determination -- in which Inland was subjected to the "all other exporters" rate because the information Inland submitted was ignored -- was clearly derived from an administrative disposition of an incompetent official -- the deadline established in the February 8, 1993 notification. In the Final Determination, SECOFI relied directly on the fact that Inland had not submitted timely responses to the questionnaire -- specifically, responses before the deadline stated in the February 8, 1993 notification from its incompetent official.⁵⁹ We declare this part of the Final Determination insofar as it relates to the determination of Inland's dumping margins to be illegal under Article 238/I.

⁵⁶ See April 21, 1995 Hearing Transcript ("Transcript I"), pages 251-58 (in Spanish), Administrative Record (VC) No. 243; and Final Determination 27.

⁵⁷ Administrative Record (VC) No. 66.

⁵⁸ Id. No. 75.

⁵⁹ Final Determination ¶ 27.

3. Effect on Other U.S. Exporters.

117. For other U.S. exporters, there is no evidence in the administrative record that the deadline in the February 8, 1993 notifications affected the ability or willingness of any of the U.S. exporters to present evidence in the anti-dumping proceeding. All of these U.S. exporters chose to participate in the proceeding and seemed willing and able to present the information on time. Of equal importance, there is also no evidence that the February 8, 1993 notifications resulted in the U.S. exporters presenting documents or information they did not wish voluntarily to present as part of their evidence in the anti-dumping proceeding, as discussed above.

118. In our view, therefore, SECOFI was required to consider the evidence that Bethlehem, LTV and USX submitted voluntarily, and without objection, even if its February 8, 1993 notifications and questionnaires are illegal, null or void. Therefore, even if the February 8, 1993 notifications are without legal effect, SECOFI still was required to determine the dumping margins for these U.S. exporters based on the evidence these exporters voluntarily submitted. In these particular circumstances, it is our conclusion that the portions of the Final Determination which established dumping margins for Bethlehem, LTV and USX, were derived from the evidence these exporters voluntarily submitted and not from the February 8, 1993 notifications (or the particular proceeding that consisted of the issuance of the February 8, 1993 notifications) or from other related actions taken by incompetent officials.

119. In their Complaints in this Binational Panel proceeding, USX, Bethlehem and LTV raised numerous issues regarding whether SECOFI reached correct conclusions based on the evidence presented. For the above reasons, we must address these conclusions of SECOFI on their merits, which we do in Part VI of this Opinion.

4. Remedy With Respect To Inland.

120. The Panel again notes that it does not have jurisdiction under NAFTA Article 1904 to declare any part of the Final Determination a "nullity." Under Article 1904(8) of NAFTA, this Panel can only "uphold a final determination, or remand it for action not inconsistent with the panel's decision" ("confirmar la resolución definitiva o devolverla a la instancia anterior con el fin de que se adopten medidas no incompatibles con su decisión.").

121. For all these reasons, the Panel has determined that the only appropriate decision is to declare illegal, under Article 238, Section I of the Federal Fiscal Code, only that portion of the Final Determination that determines the dumping margins of Inland and to declare that it shall be given no legal effect.⁶⁰ We declare this portion of the Final Determination to be illegal because Inland had a right to present evidence and to have this evidence considered by SECOFI, and because the only reason SECOFI states that it did not consider this evidence is because Inland did not submit its evidence by the deadline stated in a notification issued by an official of an incompetent entity (DGPCI or DCC).

122. The Panel is of the view that it would be consistent with the Panel's decision for SECOFI, on remand, to consider Inland's evidence, to offer Inland an opportunity to provide additional relevant evidence (an opportunity which was denied to Inland as a result of the actions of an incompetent official) and to comment on the Investigating Authority's analysis, and to make a new decision based on that evidence. SECOFI may also, or in the alternative, take any other action permitted by applicable law. The Panel is of the view that grouping Inland

⁶⁰ See Final Determination ¶ 27.

with "all other exporters" (or taking other actions which prejudice Inland's right to present evidence) would not be consistent with applicable law. We do not at this time express a view on whether applicable law would permit a modification of the Final Determination to assess the exports of Inland with zero anti-dumping duties. Although such an approach was taken in the Panel decision in MEX-94-1904-02, one would have to consider the legal interests of Mexican producers and the duty of SECOFI to carry out a full investigation of possible unfair trade practices that affect the economy of Mexico.

IV. COMPETENCE OF OFFICIALS INVOLVED IN THE VERIFICATION PHASE

123. In their Complaints, Bethlehem, LTV and USX have presented issues relating to the competence of officials concerning acts that occurred during the verification phase of the anti-dumping investigation, during July and August of 1993. These issues are discussed individually below.

A. COMPETENCE OF OFFICIALS WHO ISSUED THE VERIFICATION ORDERS

124. Bethlehem, LTV and USX claim that verification orders sent to them were invalid because they were signed by officials of entities that were not lawfully created. They claim that this incompetence causes the entire Final Determination to be illegal under Article 238/I of the Federal Fiscal Code.

125. We examine below: (1) the verification orders themselves, (2) the lawful exercise of UPCI's powers, (3) guidance from previous amparo decisions, and (4) administrative

determinations within the Final Determination that were derived from any incompetent acts. The Panel concludes that the verification orders were acts of a lawful entity, Unidad de Prácticas Comerciales Internacionales ("UPCI"); that the officials who signed the orders were employees of UPCI; and that these officials had been delegated authority to issue these orders by a delegation agreement (Acuerdo Delegatorio) that was published in the *Diario Oficial* on September 12, 1985 and that remained in effect until March 1994. Alternatively, the Panel concludes that the parts of the Final Determination concerning Bethlehem, LTV and USX were based on evidence that these U.S. exporters voluntarily submitted, and not on administrative dispositions in the verification orders or verification visits.

1. **The Verification Orders.**

126- Three verification orders are involved. The first verification order, dated July 6, 1993, was sent to LTV.⁶¹ It was signed in the absence of Miguel Angel Velazquez Elizarraras, who is identified in the order as "El Director General Adjunto." The verification order was prepared on the stationery of SECOFI and begins by identifying the following entities:

UNIDAD DE PRACTICAS COMERCIALES INTERNACIONALES
DIRECCION GENERAL ADJUNTA TECNICA JURIDICA

127. The second verification order, dated July 8, 1993, was issued to USX.⁶² It was signed by Gustavo Uruchurtu, who is identified in the order as "Director De Procedimientos y Proyectos." It was prepared on the stationery of SECOFI and begins by identifying the following entities:

⁶¹ See Administrative Record (VC) No. 266.

⁶² Id. No. 268.

UNIDAD DE PRACTICAS COMERCIALES INTERNACIONALES
DIRECCION GENERAL ADJUNTA TECNICA JURIDICA

128. The third verification order, dated July 14, 1993, was sent to Bethlehem.⁶³ It was also signed by Mr. Uruchurtu, who is identified in the order as "El Director." It was prepared on the stationery of SECOFI and begins by identifying the following entities:

UNIDAD DE PRACTICAS COMERCIALES INTERNACIONALES
DIRECCION DE PROCEDIMIENTOS Y PROYECTOS

2. The Lawful Exercise of UPCI's Powers.

129. The parties in their briefs and at the hearing agree that the first entity listed in these verification orders, Unidad de Prácticas Comerciales Internacionales ("UPCI"), was lawfully created by the Internal Regulation of SECOFI published in the *Diario Oficial* on April 1, 1993. In addition, there is also no disagreement that, at the time of the verification orders, neither the Dirección General Adjunta Técnica Jurídica ("DGATJ") nor the Dirección De Procedimientos Y Proyectos ("DPP") were formally created by the April 1, 1993 Internal Regulation or by any other formal document according to law. Therefore, DGATJ and DPP were not "authorities" that could in their own names issue the verification orders externally.

130. SECOFI, however, claims that UPCI (and not DGATJ and DPP) carried out the anti-dumping proceeding after April 1, 1993. SECOFI also claims that individuals who signed the verification orders were delegated certain powers and authority of UPCI.

131. The Panel agrees that the verification orders were acts of UPCI and that the individuals in whose names the orders were signed were delegated the authority of UPCI to sign

these orders. However, the Panel believes that the delegation occurred through an Acuerdo Delegatorio of September 12, 1985, and not by the Internal Regulation of April 1, 1993 cited by SECOFI.⁶⁴

132. First, the verification orders themselves appear to be documents of UPCI. UPCI is the first entity listed on each of these documents. Immediately before the date of each document, there is a code number identifying the verification order as a UPCI document. For example, the verification order of July 6, 1993 to LTV is identified as Document No. UPCI.211.93.2221. Also, as discussed in Part IV/C of this Opinion, the only officials mentioned in the verifications reports (Actas Circunstanciadas) are described as officials of UPCI.

133. Second, the persons who signed the orders were formally appointed as officials of UPCI. The appointment documents, each a Constancia Unica de Movimiento de Personal, dated January 16, 1993 and March 1, 1993, formally appoint Mr. Velázquez and Mr. Uruchurtu respectively as an Adjunct Director and as an Area Director of UPCI. In fact, these documents list UPCI as both the responsible entity (Unidad Responsable) and the actual assignment (Ubicacion Fisica) for both officials.⁶⁵

⁶³ Id. No. 277.

⁶⁴ This Panel may consider precedents, laws, regulations and other published records which support a participant's position but which have not been mentioned by that participant. See Semanario Judicial de la Federación. 7a. época, vols. 199-204, p. 65. Amparo directo 151/83. Productos Rubí, S.A. 25 de octubre de 1985. Unanimidad de votos. Ponente: José Antonio Hernández Martínez; also Semanario Judicial de la Federación. 8a. época, tomo IV, segunda parte 1, tesis 17, p. 565. Amparo directo 347/89. Constructora Vyr, S.A. 9 de agosto de 1989. Unanimidad de votos. Ponente: José Ángel Mandujano Gordillo. Secretaria: Julieta María Elena Anguas Carrasco.

⁶⁵ See Constancias Únicas de Movimiento de Personal dated January 16 and March 1, 1993 in the Annex to the Brief of the Investigating Authority, March 3, 1995.

134. Third, Article 33 of the April 1, 1993 Internal Regulation of SECOFI gives to UPCI the express powers "to investigate, carry out and determine the investigation and administrative procedures on unfair international trade practices. . . ." Article 33 of the April 1, 1993 Internal Regulation gives to UPCI the express power to "order and make verification inspections. . . ."

135. Fourth, there is evidence that these powers were delegated to Mr. Velázquez and to Mr. Uruchurtu as officials of UPCI. An Acuerdo Delegatorio of SECOFI published in the *Diario Oficial* on September 12, 1985 states (in Article 6):

A fin de agilizar el despacho de los asuntos dentro de las unidades administrativas competentes, se faculta a los Directores y Subdirectores de Area, Jefes y Subjefes de Departamento, Jefes de Oficina, Delegados, Subdelegados y Jefes de Departamento de las Delegaciones Federales, para que firmen las formas en que se determinan los derechos que se causen; las órdenes de inspección y visitas domiciliarias; los requerimientos de informes, datos, documentos y, en general, los oficios de trámite relacionados con las actividades que tengan a su cargo.

In order to facilitate matters pertaining to the competent administrative units, powers are bestowed upon Area Directors and Subdirectors, Departmental Chiefs and Subchiefs, Office Chiefs, Delegates, Subdelegates and Departmental Chiefs of Federal Delegations, in order for them to sign the forms that establish any fees to be charged, orders regarding inspections and domiciliary visits, requests for information, data and documents, and in general to issue official administrative documents related to the activities that are under their responsibility.

136. This Acuerdo Delegatorio was preserved by a later Acuerdo Delegatorio of SECOFI published in the *Diario Oficial* on April 3, 1989. The latter Acuerdo states (in the second transitory provision):

Los Acuerdos publicados en el Diario Oficial de la Federación los días 12 de

The Agreements published in the *Diario Oficial* de la Federacion in

septiembre de 1985 y 5 de abril de 1988, los que respectivamente delegan facultades en los Subsecretarios, Oficial Mayor, Directores Generales y otros subalternos de la Secretaría de Comercio y Fomento Industrial y determinan la Organización de las Delegaciones Regionales y Federales de la Secretaría de Comercio y Fomento Industrial y establecen sus facultades, seguirán en vigor en lo que no se opongan al Reglamento Interior de esta Secretaría y al presente Acuerdo. . . .

September 12, 1985 and April 5, 1988, which respectively delegate authority to the Subsecretaries, Major Officials, General Directors and others from the Secretaría de Comercio y Fomento Industrial and determine the organization of the Federal and Regional Delegations of SECOFI and establish their powers, will continue to be in force as long as they do not contravene the Internal Regulation of this Secretariat and the present Agreement. . . .

137. The September 12, 1985 Acuerdo Delegatorio remained in effect until it was abrogated by the second transitory provision of the Acuerdo Delegatorio of SECOFI published in the *Diario Oficial* on March 29, 1994:

SEGUNDO. Se abroga el Acuerdo que adscribe Unidades Administrativas y delega facultades en los Subsecretarios, Oficial Mayor, Directores Generales y otros Subalternos de la Secretaría de Comercio y Fomento Industrial, publicado en el **Diario Oficial de la Federación el 12 de septiembre de 1985, y sus reformas.**

SECOND. This abrogates the Acuerdo that assigned Administrative Units and delegated powers to Subsecretaries, Major Officials, Directors General and other lower ranking officials of the Secretariat of Commerce and Industrial Development, published in the ***Diario Oficial of the Federation on the 12th September, 1985, and its amendments.***

138. Therefore, during the time of the verification orders and verification visits (July and August 1993), the Acuerdo Delegatorio dated September 12, 1985 was still in effect.

139. The language of the September 12, 1985 Acuerdo Delegatorio is important. The text expressly delegates the power to sign "orders regarding inspections and domiciliary visits." In addition, the text does not delegate the authority to other administrative units such as Directorates (Direcciones). Instead, the delegation is made to individuals such as Directors (Directores) and Chiefs (Jefes).

140. It is true that, normally, a Director is the person in charge of a separate administrative unit, such as a Directorate (Dirección) or a Department (Departamento). However, we are not aware of any jurisprudence that requires that a delegation from one lawfully established unit be made only to a second lawfully established entity. Instead, it appears that a proper delegation may also be made by a lawfully established unit to any official who is also within that same administrative unit. The Ley Orgánica de la Administración Pública Federal ("LOAPF") thus provides:

Artículo 14. Al frente de cada Secretaría habrá un Secretario de Estado, quien para el despacho de los asuntos de su competencia se auxiliará por los subsecretarios, oficial mayor, directores, subdirectores, jefes y subjefes de departamento, oficina, sección, mesa, y por los demás funcionarios que establezca el reglamento interior respectivo y otras disposiciones legales.

Artículo 16. Corresponde originalmente a los titulares de las Secretarías de Estado y Departamentos Administrativos el trámite, y resolución de los asuntos de su competencia, pero para la mejor organización de trabajo podrán delegar en los funcionarios a que se refieren los artículos 14 y 15, cualesquiera de sus facultades, excepto aquellas que por disposición de la ley o del reglamento interior respectivo, deban ser ejercidas precisamente por dichos titulares. . .

Article 14. At the head of each Ministry, there shall be a Minister of state who will be assisted in matters under his jurisdiction by undersecretaries, a chief of staff, directors, deputy directors, and by directors and subdirectors of areas, offices, sections and subsections, and all other authorized persons mentioned in the appropriate internal regulation and in other legal provisions.

Article 16. The Secretaries of State and the heads of the Administrative Departments are responsible for the processing and resolution of matters within the jurisdiction of their respective ministries and agencies. However, in order to better organize their work, they may delegate any of their powers to the officials referred to in Articles 14 and 15, except for those powers that by law or in accordance with the respective internal regulation must be exercised personally by the Secretaries of State and the heads of the Administrative Departments. . .

141. Both Articles 14 and 16 contemplate a delegation to individuals as well as to administrative units. There is no requirement that an official to whom powers are delegated must be in a different administrative unit. Rather, the official may be in the same administrative unit, as is the case here with UPCI.

142. It is true that in addition to identifying UPCI, the verification orders also identify either DGATJ and DPP which are not lawfully established entities with the power to act externally. The orders also suggest (but do not state) that Mr. Uruchurtu and Mr. Velazquez may have been directors of DGATJ and DPP. However, this appears to mean that DGATJ and DPP were simply informal divisions within UPCI itself and that Mr. Uruchurtu and Mr. Velázquez were exercising the authority of UPCI. As we have said, the verification orders are identified as documents of UPCI and Mr. Uruchurtu and Mr. Velázquez were employees only of UPCI.

143. Fifth, the verification orders did not recite the legal foundation for the delegation of authority based on Article 6 of the 1985 Acuerdo. This is a problem of a failure to state the legal foundation (fundamentación) under Article 238/II of the Federal Fiscal Code:⁶⁶

DELEGACION DE FACULTADES, ES
SUFICIENTE PARA LA LEGALIDAD
DEL ACTO DE MOLESTIA
MENCIONAR EL ACUERDO
DELEGATORIO.—Cuando un
funcionario jerárquicamente inferior,
actúa por delegación de facultades, esto
es, por comisión, autorización o encargo

DELEGATION OF POWERS. IT IS
SUFFICIENT FOR THE LEGALITY
OF A GOVERNMENTAL ACT OF
DISTURBANCE [*MOLESTIA*] TO
MENTION THE DELEGATION
AGREEMENT.—When a hierarchically
inferior public servant acts pursuant to a
delegation of powers, that is, by

⁶⁶ Cuarto Tribunal Colegiado en Materia Administrativa del Primer Circuito. Semanario Judicial de la Federación. 8a. época, tomo I, segunda parte 1, p. 233. Amparo directo 1674/86. Rafael González Ordaz. 2 de junio de 1988. Unanimidad de votos. Ponente: David Delgadillo Guerrero. Secretaria: Silvia Gutiérrez Toro.

del funcionario superior, es suficiente para la legalidad del acto de molestia que se mencione el acuerdo en el que se confirieron dichas facultades que se están utilizando y su fecha de publicación en el Diario Oficial de la Federación.

omission, authorization or assignment of a hierarchically superior public servant, it is sufficient for the legality of the governmental act [of molestia] to mention the delegation agreement in which the said powers were conferred and the date of publication in the Diario Oficial de la Federación.

144. However, this particular issue of fundamentación under Article 238/II, was not raised in the Complaints of Bethlehem, LTV or USX. The Panel, thus, lacks jurisdiction to decide this issue under Rule 7 of the NAFTA Panel Rules for Article 1904 Binational Panel Review.

145. In summary, Mr. Velazquez and Mr. Uruchurtu were officials of UPCI who had been delegated the authority of UPCI to sign verification orders.

3. Guidance From Amparo Decisions.

146. The previous amparo decisions cited to us involved the incompetence of an official who issued orders for verification visits, but these were not officials of UPCI. Unlike this case where the actions occurred after April 1, 1993 and were issued in the name of a lawfully created administrative unit (UPCI), the orders for verification visits in the earlier amparo decisions were issued before April 1, 1993 by incompetent administrative units (DGPCI and DCC).⁶⁷

⁶⁷ Juzgado Cuarto de Distrito en materia administrativa del Primer Circuito, Amparo Decision Nos. 193/93, 194/93 and 195/93 (1994).

4. **Administrative Dispositions From Which Administrative Determinations Were Derived.**

147. The Panel also believes that these particular verification orders, and the verification visits that resulted from these orders, did not result in the collection of new evidence or other administrative dispositions from which any part of the Final Determination was derived. As we discussed in Part III/E of this Opinion, we must be very careful in reviewing the Final Determination to distinguish between parts of the Final Determination that derive from evidence the U.S. exporters voluntarily presented (and which helped their case) and those parts of the Final Determination which derive from acts of an incompetent official.

148. The text of the Final Determination discusses the verification visits and its relationship to the evidence presented by Bethlehem, LTV and USX:

22. . . . asimismo, la Secretaría verificó la información presentada como prueba por las empresas Bethlehem Steel Corporation, United States Steel Group, a Unit of USX Corporation, y LTV Steel Corporation, con el objeto de constatar su veracidad y cotejarla con los registros contables correspondientes así como para obtener detalles más completos sobre la información rendida en el curso de la investigación.

* * *

26. Los exportadores LTV Steel Company, Bethlehem Steel Corporation y USX Corporation respondieron en forma adecuada y completa tanto el formulario oficial de investigación como la información complementaria o adicional que las requiriera la Secretaría. Por consiguiente, los márgenes de

22. . . . In addition, the Department verified the information presented as proof by the companies Bethlehem Steel Corporation, United States Steel Group, a Unit of USX Corporation, and LTV Steel Corporation, in order to confirm its truthfulness and to compare it with the corresponding accounting books, as well as to obtain fuller details regarding the information delivered during the course of the investigation.

* * *

26. The exporters LTV Steel Company, Bethlehem Steel Corporation and USX Corporation responded in an adequate and complete manner to the official investigation form as well as to the additional information requested by the Department. As a result, the price discrimination margins for these three

discriminación de precios para estas tres empresas se determinaron conforme a la información aportada en sus comparecencias.

companies were determined in accordance with the information they provided at their hearings.⁶⁸

149. This text suggests that although SECOFI during the verification visits attempted "to obtain fuller details regarding the information delivered during the course of the investigation," the actual decisions regarding price discrimination margins for Bethlehem, LTV and USX "were determined in accordance with the information they provided at their hearings." In other words, it appears that the verification visits did not result in any significant new evidence. In addition, the decision regarding dumping was based not on evidence from the verification visits, but rather on information these U.S. exporters had previously or subsequently submitted. With regard to injury, the text of the Final Determination also indicates that the determinations by SECOFI also did not come from any new evidence obtained during the verification visits:

129. Con arreglo a la valoración de las pruebas aportadas por las empresas denunciantes y las empresas interesadas, así como del resultado de las indagatorias practicadas por la Secretaría a los productores nacionales, se procedió a examinar el volumen de las importaciones objeto de dumping y su efecto en los precios, así como los efectos consiguientes de dichas importaciones sobre la producción nacional . . .

129. Based on the evaluation of the proof provided by the claimant company and the other interested parties, as well as the results of the investigation carried out by the Department vis-à-vis domestic manufacturers, the volume of imports which were the subject of dumping and the effect of the same on prices were examined, as well as the subsequent effects of said imports on domestic production.⁶⁹

⁶⁸ Final Determination, 22, 26.

⁶⁹ Final Determination, ¶ 129.

150. We note that the above determinations differ from the typical situation in a fiscal proceeding in which an administrative determination is derived from a domiciliary visit. During a domiciliary visit in a fiscal proceeding, much of the evidence will come from the papers and records demanded and obtained during the visit. That is not the case here. Significantly, the U.S. exporters do not claim that the verification orders or visits generated information or evidence different from what these exporters chose to submit before the verification orders were issued.

151. We realize that there is another viewpoint. The administrative determinations on dumping and injury in the Final Determination that concern Bethlehem, LTV and USX would not have occurred, unless the information submitted by these U.S. exporters had been verified. However, the simple act of verification of information that individuals have voluntarily submitted does not appear to have the same legal effect in an administrative proceeding as does new evidence obtained during a verification visit. The following two precedents support this view:

FACULTADES DE COMPROBACION E INVESTIGACION DE LA AUTORIDAD FISCAL. CUANDO SE INICIA.. De la lectura de los artículos 42, último párrafo, del Código Fiscal de la Federación vigente, 11, fracción I, y 12 del Reglamento del Artículo 85 del Código Fiscal de 1996. de 1966 se desprende que las facultades de comprobación de la autoridad fiscal se inician con el primer acto de investigación que se notifique legalmente al quejoso y no con la solicitud de documentos e informes en relación con la revisión de dictámenes de estados

POWERS OF THE FISCAL AUTHORITY TO CORROBORATE AND INVESTIGATE. INITIATION. It follows from a reading of the last paragraph of Article 42 of the Codigo Fiscal de la Federacion of 1966, that the verifying powers of the authority are initially exercised with the first investigation act notified to the complainant but not with the request of documents and reports related to the examination of financial reports made by a Public Accountant, because this is not an acto de molestia in terms of article 16 of the Constitution. Instead, it is made

financieros formulados por un contador público, pues

* * *

for the benefit of the taxpayers through which they are given the opportunity to express their point of view and present evidence regarding said reports so they can avoid the full exercise of verification powers.⁷⁰

* * *

ACTO DE MOLESTIA. No lo constituye el acto mediante el cual una autoridad requiere documentación a un particular con la finalidad de acordar una solicitud formulada por este último, si el requerimiento tiene como finalidad resolver el procedimiento iniciado por el propio particular, situación que, lejos de causarle un perjuicio, le beneficia es un acto de molestia cuando la autoridad le ordena a un particular presentar información con el propósito de resolver sobre una solicitud presentada por el individuo si la orden persigue decidir sobre la cuestión presentada por el particular, una situación que lejos de perjudicarlo, le beneficia.

ACTO DE MOLESTIA. It is not an acto de molestia when the authority orders an individual to submit information in order to make a determination regarding an application submitted by the individual if the order seeks to decide the issue brought up by the individual, a situation which far from harming him, works to his benefit.⁷¹

152. For these reasons, the Panel believes that the administrative determinations in the Final Determination concerning Bethlehem, LTV and USX derive from the evidence these exporters voluntarily submitted. For purposes of Article 238/I of the Federal Fiscal Code, these

⁷⁰ Segundo Tribunal Colegiado en Materia Administrativa del Primer Circuito. Informe 1986, parte III, p. 77. Amparo directo 382/86. Compañía Sherwin Williams, S.A. 15 de mayo de 1986. Unanimidad de votos. Ponente: Carlos Amado Yáñez. Secretaria: María del Carmen Arroyo Moreno.

⁷¹ Sexto Tribunal Colegiado en Materia Administrativa del Primer Circuito. Semanario Judicial de la Federación. 8a. época, tomo I, segunda parte 1, p. 45. Amparo en revisión 166/88. Termoplásticos de México, S.A. 17 de febrero de 1988. Unanimidad de votos. Ponente: Mario Pérez de León Espinosa. Secretaria Adela Domínguez Salazar.

administrative determinations do not derive from new evidence or administrative dispositions generated from verification orders and visits of an incompetent official.

B. THE "P.A." SIGNATURE ON THE LTV VERIFICATION ORDER

153. LTV claims that its verification order was not signed by a competent official because the person in whose name the order was purportedly issued, Mr. Velázquez, did not actually sign the verification order. Instead, the LTV verification order was signed in his absence ("P.A.") by a Mr. Avila. LTV claims that this order was not signed by a competent official, and that the Final Determination is illegal under Article 238/I.

154. As discussed above, UPCI had the power to issue the verification order, and this power was delegated to Mr. Velazquez as an official of UPCI. SECOFI also argues that Mr. Avila was delegated the power to sign the order in the absence of Mr. Velazquez under SECOFI's Internal Regulation of April 1, 1993.

155. Article 39 of the April 1, 1993 Internal Regulation of SECOFI states:

Artículo 39.—Los Directores Generales serán suplidos en sus ausencias temporales por el director de área respectivo. Las ausencias temporales de los directores serán suplidas por el subdirector al cual corresponda el asunto, salvo que sea único en la dirección o unidad respectiva, caso en el cual será suplido por el servidor público de jerarquía inmediata inferior que designe el Director General . . .

Article 39.—Directors General shall be replaced during their temporary absences by their respective area director. The area directors shall be replaced during their temporary absences by the sub-director to whom the matter relates. In the event that there is no relevant sub-director, the area directors shall be replaced during their temporary absence by the public servant, immediately following in the order designated by the Director General . . .

156. As part of its defense before the Panel, SECOFI represented that Mr. Velazquez was absent, and that Mr. Avila was an area director reporting to Mr. Velazquez and that he also was the immediately lower-in-hierarchy public servant within the meaning of Article 39.⁷² No evidence was presented that contradicted this representation. For this reason, Mr. Avila appears to have been a competent official.

157. It is true that the verification order did not recite the legal foundation for Mr. Avila's substitution. This was a possible problem of a lack of fundamentación under Article 238/II of the Federal Fiscal Code.⁷³

FIRMA "P.A." EN LA RESOLUCIÓN RECLAMADA, OCASIONA INDEFENSIÓN A LA QUEJOSA. No es correcto considerar (como lo hace autoridad responsable en la resolución impugnada) que resulta intrascendente que el oficio reclamado lo haya firmado el subdirector general de aduanas "P.A." considerando que aun cuando se emplearan términos dubitativos, ello no agravaba a la entonces actora, porque de cualquier forma el funcionario signatario de la orden de visita, ya aludido, posee competencia originaria derivada de la Ley de la materia; pues efectivamente asiste razón a la quejosa, en virtud de que al firmar el funcionario de que se trata en la forma señalada introdujo en perjuicio de aquella una confusión que le ocasiona indefensión, porque para ello basta afirmar que por una parte la utilización de las iniciales señaladas implica para el

SIGNATURES "P.A." IN THE CONTESTED RESOLUTION. DEPRIVES THE COMPLAINANT OF A DEFENSE. It is erroneous to hold (as the official in charges does in the contested resolution) that it is inconsequential that the communication being challenged was signed by the General Under-Director of Customs "P.A.", arguing that, even though dubious terminology was used, it did not harm the complainant at the time because, in any case, the official who signed the referenced visit order had competence which derives from the law. The complainant is right, because the signature of the official introduced an element of confusion which did not allow the complainant to defend himself, since, on the one hand, it would be enough to say that the use of initials implies to the individual being visited that the act cannot be attributed. In other words, the complainant was left in the dark as to how to defend his

⁷² See Brief of the Investigating Authority, March 3, 1995, Part IV, Section B/5.

⁷³ Tercer Tribunal Colegiado en Materia Administrativa del Primer Circuit. Semanario Judicial de la Federación. 7a. época, vols. 157-162, p. 82. Amparo directo 1169/81. Carlos de Jesus Castaño Acebo. 19 de abril de 1982. Unanimidad de votos. Ponente: Samuel Hernández Viazcán.

visitado no saber a quién atribuir el acto, es decir, si al director o al subdirector de aduanas, ni si éste actuó por acuerdo o por ausencia de aquél, o bien, por sí mismo, dejando a la quejosa en la incertidumbre de cómo defenderse y contra quién hacerlo; puesto que es evidente que la parte afectada tiene derecho a conocer el carácter o la representación con que se ostentan las autoridades al emitir el acto de molestia y mediante el conocimiento de tales circunstancias objetar de la manera que más convenga a sus intereses tanto el acto como la personalidad o la representación citadas.

interests and against whom. It is evident that the harmed party has the right to know in what character or on whose behalf the official is acting when issuing an acto de molestia, and that by acquiring that information, the party can challenge both the act as well as the personality or the representation discussed above.

158. This particular issue of fundamentación under Article 238/II, however, was not raised in the Complaint of LTV. The Panel, thus, lacks jurisdiction to decide this issue under Rule 7 of the NAFTA Panel Rules.

159. For the above reasons, a majority of the Panel does not sustain the claim of LTV on this issue.

C. COMPETENCE OF OFFICIALS WHO PARTICIPATED IN THE VERIFICATION VISITS

160. By way of background, each of the verification orders designated five persons to participate in the verification visits to Bethlehem, LTV and USX:

Jorge Miranda Meave
Jose Simón Somohano
Erika Guzmán Soulé
Jorge Santibáñez Fajardo
Francisco Velazquez

161. The verification reports (Actas Circunstanciadas) for the verification visits to Bethlehem LTV and USX identify these same individuals as participating in the verification visits, except for José Simón Somohano who apparently did not participate in any of the visits.⁷⁴ The verification reports for the verification visits to LTV and USX also identify Alberto Lerín Mestas as having participated, and indicate that Jorge Miranda Meave did not participate.

162. U.S. exporters raise four claims relating to the competence of those persons who carried out the verification visits. For each of these claims, U.S. exporters claim that any lack of competence caused the entire Final Determination to be illegal under Article 238/I, of the Federal Fiscal Code.

163. We consider these four issues in order.

1. Claim That Two Of The Units Were Not Legally Established.

164. First, U.S. exporters claim that two of the persons who participated in the visits held positions in administrative units that had not been legally established and, for this reason, they were not competent to participate in the verification procedure. The verification reports identify Erika Guzmán Soulé as subdirector of Investigation of Dumping and Subsidies and Alberto Lerín Mestas as the head of the Directorate of Investigation of Dumping and Subsidies. Neither of these entities was legally established as a separate administrative entity.

⁷⁴ See Administrative Record (VC) Nos. 301, 314 and 315.

165. However, an analysis of this issue requires consideration of whether these two officials were acting for an administrative unit that was lawfully established, and whether they were properly delegated the power to participate in the verification visits.

166. Both of these officials appear to have been acting as officials of UPCI, an administrative unit that was lawfully created by SECOFI's Internal Regulation of April 1, 1993. Significantly, the verification reports (Actas Circunstanciadas) for each exporter identify these two individuals as follows:

el Ingeniero Alberto Lerín Mestas, Director de Investigación de Dumping y Subvenciones y la Lic. Erika Guzmán Soulé, Subdirectora de Investigación de Dumping y Subvenciones, funcionarios de la Unidad de Prácticas Comerciales Internacionales...⁷⁵

167. Thus, both individuals are identified as officials of UPCI (funcionarios de la Unidad de Practicas Comerciales Internacionales), but that, within UPCI itself, Alberto Lerín Mestas had the title of "Director de Investigacion de Dumping y Subvenciones," and Erika Guzmán Soule had the title of "Subdirectora de Investigación de Dumping y Subvenciones. However, once again, Mexican law does not require that a person with the title Director belong to a separate Directorate. Of course, an official must be delegated the power to carry out a verification visit. Erika Guzmán Soulé was expressly delegated the authority to carry out the investigation visits by the verification orders. Thus, as to Ms. Guzmán Soulé, the Panel does not sustain the claim of the U.S. Exporters. The situation of Mr. Lerín Mestas is considered in Part IV/C/3 below.

⁷⁵ See Administrative Record (VC) No. 301.

2. **Claim That The Underlying Orders Were Invalid.**

168 Second, U.S. exporters claim that none of the individuals who participated in the verification visits were competent because the verification orders which identified these officials were not issued by competent officials. However, the Panel has decided above that the verification orders were issued by competent officials.⁷⁶

3. **Claim That No Delegation Was Made To Mr. Lerín Mestas.**

169. Third, LTV and USX argue that Mr. Alberto Lerín Mestas was not competent to participate in the verification visits to LTV and USX because he was not named in the verification orders for these companies.

170. In fact, Mr. Lerín Mestas was not named in the verification orders, and yet he did participate in the verification visits to LTV and USX. SECOFI has claimed in defense that because of force majeure, Messrs. Jose Simón Somohano and Jorge Miranda Meave could not participate in these verification visits and that Mr. Lerín Mestas was substituting for them. This substitution is recited in the Certificate of Facts in the verification report for LTV, but not in the verification report for USX. The following precedent suggests that reciting the substitution in the verification report may not be sufficient to confer competence:

VISITAS DOMICILIARIAS. NO LAS
PUEDEN DESAHOGAR
FUNCIONARIOS DIVERSOS DE LOS
VISITADORES AUTORIZADOS,
AUN CUANDO TENGAN
FACULTADES MAS AMPLIAS QUE
ESTOS. La fracción I, inciso b) del
artículo 84 del Código Fiscal de la

INSPECTIONS OF DOMICILES.
CANNOT BE MADE BY
FUNCTIONARIES OTHER THAN
THE AUTHORIZED INSPECTORS,
EVEN THOUGH THEY HAVE
BROADER POWERS THAN THE
AUTHORIZED INSPECTORS.
Paragraph 1, clause b) of Article 84 of

⁷⁶See Part IV/A above.

Federación, vigente hasta el 31 de diciembre de 1982 establecía: "Art. 84. En las visitas domiciliarias se observará lo siguiente: 1. Sólo se practicarán por mandamiento escrito de autoridad fiscal competente que expresará el nombre de las personas que deban desahogar la diligencia, las cuales podrán ser sustituidas, aumentadas or reducidas en su número por la autoridad que expidió la orden. En estos casos se comunicará por escrito al visitado estas circunstancias, pero la visita podrá ser válidamente practicada por cualquiera de los visitadores." De lo antes transcrito se desprende que sólo las personas designadas en el mandamiento escrito podrán desahogar diligencias relativas a la visita y el hecho de que otras autoridades fiscales tengan facultades aún más amplias que las de los visitadores designados, no implica que puedan desahogar esas actuaciones legalmente, pues al señalarse en la orden de visita el o los nombres de los visitadores, en cumplimiento de la garantía de seguridad jurídica, son la autoridad competente para practicar las actuaciones relacionadas con dicha visita, pues de interpretar en sentido contrario el precepto citado bastaría con señalar en la orden que la visita podría ser realizada por quien tuviera facultades legales para ello, sin precisar nombres, lo cual alteraría el texto legal.

the Federal Fiscal Code, in force until December 31, 1982, established: "Art. 84. In inspections of domiciles the following shall be observed: 1. They shall only be undertaken pursuant to written order of the legally authorized tax official that shall state; b) the names of the persons who shall perform the inspection, who may be substituted, added to or reduced in number by the authority which issued the order. In these circumstances, the change(s) shall be communicated to the party being inspected in writing, but the inspection may be validly undertaken by any of these inspectors." from the above it is evident that only the persons designated in the written order may perform the legal proceedings related to the inspection and it does not follow from the fact that other tax officials may have broader powers than those of the designated inspectors that the other officials may legally perform these acts, since in keeping with the guarantee of juridical security, the person or persons named in the inspection order are the competent authorities to undertake the acts related to said inspection. If the cited rule were to be interpreted in a contrary manner, it might be enough to state in the inspection order that the inspection may be carried out by whomever has the legal powers to do so, without specifying names, which would amount to an alteration of the legal text.⁷⁷

⁷⁷ Cuarto Tribunal Colegiado en Materia Administrativa del Primer Circuito. Semanario Judicial de la Federación. 8a época, tomo VI, segunda parte 2, p. 695. Amparo Directo 84/90. Super Tienda El Emporio Mercantil, S.A. 7 de junio de 1990. Unanimidad de votos. Ponente: Hilario Bárcenas Chávez. Secretario: Emiliano Hernández Salazar.

171. The verification report for USX was not signed by Mr. Lerín Mestas, but only by Erika Guzmán Soulé who was clearly appointed in the verification order.⁷⁸ From these facts, it might be argued that Mr. Lerín Mestas was not the official who carried out this part of the anti-dumping proceeding for purposes of Article 238/I of the Fiscal Code.

172. By contrast, Erika Guzmán Soulé and Mr. Lerín Mestas both signed the verification report for LTV. The report also indicates that Mr. Lerín Mestas presided during a part of the visit. SECOFI did not present evidence of any act that delegated to Mr. Lerín Mestas the competence of the persons mentioned in the verification order -- or the power to substitute for them.

173. As discussed in Part IV/A of this Opinion, however, the Panel is of the view that the administrative determinations within the Final Determination are not derived from these particular verification visits, since these verification visits did not include new evidence or other administrative dispositions on which any part of the Final Determination was based.

174. The Panel does not sustain the claims of USX and LTV on this issue.

4. Claim That External Consultants Should Not Have Participated.

175. Fourth, U.S. exporters argue that two external consultants who participated in the verification visits were not competent to participate in the verification visit, because they were outside consultants and not officials of SECOFI.

176. Article 21 of the Regulation Against Unfair International Trade Practices states that the Investigating Authority "may hire the services of specialized consulting companies, to

⁷⁸ See Administrative Record (VC) No. 314.

support it in the investigation and verification of data" This is clear authority for SECOFI to hire consultants to assist in the verification of data, and SECOFI has argued that the consultants only assisted. The key words are "assist" and "support." These verification visits were carried out by officials ("funcionarios") of UPCI. The Verification Reports (Actas Circunstanciadas) state that the officials, and not the external consultants, presided at the verification visits. These Verification Reports were signed only by the actual officials, and not by the external consultants.⁷⁹

177. The apparent role of the external consultants was to assist and support the UPCI officials. These consultants were named expressly in the verification orders. The majority of the Panel is aware of no jurisprudence that would preclude SECOFI from using external consultants in this fashion to assist and support the UPCI officials who conduct a verification visit. The U.S. exporters have not cited any precedent in which a verification visit was led by an official of a government agency and in which any external consultant simply assisted that official.⁸⁰ Similarly, in reaching an opposite result on this issue, the earlier panel in Case No. MEX-94-1904-02 did not cite any direct precedent.

178. In these circumstances, we would be creating a substantial new burden on government agencies if we were to rule that an external consultant could not assist an authorized official in a verification visit. An external consultant may be necessary to help an official carry out his duties where the subject matter is highly technical. The assistance of an external

⁷⁹ See Administrative Record (VC) No. 301.

⁸⁰ One precedent cited by the U.S. exporters appears not to be directly relevant. See "Visits Carried Out By A Company Consultant, Are Not Valid As The Basis For A Fiscal Credit." Primer Tribunal Colegiado en Materia Administrativa del Primer Circuito. Semanario Judicial de la Federación. 7a. época, vol. 31, sexta parte, p. 68. DA 201/70. Materiales Aislantes, S.A. 19 de julio de 1971. Unanimidad de votos. Ponente: Jesús Ortega Calderón.

consultant may also be necessary to help an official understand the details of a foreign accounting system. Again, Article 21 of the Regulation Against Unfair International Trade Practices specifically authorizes the use of external consultants. These particular consultants were authorized to participate in these verification visits when they were directly named in the verification orders.

179. The Panel does not sustain the claims of the U.S. exporters on this issue.

5. Relationship Of The Verification Visits To The Final Determination.

180. As discussed in Part IV/A above, we have concluded that the verification visits did not generate new evidence or other administrative dispositions from which any administrative determination in the Final Determination was derived. The administrative determinations in the Final Determination did not derive from any act during the verification visits.

181. For all of these reasons, the Panel has decided to deny the claims of the U.S. exporters on these issues.

D. COMPETENCE OF OFFICIALS WHO REJECTED INLAND'S QUESTIONNAIRE RESPONSES.

182. Inland's questionnaire responses were rejected on June 17, 1993 in an acuerdo issued by Mr. Velázquez.⁸¹ This same official rejected subsequent submissions.⁸² It is claimed that Mr. Velázquez was not a competent official on June 17, 1993.

⁸¹ See Administrative Record (VC) No. 243.

⁸² Id. Nos. 256, 322, 351 and 357.

183. As stated in Part III of this Opinion, the Panel unanimously has concluded that earlier acts in the administrative proceeding (before April 1, 1993) were undertaken by an official of an administrative unit (DCC) that was not competent, and that those acts interfered with the legal interests of Inland in the anti-dumping proceeding. In view of the decision in Part III of this Opinion, it is not necessary for the Panel to grant relief on this issue.

V. FORMALITY AND TECHNICAL ISSUES

184. U.S. exporters raise three issues of a technical nature regarding the verification visits. First, they claim that the verification orders fail to specify each of the places where the verification would take place. Second, they claim that the verification orders fail to specify the period covered by the investigation. Third, U.S. exporters claim that SECOFI failed to notify and to obtain an authorization from the government of the United States of America before the verification visits. Apparently, U.S. exporters seek review of these issues under Article 238, Sections II and III of the Federal Fiscal Code.

185. The Panel denies these particular claims. The Panel also denies a fourth technical issue presented by IMSA relating to a claimed improper participation of foreign legal representatives of LTV and Bethlehem in the anti-dumping proceeding.

A. FAILURE TO SPECIFY THE PLACES FOR THE VISITS

186. The verification orders for LTV and Bethlehem mentioned a city for each verification visit, but not the complete address. Also the verification visits took place in cities that were different from the cities mentioned in the verification orders (in each case, the orders mentioned the city in which the headquarters of the particular U.S. exporter was located). U.S. exporters claim that these failures in the verification orders violated the legal protections provided by Article 16 of the Mexican Constitution.

187. These omissions of formal requirements provided by law and procedural errors, however, are reviewed under Sections II and III of Article 238 of the Federal Fiscal Code. These provisions require that such omissions or errors both adversely affect an individual's defenses (afecte las defensas del particular) and impact the result of the challenged resolution (trascienda al sentido de la resolución impugnada). There is no evidence that these particular omissions and errors regarding the address and city for the verification visits affected either the defenses of any U.S. exporter or the result of the Final Determination. For these reasons, the Panel denies the claims on this issue.

B. FAILURE TO SPECIFY THE PERIOD COVERED BY THE VERIFICATION

188. The verification orders fail to specify the specific time period that was to be verified during the verification visits. U.S. exporters claim that this failure violates the legal protections established in Article 16 of the Constitution.

189. Again, such omissions of the formal requirements provided by law, and such procedural errors, are reviewed under Article 238/II and III and require that the omission or

error both adversely affect an individual's defenses (afecte las defensas del particular) and also impact the result of the challenged resolution (trascienda al sentido de la resolución impugnada). There is no evidence that these particular omissions and errors adversely affected the defenses of U.S. exporters or the result of the Final Determination. For these reasons, the Panel denies the claims on this issue.

C. FAILURE TO NOTIFY THE U.S. GOVERNMENT

190- Article 6, paragraph 5 of the 1979 GATT Anti-dumping Code requires that an investigating authority "notify the representatives of the government of the respective country" in which a verification visit will take place. Article 21 of the Regulation Against Unfair International Trade Practices provides for a verification in the country of origin "if the respective government authorities accept the execution of the same. . . ." Here, there was no notification to the U.S. Government or formal acceptance of the verification visits by the U.S. Government. U.S. exporters claim that these are procedural errors that should be reviewed under Article 238/III.

191. There is an issue of whether these U.S. exporters are the proper parties to raise this particular procedural error, or whether such an error must be raised by the U.S. Government itself. Moreover, there is no evidence that this failure to notify the U.S. Government adversely affected the defenses of the U.S. exporters, or impacted the result of the Final Determination, as required by Article 238/III.

192. For this reason, the Panel denies the claims of the U.S. exporters on this issue.

D. IMPROPER PARTICIPATION OF FOREIGN LEGAL REPRESENTATIVES

193. After the April 21-22 1995 public hearing before the Panel, the Panel ordered the Investigating Authority to grant certain counsel access to confidential documents in the administrative file, without the need to present any bond or other security. Counsel for IMSA was one of the persons to whom access was granted for these confidential documents. IMSA claims that in its review of the confidential documents, it discovered a substantial involvement in the anti-dumping proceeding by foreign attorneys representing LTV and Bethlehem who are not authorized to practice law in Mexico. IMSA appears to claim that the participation by these foreign legal representatives involved a procedural error under Article 238/III of the Fiscal Code.

194. The Panel concludes that it does not have jurisdiction to review this issue. Under Rule 7 of the NAFTA Panel Rules for Article 1904 Binational Panel Review, this Panel's review powers are "limited to (a) the allegations of error of fact or law... that are set out in a Complaint . . . and (b) procedural and substantive defenses raised in the panel review."

195. This issue regarding the participation of foreign legal representatives is not a defense. Nor is it a claim presented in any Complaint. It might be said that the full extent of the participation by the foreign legal representatives was only disclosed after IMSA's counsel received access to confidential documents in the administrative file. However, the non-confidential documents in the administrative file also showed very extensive involvement by these foreign legal representatives.⁸³

⁸³ See, for example, Administrative Record (VC) Nos. 61, 64, 66, 89, 90, 92, 93, 181, 183, 189, 191, 193, 196, 199, 228, 229, 236, 238, 265, 276, 336, 350, 352, 370, 371, etc.

196. In summary, there was an opportunity to present this claim in a Complaint. Since it was not presented in a Complaint or as part of a defense, this Panel lacks jurisdiction to review the issue.

VI. DUMPING ISSUES

197. In this section of the opinion, the Panel considers individually dumping issues presented by the following U.S. exporters: New Process Steel Corporation, Inland Steel Company, USX Corporation, and Bethlehem Steel Corporation. Then it will consider dumping issues presented by the complainant, IMSA.

A. DUMPING ISSUES PRESENTED BY NEW PROCESS

198. The Final Determination states that, with respect to the standard value for exports by New Process to Mexico, New Process "had presented information regarding its domestic prices but not regarding costs."⁸⁴ For this reason, SECOFI said that it was not able to establish whether the domestic prices of New Process were less than its total production costs, as claimed by IMSA. Thus, SECOFI rejected the domestic selling prices of New Process as a basis for establishing standard value.⁸⁵

199. Next, the Final Determination states that the standard value for New Process could not be based on reconstructed value. In SECOFI's view, New Process "did not provide the relevant information."⁸⁶ As a result, under Article 6, paragraph 8 of the 1979 GATT Anti-dumping Code, SECOFI determined the standard value for the exports by New Process based on the best information available.⁸⁷

200. New Process now presents several claims concerning these determinations. Essentially, these involve three types of issues:

⁸⁴ See Final Determination, ¶ 106

⁸⁵ Id.

⁸⁶ See Final Determination, ¶ 107.

201. (1) Whether New Process was denied an opportunity to present certain cost information, and to have other cost information fairly considered, which is said to violate Sections II and III of Article 238 of the Federal Fiscal Code;

202. (2) Whether SECOFI failed properly to evaluate the cost information presented by New Process, and to apply the formal requirements of the applicable law to this information, which is said to violate Sections II and IV of Article 238 of the Federal Fiscal Code; and

203. (3) Whether a proper evaluation of the cost information submitted by New Process requires that reconstructed values be separately calculated for prime steel, secondary steel, and scrap steel according to an accounting method proposed by New Process.

1. **Opportunity to Present Cost Information.**

204. New Process makes several claims in its brief about the opportunity it had to present cost information. New Process states that it filed a timely response to the questionnaire. It says that in the questionnaire, it provided detailed information about its costs. The resolution revising the provisional resolution, published in the *Diario Oficial* on April 28, 1983, indicates, in paragraph 16, that New Process had submitted information regarding costs, profits and adjustments. Paragraph 27 of that same resolution confirms that New Process had answered the questionnaire in the form requested and within the established deadlines.

205. New Process next states that in a communication dated May 31, 1993, the Investigating Authority requested additional information regarding the valuation of

⁸⁷ See Final Determination, ¶ 108.

inventories.⁸⁸ New Process says that supplied the requested information in a communication dated June 15, 1993.⁸⁹

206. Most importantly, New Process states that at no time did SECOFI state that any cost information was missing; nor did SECOFI request New Process to supply other cost information that was not supplied.

207- SECOFI in its brief and at the hearing did not deny any of these points. Instead, SECOFI maintained that paragraph 107 of the Final Determination was correct, that New Process "did not provide the relevant information."

208. SECOFI has explained that New Process is not an original manufacturer, but simply cuts and processes steel produced by others. Its main cost is its purchase price for steel produced by other manufacturers. There is a possibility that purchases of steel by New Process from other manufacturers might be below cost, as alleged by the complainant IMSA. In SECOFI's view, New Process was required to submit the manufacturing costs of its suppliers before SECOFI could use the prices New Process paid as a cost element for any reconstructed value of exports by New Process.

209. We do not decide whether SECOFI may, as a general rule, require a respondent to provide SECOFI with the manufacturing costs of its suppliers. The key point is that SECOFI never specifically requested New Process to provide the costs of its suppliers. Thus, New

⁸⁸ See No. 214 in the Administrative Record.

⁸⁹ See No. 246 in the Administrative Record.

Process did not and could not have failed to comply with such a request. SECOFI does not deny that New Process submitted all information it was specifically requested to provide⁹⁰.

210. Article 6, paragraph 1 of the 1979 GATT Anti-dumping Code, which again is a part of the law in Mexico, requires that foreign suppliers and all other interested parties "be given ample opportunity to present in writing all evidence that they consider useful in respect of the anti-dumping investigation in question." Article 6, paragraph 7, of the 1979 GATT Anti-dumping Code requires that all parties "have a full opportunity for the defense of their interests." Article 27 of the Regulation Against Unfair International Trade Practices states that interested parties "may adduce all classes of evidence."

211. These provisions of law required SECOFI to provide adequate procedures so that New Process and other interested parties could present all relevant evidence and have a full opportunity to defend their interests. Here, the procedure SECOFI followed involved requesting certain cost information from New Process, failing to notify New Process how this information was deficient, and failing to notify New Process that it must supply information regarding its suppliers' manufacturing costs.

212. If SECOFI believed that information regarding suppliers' costs were relevant for determining a standard value for New Process, then SECOFI committed procedural errors by (1) failing to request this information from New Process and (2) then penalizing New Process for failing to supply what was not requested. The failure to request the information affected the defenses of New Process and substantially affected the result for New Process in the Final Determination. For these reasons, the Panel concludes that SECOFI's failure to specifically

⁹⁰ In this respect, the facts in our case are different from those considered in Case No. MEX-94-1904-

request information about the costs of the suppliers to New Process, and then basing its determination on the failure by New Process to provide what was not requested, is illegal under Section III of Article 238 of the Federal Fiscal Code.

2. Improper Evaluation of the Cost Information.

213. New Process next claims that it was improper for SECOFI to disregard the cost information that New Process did present and to base its determination on "best information available." New Process says that it presented information to the Investigating Authority that its suppliers included several companies outside the United States. These non-U.S. suppliers were not parties in the investigation. New Process claims that there was no basis to disregard raw material costs based on the purchases from these non-U.S. suppliers and that its purchases from these suppliers were in the normal course of trade.

214. SECOFI does not deny that some of the suppliers to New Process were companies from third countries. SECOFI also does not deny that purchases from these non-U.S. suppliers were in the normal course of trade.

215. Regarding the U.S. suppliers to New Process, it appears SECOFI assumed that all purchases by New Process from U.S. suppliers were necessarily below cost. For example, in the Final Determination, SECOFI found that some of the domestic sales by LTV Steel Company were made in the normal course of trade. For that reason, SECOFI determined standard values for each LTV product code "using either domestic prices or reconstructed value,

03. We do not comment on the analysis in Case MEX-94-1904-03 of the rights of a foreign exporter to be informed of deficiencies in its answer to a questionnaire.

depending on whether, for each code, domestic sales under normal business conditions, i.e., sales with profits, were sufficiently representative.⁹¹

216. For USX Corporation, SECOFI based the standard value for some product codes on domestic sales.⁹² SECOFI specifically found that some of these domestic sales were at a profit and not below cost.⁹³

217. In addition, absent clear evidence, there appears to be no basis in the administrative record to assume that all steel suppliers in the United States sell all of their steel products below cost to New Process or to others. Furthermore, the vast majority of the suppliers to New Process were not subject to this anti-dumping investigation.⁹⁴

218. Therefore, the Panel concludes, based on the cost information in the administrative record, that there was no reasonable basis to assume that all of the purchases of steel by New Process from U.S. suppliers were necessarily below cost, or that purchases of steel from third country suppliers were also be low cost.

219. For these reasons, the Panel concludes that certain of the facts on which the Final Determination based a determination of dumping by New Process, were nonexistent or were erroneously weighed. For that reason, the determination of dumping against New Process was illegal under Section IV of Article 238 of the Fiscal Code.

220- We do not decide here whether an Investigating Authority might properly disregard purchases by a processor like New Process, when those purchases have clearly been established to be below cost. This issue should not arise on the remand of this decision. Since

⁹¹ See Final Determination, ¶ 31.

⁹² See Final Determination, ¶ 84-86

⁹³ Id., 83.

SECOFI did not request New Process to supply information about its suppliers' costs, there is no such information in the administrative record (or failure to provide requested information) that can be considered on remand. We direct SECOFI to compute one or more reconstructed values for New Process based on the information that New Process has provided and, unless there is clear evidence that a particular raw material purchase was below cost, the decision on remand must assume that all raw material purchases by New Process were above cost.

3. Use of Separate Reconstructed Values for Prime, Secondary and Scrap Steel.

221. The Final Determination did not make any determination about whether separate reconstructed values should be determined for prime, secondary and scrap steel, or about what method should be used for allocating costs among those three types of steel. Instead, the Final Determination rejected all reconstructed values for New Process and used other available information.

222. Both New Process and SECOFI presented arguments to the Panel regarding this issue. Citing an accounting text, New Process claims that separate reconstructed values should have been determined for the prime, secondary and scrap steel it exports to Mexico. SECOFI's position is that unlike other distinct steel products, prime, secondary and scrap steel all originate from the same production process. At the beginning of production, there is no way to distinguish between what will eventually become the prime, secondary and scrap products. Thus, in SECOFI's view, there should be only one reconstructed value for all three products.

⁹⁴ See Transcript I, pages 147, 154 (in Spanish).

223. Since the issue was not addressed in the Final Determination, the Panel cannot at this time make a binding decision on this issue. For the sake of efficiency, the panel simply provides guidance for use by the Investigating Authority during the remand of this case.

224. The Panel believes that three principles should be considered during the remand. First, prime, secondary and scrap steel each appear to be commercially different. They appear to have different uses, different markets, and different commercial values. It is not unreasonable to expect that each of these different types of steel to have different costs.

225. Second, in the Final Determination, SECOFI determined separate reconstructed values for different products sold by other U.S. exporters. In the case of LTV, it appears that SECOFI determined separate reconstructed values for different product codes, including "a production cost specific to each code."⁹⁵ Similarly, for USX Corporation, SECOFI also determined separate reconstructed values for each product code, including a "production cost specific to each code."⁹⁶. To the extent prime steel products, secondary steel products and scrap steel products are analogous to separate product codes, consistency of treatment would suggest that separate reconstructed values be determined for these different types of steel.

226. Third, any determination of costs depends on accounting principles. New Process claims that the cost allocation method it is proposing, to allocate costs among prime, secondary and scrap steel, is consistent with generally accepted accounting principles. It has cited an accounting text in support of this view. At the hearing SECOFI was not able to refer to any accounting principles or accounting text in support of its position.

⁹⁵ See Final Determination, ¶ 40.

⁹⁶ Id., 65

227. The Panel emphasizes that the above points are for guidance only. Nor is the Panel requiring SECOFI to follow any particular methodology. This Panel or another panel will be free to make a decision if the issue is properly presented following the remand of the Panel's current decision. At the same time, the Panel would expect that any determination would consider the above guidance.

4. Relief on the New Process Dumping Issues.

228. For the reasons stated above, the Panel has concluded that SECOFI's determinations on dumping with respect to New Process, in paragraphs 105 through 108 of the Final Determination, are illegal under Sections III and IV of Article 238 of the Federal Fiscal Code. The Panel is instructing the Investigating Authority on the remand (a) to determine standard values for exports of New Process; (b) to use the cost data submitted by New Process that appears in the administrative record in determining the standard values, except where there is clear evidence that a particular purchase by New Process was below cost; (c) to use the export prices provided by New Process in determining any price discrimination margins; (d) based on the above, to compute new price discrimination margins for New Process; and (e) based on any price discrimination margins, to determine if exports by New Process caused injury or represented a threat of injury to the domestic industry.

B. DUMPING ISSUES PRESENTED BY INLAND

229. As discussed in Part III [and Part IV] of this Opinion, the Panel has determined that the portion of the Final Determination relating to Inland is illegal under Article 238, Section I, of the Fiscal Code. Therefore, the Panel will address only briefly the other points presented by Inland relating to dumping.

229 bis Inland claims that it did not have a full opportunity to present evidence in the anti-dumping proceeding, and particularly questionnaire responses, because it did not receive a clear notification of the deadlines by which the questionnaire responses were due. The Final Determination specifically states: "The exporter Inland Steel Company responded to the official questionnaire after the deadline for the receipt of proof."⁹⁷ For that reason, SECOFI disregarded Inland's questionnaire responses and determined the information regarding Inland in accordance with the best information available.⁹⁸

230. The only notification Inland received of specific deadlines was the notification dated February 8, 1993 to Inland.⁹⁹ Paragraph 14 of that notification indicated that if Inland did not submit its questionnaire responses by March 8, 1993, its information would not be considered in the resolution revising the provisional resolution. Paragraph 14 also stated that if the questionnaire responses were not "presented during the investigation," the final resolution regarding Inland would be based on the best information available. Inland claims that this last sentence gave it a notification that it could present questionnaire responses at any reasonable

⁹⁷ See Final Determination, ¶ 27

⁹⁸ Id

⁹⁹ See No. 40 in the Administrative Record.

time during the investigation -- and that SECOFI did not subsequently notify Inland of any earlier deadline.

231. During this Panel proceeding, SECOFI has given different reasons for its resolution regarding Inland. During the hearing, however, SECOFI agreed that there were two opportunities available for Inland to present its questionnaire responses. The first opportunity was before March 8, 1993. The second opportunity was within 30 days after the publication of the resolution revising the provisional resolution, or by May 28, 1993. SECOFI also agreed that it did not give Inland direct notification of this second deadline of May 28, 1993. Instead, SECOFI claims that this second deadline (30 days after notification of the resolution revising the provisional resolution) was "internal practice" that was generally known to those familiar with its procedures.¹⁰⁰

232. In the Panel's view, the failure to give Inland direct notification of the second deadline was an error of procedure which denied to Inland a full opportunity to present evidence in the anti-dumping proceeding. This failure substantially affected Inland legal interests under Article 27 of the Regulation Against Unfair International Trade Practices and under Article 6, paragraphs 1 and 7, of the 1979 GATT Anti-Dumping Code. For this reason, the resolution regarding Inland in paragraph 27 of the Final Determination is illegal under Article 238, Section III, of the Federal Fiscal Code. For this reason as well, we are directing SECOFI on remand to give Inland an opportunity to present additional evidence.

¹⁰⁰ See Transcript I, pages 253-255 (in Spanish).

233. Also during this panel proceeding, SECOFI suggested that a defect in the power of attorney accompanying Inland's questionnaire responses may have been defective. This reason, however, was not the basic reason relied on by SECOFI for rejecting Inland's questionnaire responses.¹⁰¹ Also, this possible reason was not mentioned in paragraph 27 of the Final Determination. If this claimed problem with the power of attorney was a reason that was not mentioned in the Final Determination, the Final Determination would then fail to state all of the legal reasons (motivacion) supporting the resolution regarding Inland, and the resolution might also then be illegal under Article 238, Section II of the Fiscal Code. The Panel, however, does not need to decide that question. Nor does the Panel need to decide whether there was, in fact, a problem with Inland's power of attorney.

C. DUMPING ISSUES PRESENTED BY USX

234. USX Corporation has presented three issues for review regarding the calculation of its anti-dumping margin. The first issue is whether SECOFI properly calculated the "profit" component of USX's reconstructed values, when it based this profit component solely on profits from those domestic sales that earned a profit (and without consideration of those domestic sales that incurred a loss). The second issue is whether SECOFI properly included an export sale at a distress price when determining the export prices of USX Corporation's sales to Mexico. The third issue concerns a bank finance charge on an export sale.

¹⁰¹ See Transcript I, pages 251-258 (in Spanish).

1. Computation of The Profit Component.

235. USX Corporation claims that the method used by SECOFI to calculate the profit component of its reconstructed values was unreasonable. The Final Determination states that SECOFI calculated the profit margin "as the average weighted margin for the product codes where the standard value was established based on domestic prices."¹⁰² In other words, for those product codes where domestic sales were at a loss and for which reconstructed values were needed, none of the profit (or loss) margins were taken into account on those sales. The Final Determination states that Article 2, Section II, Item B of the Regulation Against Unfair International Trade Practices, refers to a "reasonable profit margin," and that this term "excludes the possibility of including operations which did not show a profit."¹⁰³

236. USX claims that this method for determining the profit component is unreasonable for three reasons. First, USX claims that the term "profit" as used in the regulations means an aggregate profit amount that includes both positive and negative profits on specific sales. Second, USX says that, in some cases, excluding negative profits (or losses) in the computation can have a distortive effect. Third, USX states that SECOFI's method is inconsistent with the methods SECOFI uses in other areas. For example, SECOFI estimates dumping margins by considering both positive and negative amounts in the weighted average. In addition, if an exporter does not contest that its domestic sales were at a loss, SECOFI bases

¹⁰² See Final Determination, ¶ 96

¹⁰³ See Final Determination, ¶ 97.

the profit element on a company-wide average for the company during a representative period.¹⁰⁴

237. In its response, SECOFI states that it strictly followed the applicable regulations and that its decision was consistent with the regulations.

238. Article 2, Section II of the Regulation Against Unfair International Trade Practices ("Regulation") states three requirements for determining the profit component of a reconstructed value. First, SECOFI must include a "reasonable profit margin." This is the central requirement. The profit component must be "reasonable" in its amount.

239. Second, the same Regulation states:

As a general rule, where a profit is normally obtained on sales of products within the same general category in the domestic market of the country of origin, the amount to be added in respect of profit for purposes of this assessment shall not be higher. (Emphasis added.)

240. This second requirement states an upper limit. The profit component of reconstructed value may be no higher than the profit "on sales of products within the same general category in the domestic market," provided that a profit "is normally obtained" on these sales. This language is similar to the last sentence of Article 2, paragraph 4, of the 1979 GATT Anti-dumping Code, which reads:

As a general rule, the addition of profit shall not exceed the profit normally realized on sales of products of the same general category in the domestic market of the country of origin.

241. This, however, is only "a general rule." It apparently may be disregarded if application of the rule would produce a profit component that is not "reasonable" in its amount.

¹⁰⁴ See Final Determination, ¶ 67.

242. Third, the Regulation states: "In other cases, profit shall be determined according to reasonable standards and whatever pertinent information may be available."

243. USX does not directly claim that the specific profit margin that SECOFI applied to the reconstructed value was itself unreasonable in amount. It has said nothing about the actual amount of the profit margin SECOFI used. Instead, USX challenges only the application of the second and third requirements.

244. The second requirement requires an Investigating Authority to compute an overall profit for a "general category" of products that includes the particular products under investigation. The words "general category" mean a broader category than products that are "identical" or "similar" to the products under investigation. Article 2 of the Regulation Against Unfair International Trade Practices uses the term "identical or similar goods" when referring to a more narrow group of goods that are to be compared with the products under investigation. Therefore, the term "products within the same general category" must necessarily mean a broader group of products than "identical or similar goods." SECOFI did not determine a profit for any general category, but only for particular product codes from among the "identical" or "similar goods" that were sold in the domestic market.

245. In addition, the term "profit" used both in the Regulation and in Article 2, paragraph 4, of the GATT Anti-dumping Code necessarily requires a determination of the overall profit for the "general category," and not only the profits on those individual sales that are determined to have been made at a profit. This provision of the Regulation does not refer to sales "in the normal course of trade" as do other portions of the Regulation. Thus, it requires a

consideration of the overall profit on all sales in some general category and not just the profit on sales that are determined to be "in the normal course."

247. The Regulation does not specify which general category an Investigating Authority must consider, provided the products under investigation are a part of the same general category. The general category to be selected may depend on what accounting records are maintained by the respondent. Those accounting records normally would reflect an overall profit figure that is based upon sales both at a profit and sales that are loss.

248. The Regulation, however, is not mandatory in all cases. It appears that there may be circumstances where an Investigating Authority is not required to use the overall profit figure for a general category of products. One circumstance is where a general category of products has not earned an overall profit, but a loss.

Since SECOFI did not select any general category of products and also did not determine an overall profit for such a general category, the determination of the reconstructed values for USX did not follow the applicable provisions of law. For that reason, the portion of the Final Determination that determined reconstructed values for USX was illegal under Section IV of Article 238 of the Federal Fiscal Code.

2. Requested Exclusion of Distress Sale.

249. USX claims that SECOFI should have excluded entirely from the determination of USX's export prices to Mexico, a sale that was made at distress prices. Apparently, the merchandise was specifically made for a customer in a third country. It could not be sold to that customer. Eventually it was sold to a customer in Mexico at non-prime prices. In this regard, the Final Determination refers to certain sales that USX Corporation sought to exclude.¹⁰⁵

250. Article 5 of the Regulation Against Unfair International Trade Practices requires that prices be examined on a "comparable basis." Article 5 also requires that differences in prices which result from differences in the conditions of sale should be taken into account. Article 6 of the Regulation Against Unfair International Trade Practices provides for "appropriate adjustments" where there are different "conditions and terms of sale."

251. USX, however, did not ask SECOFI during the administrative proceeding to take into account, or to make adjustments for, the different conditions that affected its distress sale. Instead, it asked SECOFI to exclude that sale entirely.

252. USX has not mentioned any provision of the law that requires a distress sale to be excluded entirely. Instead, the Regulation requires that differences in conditions of a sale "be taken into account" by means of adjustments. This suggests that USX might have been able to request an adjustment because of the distress conditions of this particular sale. Since USX did not request an adjustment during the administrative proceeding, the issue of an adjustment is not now before the Panel.

¹⁰⁵ See Final Determination, ¶ 101.

253. Since the Regulation does not permit a total exclusion of a distress sale and since the issue of an adjustment is not before us, we affirm the decision by SECOFI not to exclude this distress sale from the calculation of the dumping margins for USX Corporation.

3. The Bank Finance Charge.

254. USX has presented an issue of whether SECOFI has correctly calculated a bank finance charge on one export sale. SECOFI at the hearing agreed that its calculation was incorrect and that the amount of the finance charge proposed by USX Corporation is correct. Accordingly, there has been an error in evaluating the facts under Section IV of Article 238 of the Federal Fiscal Code. We direct that SECOFI, on remand, recalculate this bank finance charge using the data and methodology proposed by USX Corporation.

3. Relief on the USX Dumping Issues.

255. For the reasons stated above, the Panel declares that the determination of the profit component of the reconstructed values for USX, as stated in paragraphs 94-97 of the Final Determination, and the use of the incorrect bank finance charge on one export sale, are illegal under Article 238, Section IV, of the Federal Fiscal Code. The Panel remands these issues to the Investigating Authority with instructions (a) to determine an overall profit for sales in the domestic market of a "general category" of products that includes the products under investigation; (b) to determine a reasonable amount of profit that is no higher than this overall profit on domestic sales of products in this general category, unless it determines that there has been no overall profit for this general category; (c) to recalculate the reconstructed values for USX based on this recalculated profit component; (d) to use the bank finance charge proposed by USX in computing the export price on the sale involving that finance charge; (e) to recalculate the price discrimination margins for USX Corporation based on the above; and (f) based on any price discrimination margins, to determine if exports by USX caused injury or represented a threat of injury to the domestic industry. The Panel affirms the determination by the Investigating Authority not to exclude the distress sale referred to by USX.

D. DUMPING ISSUES PRESENTED BY BETHLEHEM STEEL CORPORATION

256. Bethlehem Steel Corporation has presented two issues for review. The first issue is whether SECOFI properly computed an adjustment to the domestic freight costs on export sales to Mexico. The second issue is whether SECOFI properly computed the general expense component of the reconstructed value for Bethlehem, when it allocated to those selling costs a portion of the restructuring charges involving other steel products.

257. Since Bethlehem had no price discrimination margin and since exports by Bethlehem were determined not to cause injury or to present a threat of injury, there is a question of whether this Panel has the jurisdiction to decide these issues. Rule 7 of the NAFTA Article 1904 Panel Rules states that a panel review shall be limited to:

(a) the allegations of error of fact or law, including challenges to the jurisdiction of the Investigating Authority, that are set out in the Complaints filed in the panel review; and

(b) procedural and substantive defenses raised in the panel review.

258. Bethlehem presented a timely Complaint. It is also presented defenses to issues that the complainant, IMSA, has raised. Because of the issues IMSA has presented, Bethlehem also could not be certain whether this Panel's decision would change the Final Determination's zero dumping margin for Bethlehem. Accordingly, the Panel believes that it may address the issues Bethlehem has presented.

1. Freight Expense Adjustment.

259. On export sales to Mexico, Bethlehem's invoices to its Mexican customers shows both a price as well as an estimated amount for domestic freight expense. The freight amount is estimated, because at the time the invoice is issued Bethlehem has not received the final freight amount from the carrier. Therefore, if this estimated freight amount is to be used in computing the export price, an adjustment will be required if the final freight expense is above or below the estimated amount.

260. The Final Determination states that SECOFI adjusted Bethlehem's export prices for domestic freight, and that "the amount of the adjustment was calculated according to the information provided by Bethlehem Steel Corporation."¹⁰⁶ The Final Determination does not state that SECOFI actually made two adjustments. However, the parties agree that two adjustments were made. The first adjustment was the specific adjustment (for each sale) supplied by Bethlehem before verification. The second adjustment was a weighted average adjustment Bethlehem had computed for a separate investigation (regarding steel plate products) but not for the Investigated Products here.

261. Bethlehem claims that it was clearly erroneous for SECOFI (1) to include both adjustments, and (2) to use the weighted average adjustment from the plate investigation. Bethlehem appears to make its arguments under Section IV of Article 238.

262. In response, SECOFI stated in its brief, and again at the hearing, that both adjustments were required. At the hearing, SECOFI suggested that the first adjustment was needed to account for the difference between the estimated freight amount shown on the invoice

¹⁰⁶ See Final Determination, ¶ 76.

to the customer and the amount the customer was charged, and that the second adjustment was needed to account for the difference between the estimated freight amount and the actual freight amount.¹⁰⁷ However, the information presented to the Panel shows that the estimated freight amount is the amount shown on the invoice to the customer and is also the amount the customer is initially charged.¹⁰⁸ The specific adjustment for each sale supplied by Bethlehem accounts for the difference between the estimated freight amount and the actual freight amount. There was no need for a second adjustment. Despite detailed questions at the hearing, the Panel could not understand the logic or the reasons why both adjustments are necessary.

263. The Panel understands there may be situations where the Investigating Authority may believe it more appropriate to use a weighted average adjustment, particularly where a more specific adjustment for each sale is either inaccurate or has not been verified. Here, however, the adjustment proposed by Bethlehem for each sale was accepted by SECOFI. It used that same adjustment as one of the two adjustments in its calculation of export prices.

264. In addition, there is a question whether the weighted average freight adjustment used in the separate plate investigation is representative of the true freight adjustment here. It involves a different product. Also, the computation from the plate investigation was based on domestic sales and not on export shipments to Mexico.

265. We do not decide whether, in other circumstances, an Investigating Authority may properly find that a weighted average adjustment in another proceeding may be the most representative basis for making an adjustment between estimated freight and actual freight. In this case, however, the adjustments that are specific to each sale for the same product are the

¹⁰⁷ See Transcript I, pages 264-266 (in Spanish).

most representative. In addition, we agree that it was error to adjust the estimated freight twice: using both the adjustment that was specific to each sale and also a weighted average adjustment that applied to all sales of a different product.

266. In summary, we find that the portion of the Final Determination that adjusts the domestic freight expense on Bethlehem's export sales to be illegal under Section IV of Article 238 of the Federal Fiscal Code. In particular, the Investigating Authority has erroneously weighed the facts concerning the difference between actual freight and estimated freight.

2. Allocation of Restructuring Charges.

267. In the Final Determination, SECOFI computed the general expenses component of the reconstructed value for Bethlehem, by allocating to these general expenses restructuring expenses from (i) the closure of Bethlehem's rod and wire division and (ii) the suspension of production of coke coal at Bethlehem's Sparrow's Point plant.¹⁰⁹

268. Bethlehem claims that SECOFI erroneously included restructuring expenses relating to other products. In its view, such an allocation was not supported by law. In particular, Bethlehem states that these restructuring costs may not properly be included as part of the cost of production, or of any other cost element, in determining reconstructed value.

269. SECOFI in its response states that these restructuring expenses are part of the administrative and overhead expense component of the cost of production. SECOFI points out that if restructuring expenses were incurred for a division that is closed, the expenses cannot be

¹⁰⁸ See Transcript I, pages 184-189 (in Spanish).

allocated to that division, but must be considered as general in nature and allocated to all products -- including the products under investigation.

270. Article 2 of the Regulation Against Unfair International Trade Practices states that reconstructed value consists of the total of "the production costs of the goods in the country of origin, selling costs, shipping costs, and a reasonable profit margin." Restructuring expenses are not part of the selling costs or shipping costs of the goods under investigation. Article 2 also defines "production costs" and states that production costs "shall be increased by a reasonable amount to cover administrative and other overhead costs." The Regulation does not say if restructuring expenses are to be considered as part of a "reasonable amount to cover administrative and other overhead costs."

271. The overall structure of the Regulation, however, indicates that restructuring costs for other product lines were not intended to be covered by the term "reasonable amount to cover administrative and other overhead costs." The term "administrative and other overhead costs" appears in the context of a definition of "production cost." The apparent purpose was to make sure that production costs receive an allocation of the administrative and overhead costs related to the production of the products under investigation. These costs may include rent, utility expenses, other fixed costs relating to the production, the salaries of management and supervisory personnel involved in the production, and an allocation for those corporate personnel and resources that contribute in some way to the production of the product under investigation.

¹⁰⁹ See Final Determination, ¶ 58-64.

272. Restructuring expenses for separate, unrelated products do not have this same type of connection with the production of the products under investigation. Although a restructuring expense for a division that is no longer operating might be considered general in nature, the Regulation does not contemplate that every general expense incurred anywhere in a corporation be allocated to the products under investigation.

273. In addition, an allocation of restructuring expenses from other products to the cost of production should not depend on whether the restructured operations are terminated or continued. Whether a company continues or terminates production of other products will not necessarily affect the cost of production of the products under investigation here. There is no evidence that the Bethlehem's restructuring expenses on other products benefitted the products under investigation.

274. For these reasons, we conclude that the allocation of Bethlehem's restructuring expenses for unrelated products was in violation of the applicable provisions of law. Therefore, the portion of the Final Determination that allocates these restructuring expenses to the reconstructed value for Bethlehem is illegal under Section IV of Article 238 of the Federal Fiscal Code. We do not decide whether, in other cases, restructuring charges for unrelated products might also benefit production of products under investigation, or whether an investigating authority may properly allocate those restructuring expenses in that situation.

3. Relief on the Bethlehem Dumping Issues.

275. For the reasons stated above, the Panel concludes that the determination of the freight adjustment on the export prices for Bethlehem as referred to in Paragraph 76 of the Final Determination, and the allocation of restructuring expenses to the reconstructed value for Bethlehem as stated in Paragraphs 58 through 64 of the Final Determination, were illegal under Section IV of Article 238 of the Federal Fiscal Code. However, since we have decided elsewhere in this Opinion to affirm SECOFI's determination of a zero dumping margin for Bethlehem, no purpose would be served at this time by requiring a recomputation of the price discrimination margin for Bethlehem. For that reason, no further remedy will be ordered on these issues.

E. DUMPING ISSUES PRESENTED BY IMSA

276. IMSA makes several claims regarding dumping: (1) that LTV and Bethlehem failed to cooperate in providing full domestic prices and that, accordingly, SECOFI should have based the dumping margins for these companies on best information available; (2) that SECOFI did not properly compute a margin of profit in determining reconstructed values for LTV and Bethlehem; (3) that SECOFI should have imputed an interest cost with respect to LTV's unsecured debt discharged in bankruptcy, as part of the reconstructed value for LTV; and (4) that SECOFI did not use a correct method for calculating restructuring charges for Bethlehem.

1. Lack of Cooperation by LTV and Bethlehem.

277. IMSA has presented an issue of whether SECOFI incorrectly calculated the dumping margins of LTV and Bethlehem, when SECOFI decided to base the margins on reconstructed values and not the best information available. In IMSA's view, LTV and Bethlehem did not cooperate in the investigation when they failed to provide data on the domestic prices of products comparable to those sold to Mexico. Instead, IMSA claims that LTV and Bethlehem reported only selective sales of certain products, which SECOFI determined not to be comparable to the products sold in Mexico. IMSA claims that the failure by LTV and Bethlehem to submit complete pricing data on all of their U.S. domestic sales constituted a lack of cooperation that required SECOFI to base the dumping margins on the best information available (under Article 6, paragraph 8 of the 1979 GATT Anti-Dumping Code).

278. In this regard, the Final Determination states the following about the approach SECOFI followed for LTV:

For each product code, LTV Steel Company presented information on domestic prices, broken down by transaction, only for goods which were considered to be comparable to those exported to Mexico. Nevertheless, as of the close of the period for receipt of proof for this stage of the proceedings, the company had not presented any study which would show that its classification of goods was technically correct. As a result, the Department considered the information on domestic prices presented by LTV Steel Company, to be incomplete. . . . The Department resorted to determining these standard values based on the reconstructed value. . . .¹¹⁰

¹¹⁰ See Final Determination, ¶ 32.

279. With regard to Bethlehem, the Final Determination states that "all the exports of Bethlehem Steel Corporation to Mexico corresponded to a single product code."¹¹¹ The Final Determination also states:

53. Bethlehem Steel Corporation reported not having made any sales in the United States of America of the product code exported to Mexico. After the resolution which revised the provisional resolution, the company provided information on domestic selling prices relative to three product codes which it considered to be similar to the exported code. . . .

54. The Department decided not to determine the standard value based on the domestic prices referenced in the preceding item, due to the fact that Bethlehem Steel Corporation did not show that the three codes classified by the company as being similar were, in effect, the only codes sold domestically which may have been considered to be comparable to the code exported to Mexico. If the selection of comparable codes proposed by the company were to be accepted, without any proof whatsoever, there is a risk that codes which are comparable with the relatively high domestic prices may be excluded from the calculations for the determination of the standard value. In this case, the Department would only have the codes which are comparable with relatively low prices, and not with all codes which comply with the comparability standard.

55. Based on the foregoing, the Department considered the information on domestic prices presented by Bethlehem Steel Corporation to be incomplete. . . . The Department resorted to determining the standard value based on the reconstructed value. . . .¹¹²

280. Regarding LTV, SECOFI claims that it confirmed during the verification visit that, in fact, LTV did not sell domestically in the United States of America the same types of flat-coated steels that it had exported to Mexico. IMSA does not directly deny this. Instead, during the hearing, IMSA made a general argument: that the Investigated Products are "commodities," that they have the same uses in Mexico and the United States, and that therefore

¹¹¹ See Final Determination, ¶ 51.

¹¹² See Final Determination, ¶ 53-55.

it was "illogical" to claim that the products sold in the U.S.A. are not comparable to the products exported to Mexico.¹¹³

281. Apart from this general statement, however, IMSA did not provide the Panel any clear evidence or facts regarding the specific products that LTV sold domestically, the specific products LTV exported to Mexico and how these products were technically comparable. In these circumstances, the Panel cannot say that SECOFI committed an error of law or of fact when it concluded that LTV did not sell comparable products domestically.

282. With regard to Bethlehem, SECOFI claims that it also determined that Bethlehem did not sell domestically the same product codes it exported to Mexico. Again, IMSA did not provide to the Panel an analysis of the specific products Bethlehem sells domestically in the U.S.A., the specific products that Bethlehem exports to Mexico, or a technical analysis of similarities and differences between these products. In these circumstances, the Panel cannot say that SECOFI committed an error of law or of fact when it concluded that Bethlehem did not sell comparable products domestically.

283. The Panel also notes that Article 6, paragraph 8 of the 1979 GATT Anti-dumping Code is not mandatory. If a company has not been cooperative, an investigating authority "may" (but is not required to) use the best information available. Under the law, if the Investigating Authority determines and verifies that comparable products are not sold in the domestic market, the Investigating Authority has the express power to base dumping margins on reconstructed values. In fact, the reconstructed values might be considered the best information available under the circumstances.

¹¹³ See Transcript I, pages 307-308 (in Spanish).

2. Calculation of Profit Margin for LTV and Bethlehem.

284. IMSA claims that in computing reconstructed values for LTV and Bethlehem, SECOFI did not include a margin of profit that was sufficiently large. IMSA does not present any specific or direct evidence that SECOFI determined the profit component of reconstructed value contrary to any provision of law. IMSA also does not present any specific profit amounts that SECOFI should have used in place of the profit component it did use.

285. Instead, IMSA makes a general argument. IMSA suggests that because LTV did not submit information about the prices of all of its domestic sales in the U.S.A., there is a possibility that some of LTV's domestic prices could be very high, as well as a possibility that any higher prices could result in a higher profit margin for purposes of reconstructed values.

286. Since IMSA has not so presented specific and direct evidence to support these possibilities, and since it is not clear that SECOFI disregarded applicable law of facts, the Panel affirms SECOFI's determinations on this point.

3. Interest on LTV's Unsubordinated Debt.

287. LTV has been in bankruptcy. As the result of its U.S. bankruptcy proceedings, previous unsecured debt of LTV was discharged. For that reason, during the period of investigation, LTV did not actually pay or incur any interest on this discharged unsecured debt. When it determined reconstructed values for LTV, SECOFI did not impute any amount for this non-existent interest. IMSA claims this was error.

IMSA has not directed the Panel to any provision of applicable law that specifically and directly requires SECOFI to impute an amount of interest when no interest was actually paid or incurred. Although it may be unfair in some circumstances for a company to be relieved of interest obligations that other companies may have, there is no provision of law requiring that the imputation of an amount for interest that was never paid and never incurred. The Panel affirms the Investigating Authority's determination on this issue.

4. Method For Allocating Bethlehem's Restructuring Charges.

289. IMSA claims that SECOFI used an incorrect method in allocating restructuring charges incurred by Bethlehem. According to the Final Determination: "The period used to allocate the restructuring expenses was defined in accordance with the useful life of the fixed assets in the steel industry according to the available information."¹¹⁴ IMSA claims that these restructuring expenses should not have been allocated over the useful life of any assets, but rather should have been assessed in their entirety in the year in which they were incurred.

290. The Panel has determined elsewhere in this Opinion that it was improper for SECOFI to allocate any of Bethlehem's restructuring expenses to the Investigated Products, because those restructuring expenses did not relate to any of the products under investigation or their production. For that reason, the Panel does not need to decide whether SECOFI was correct in amortizing those restructuring expenses over several years instead of allocating the entire amount of the expenses to the year in which they were incurred.

¹¹⁴ See Final Determination, ¶ 64

VII. INJURY ISSUES

I. INJURY

291. The interested parties to this proceeding allege a number of errors with respect to the Investigating Authority's finding that dumped flat coated steel products imported from the United States threaten injury to Mexican producers of like goods. (One party also questions the finding that U.S. source imports did not cause (present) damage to the domestic injury.)

292. The applicable legal rules governing the injury portion of this case include: Articles 3 and 6 of the 1979 GATT Antidumping Code¹¹⁵, Chapter Nineteen of the North American Free Trade Agreement (NAFTA), Articles 14 and 15 of the 1985 Mexican Law Implementing Article 131 of the Constitution, Articles 12 and 23 of the 1986 Regulations Against Unfair Trade Practices¹¹⁶, and Article 238 of the Código Fiscal de la Federación. It must be noted that due to the timing of this case, the 1993 Law of Foreign Commerce and its 1993 Regulations, both of which are designed to be fully consistent with the 1979 GATT Code and NAFTA, are generally inapplicable to the Panel's review of the Final Determination.

292. Unfortunately, none of the applicable laws and regulations provide detailed or specific guidance to this Panel. Moreover, despite excellent briefing and oral argument by the interested parties and the Investigating Authority on the injury issue, the Panel's review of these issues, particularly those relating to the "dictamen tecnico"(technical report) and the "Nota Nacional", has been hampered by counsel's lack of access to the confidential records during the administrative proceeding, and by the reluctance of the Investigating Authority to provide timely access even during this Panel proceeding. As a result, counsels' ability to

¹¹⁵ Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade, GATT, (April 12, 1979). [hereinafter the "GATT Code" or "GATT Antidumping Code"].

¹¹⁶ Regulations Against Unfair International Trade Practices, Diario Oficial (Nov. 25, 1986).

fully participate in the proceeding, and to assist the Panelists in reaching a just and correct decision, was limited until the later stages of the Panel proceeding.

294. Notwithstanding these difficulties, the Panel has reviewed the written and oral arguments of the interested parties, including the supplemental briefs filed May 29 and June 9, 1995, the applicable law and relevant portions of the administrative record, and has decided to affirm in part and remand in part injury portion of the Final Determination. The Panel:

295. A. The Panel directs the investigating Authority on remand to consider the comments of the interested parties on the contents of the “dictamen tecnico”; and to maintain the confidentiality of the identity of the consultant who prepared the dictamen tecnico.

296. B. The Panel directs the Investigating Authority on remand to consider the additional views of the interested parties on whether products included in a “Nota Nacional” should be excluded in determining a threat of future injury; and to make a new determination about threat of future injury after considering these additional views.

297. C. The Panel affirms the use by the Investigating Authority of export, production capacity and capacity utilization data (including Aggregated Data) obtained from the U.S. International Trade Commission, in its injury determination;

298. D. The Panel affirms the use by the Investigating Authority of trade data prior and subsequent to the period of investigation in making its future injury determination, but remands for the purpose of assuring interested parties an appropriate opportunity to comment on 1992 data used by the Investigating Authority ;

299. E. The Panel affirms the exclusion of imports from LTV and Bethlehem Steel from the determination of threat of future injury because those companies had either a low or a zero dumping margin;

300. F. The Panel affirms in principle the use of weighted average sales data by the Investigating Authority for price comparisons to determine price suppression or price undercutting, for purposes of demonstrating present or future injury to domestic producer, but directs the Investigating Authority on remand to consider the additional views of the interested parties on whether the “product mix” methodology used by the Investigating Authority distorted such price comparisons, and to make a new determination about threat of future injury after considering these additional views.

301. G. The Panel affirms the Investigating Authority’s conclusion, based on the administrative record, that imports of flat coated steel products from the United States did not cause current injury to the domestic Mexican market.

302. With respect to each issue remanded to the Investigating Authority by this Panel, the Investigating Authority shall continue to afford to the interested parties the same access to the confidential record as specified by the Panel’s orders of April 20 and May 17, 1995. As counsel surely recognize, such documents may not be disclosed by counsel to their clients or to any other persons to for whom access has not been duly authorized. In the course of the remand on injury issues, interested parties shall have 60 days from the issuance of this opinion to provide any additional comments they may have on this issues to the Investigating Authority; any such submissions shall follow the Investigating Authority’s current procedures for the treatment of confidential and/or privileged information.¹¹⁷

¹¹⁷ Reglamento de la Ley de Comercio Exterior del 30 de diciembre de 1993, Título VIII, Capítulo III.

more expertise than legal counsel.¹²⁵ However, no party has been able to demonstrate that the technical report contains information improperly treated as confidential under Article 6.3 of the GATT Antidumping Code or Art. 23 of the Regulations Against Unfair International Trade Practices. In fact, is apparent that the technical report

Is by nature confidential (for example because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information....¹²⁶

316. It may well be that in the future, counsel for interested parties, as in the United States, will wish to retain economic consultants directly, who are thus covered by the attorney's administrative protective order, so as to assure the availability of expert advice while maintaining the confidentiality of protected data.

317. The remaining questions therefore are (1) whether the consultant had a conflict of interests such that its name should have been made public and the report not been relied on by the Investigating Authority; and (2) whether in light of the views of the U.S. exporters concerning the technical report, as expressed in their briefs,¹²⁷ it was reasonable for the Investigating Authority to rely on the technical report as a partial basis for the finding of future injury.

¹²⁵ See Brief of Respondents Inland Steel et al, May 29, 1995, at 4. [Spanish version].

¹²⁶ GATT Antidumping Code, Art. 6.3.

¹²⁷ See Respondents Brief on Injury at 11-59; see also Respondents Reply Brief on Injury at 4-16; Brief of Respondent, June 9, 1995, at 2-4.

1. ALLEGED CONFLICT OF INTERESTS OF TECHNICAL CONSULTANT

318. It seems to the Panel that any individual or firm that is considered by the Investigating Authority to have sufficient expertise as to be qualified for consultant status would necessarily have considerable experience with the Mexican domestic steel industry. This, however, does not necessarily equate to a conflict of interest. Therefore, to disqualify all such persons or entities would leave the Investigating Authority with no reasonable options as to seeking technical expertise not found “in-house”.

319. The issue of conflict has been adequately addressed in the supplemental briefs requested and provided to the Panel on May 29 and June 9, 1995, the briefs that were filed after all parties had obtained access to the identity of the consultant. Each interested party and the Investigating Authority had a full opportunity at that time to advise the Panel on the potential conflict of interests of the technical consultant. Yet, none of these submissions even alleged that the consultant (whose name will remain confidential) had a conflict of interests such as would preclude reliance on its analysis by the Investigating Authority.¹²⁸

320. Nor is the Panel persuaded that it was unreasonable under the circumstances for the Investigating Authority to refuse to make public the name of the consultant. As counsel for the Investigating Authority indicated at the public hearing, the consultant’s future employment--and, thus, his willingness to work now and in the future for the Investigating Authority--could be dependent in part on the maintenance of this confidentiality.¹²⁹ Such concerns are explicitly recognized as a basis for treating a consultant’s name as confidential under the GATT Antidumping Code.¹³⁰ On the other hand, U.S.exporters’ concerns regarding a possible conflict of interest, particularly in light of the fact that the consultant’s identity was

¹²⁸ See Brief of Inland Steel et al, brief of New Process Steel, May 29, 1995.

¹²⁹ Transcript I, at 318-320.

¹³⁰ “Any information which is nature confidential... because its disclosure would have a significantly adverse effect on the person supplying the information....” Art. 6.3.

known to a Petitioner but not to the U.S. exporters¹³¹ are obviously legitimate. In this instance, the problem has been resolved by this Panel through permitting counsel access to the name of the consultant's employee on a confidential basis, without making the name public. Had the Investigating Authority taken the same approach in the proceeding below, it is probable that this issue would not be before this Panel today.

321. Consequently, the Panel authorizes the Investigating Authority to maintain the name of the consultant as confidential, to be made available to only those counsel who have been granted access to the confidential / privileged record before the Panel. Should the technical report be discussed in any supplemental briefs submitted to the Investigating Authority during the remand, the name of the consultant shall not be mentioned in either confidential or public versions.

¹³¹ Transcript I, at 378.

2. RELIANCE ON TECHNICAL REPORT

322. While this Panel recognizes that both Article 6.4 of the GATT Code and Article 23 of the Mexican Regulations permits the Investigating Authority to restrict access to confidential information because it is privileged, this Panel believes that in certain circumstances, denial of access to vitally important information may be inconsistent with the essential right of each party to a “full opportunity for the defense of their interests” under the Article 6.7 of the GATT Code.¹³² It is evident from the Final Determination that the technical report was extensively relied upon by Investigating Authority in determining the existence of threat of injury¹³³. Moreover, the Panel is not persuaded that the technical report constitutes “privileged information” under Rule 3 of the NAFTA Panel Rules of Procedure, in that the technical report was not a communication between two officials of the Investigating Authority.¹³⁴ Thus, in the Panel’s view, denial of counsel’s access to the technical report was a violation of the parties’ rights under the GATT Code.

323. By order of this Panel, the interested parties’ counsel have been afforded access to the technical report, although the time permitted for review has necessarily been short. Now that the question of the parties’ access to the technical report has been resolved, the technical report becomes like any other evidence relating to injury that is before the Investigating Authority. The weighing of the evidentiary value of the technical report, in light of the interested parties’ comments, is, however the responsibility of the Investigating Authority, not this Panel, based in part on any views expressed by the interested parties. Accordingly, the Panel remands this aspect of the Final Determination to the Investigating Authority, directing the Investigating Authority to reconsider the use of the information in the

¹³² See section A(1) above.

¹³³ See Final Determination at Paragraphs 128, 131(C) and (D) and 132.

¹³⁴ The Investigating Authority disagrees, see Transcript I, at 322.

technical report in determining the existence of future injury in light of any comments the interested parties submit within the 60 day comment period specified above.

**B. ROLE OF THE NOTA NACIONAL IN THE DETERMINATION OF
FUTURE INJURY BY THE INVESTIGATING AUTHORITY.**

324. Pursuant to the “Program for the Modernization of the National Industry for Automotive Use” as administered by the Secretariat of Trade and Industrial Development, the National Association of Iron and Steel Industry and the National Autoparts Industry are authorized to import certain steel products duty free if such products are not available from the domestic Steel Industry (Nota Nacional)”¹³⁵. The Nota Nacional grants duty free status to the autopart industry for imported steel products, “whenever there is no domestic manufacturing, or when such production exists but does not satisfy the requirements of the autopart industry on the matter of delivery times, quality and/or price”.¹³⁶ In other words, the Nota Nacional exempts certain steel products from customs duties on the ground that these products were not produced in Mexico, or not produced in sufficient quality or at a reasonable price.

325. It appears from the information before the Panel that in order for the autoparts producer(s) to obtain duty free treatment on specific imported steel products, they must first request permission from the appropriate authority¹³⁷. Then the authority will confer with the steel industry to determine whether the domestic industry can in fact produce the product in question or a reasonable substitute, and if the domestic producers will consent to duty free treatment on these products. The Mexican Customs Service will then grant a waiver of import duties when the parties to the agreement (i. e., the autoparts industry) import the product into

¹³⁵ Nota Nacional, en el Capitulo 72 de la ley de la Tarifa del Impuesto General de Importacion.

¹³⁶ Brief of Investigating Authority, March 3, 1995, at 112. [English version].

¹³⁷ In this instance, the authority is also the Secretariat of Commerce and Industrial Development (SECOFI).

Mexico. Apparently, this waiver is only available to the parties to the agreements and not to other importers of the same or similar products.

326. The U.S. exporters submit that the Nota Nacional agreements are “dispositive evidence that neither the products covered by agreement nor reasonable substitutes for those products are available from Mexican producers to meet the needs of autoparts producers”.¹³⁸ If the product is covered by a nota nacional, it must be considered a product not produced in Mexico.¹³⁹ The U.S. exporters go on claim that “even requests for duty free treatment constitute strong evidence that the steel mill products sought to be imported are not produced in Mexico.”¹⁴⁰

327. In light of the above cited submissions, the U.S. exporters ultimately claim that the Investigating Authority refused to exclude from the injury analysis all products which were determined under the government’s Nota Nacional process to be exempt from anti-dumping duties on the ground that affected products were not produced in Mexico, nor produced in sufficient quality or quantity.

328. The Investigating Authority asserts that the Nota Nacional does not prove that there is no domestic production of the product in question and that purposes and criteria under the Nota Nacional program are completely different from those applicable in unfair trade practices.¹⁴¹ For example, the authorization to use the Nota Nacional program is determined whenever there is no domestic production or when the limited production that does exist does not satisfy the quantity or quality needs or delivery time requirements of the autoparts industry,¹⁴² and is made by a different administrative entity under SECOFI.

¹³⁸ Respondents Brief on Injury, at 40.

¹³⁹ Transcript I, at 238.

¹⁴⁰ Respondents Brief on Injury, at 40.

¹⁴¹ See Ch. 72 of the Import Tariff.

¹⁴² Transcript I, at 238.

329. The Investigating Authority further explains that the criteria to determine product similarity under the Regulation Against Unfair International Trade Practices, is based on “the characteristics of the product which although may not be identical, are similar on certain aspects such as nature, use function or quality”¹⁴³. The Authority claims that the authorization under the Nota Nacional is given only to individuals, at the request of the Party, and all the information relating to the requests under the program are confidential because they contain confidential information from the companies in question.

330. Once again, this dispute resulted in part because the U.S. exporters and their counsel had been denied access to the Nota Nacional documents in the administrative proceeding below, and did not in fact gain access except in accordance with this Panel’s order of May 17, 1995. All parties have now had an opportunity to review the Nota Nacional and to express their views in briefs filed with the NAFTA Secretariat on May 29 and June 29, 1995. This process has had an advantage of permitting the Respondents’ counsel to ascertain for themselves whether the Investigating Authority improperly excluded the product covered by the Nota Nacional. Respondents Inland Steel et al appear to concede that the Investigating Authority properly considered the products covered by the Nota Nacional, but allege that the Investigating Authority properly failed to consider whether other coated steel products (not included in the Nota Nacional) should nevertheless have been excluded because of their similarity to the Nota Nacional products.¹⁴⁴

331. Pursuant to the principles of the GATT Code and relevant to Mexican law, a determination of injury or threat of injury in an anti-dumping case must be based on the unfair importation of similar or “like” products. Under Article 3 of the 1979 GATT Code:

“A determination of injury for purposes of Article VI of the General Agreement shall be based on positive evidence and involve an objective

¹⁴³ See Brief of Investigating Authority, March 3, 1995, at 112 [English version].

examination of... (a) the volume of the dumped imports and their effect on prices in the domestic market for like products,...”¹⁴⁵

332. Article 2 of the Code defines “like product” as:

“a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.”¹⁴⁶

333. Similarly according to Mexican law, injury and dumping are to be determined by making a comparison “of identical or similar goods intended for consumption in the country of origin”.¹⁴⁷ This Regulation defines identical or similar goods as:

“those coinciding in all respect with those against which they may be compared, taking into consideration such characteristics as their nature, origin, provenance, use, function, quality, brand name and commercial reputation. Should they not coincide in all respects with the goods against which they may be compared, it shall be sufficient if the latter possess a number of identical features specially as to their nature, use, function and quality, to be considered similar”.¹⁴⁸

334. Again, the U.S. exporters requested the Investigating Authority to exclude nine products which were not produced nor which did not have the requisite quality needed

¹⁴⁴ Brief of Inland Steel et al, May 29, 1995, at 4-5.

¹⁴⁵ Article 3.1 of the GATT Anti-Dumping Code, (1979) (emphasis added).

¹⁴⁶ Article 2.2 of the GATT Anti-Dumping Code, (1979).

¹⁴⁷ Regulation Against Unfair International Trade Practices, Article 2 (I).

¹⁴⁸ Regulation Against Unfair International Trade Practices, Article 1 (VII).

by the Mexican Industry.¹⁴⁹ As evidence that these products were not available from the domestic industry, Respondents pointed the Investigating Authority toward the Nota Nacional agreements and requests. They claimed that these requests constituted evidence that similar or like products were not available from the Mexican domestic producers, so if they were under the Nota Nacional agreements then they should be excluded from the injury analysis.

335. The Panel is generally in agreement with the U.S. exporters in that it is inconsistent with principles of injury as set out in the GATT Code and the Regulation Against Unfair International Trade Practices to include in the injury analysis imported products, when like or similar products are not manufactured in the domestic market. However, given the different purposes and criteria of the products excluded by SECOFI from compensatory duties by a reason of their inclusion under the Nota Nacional, and its application to some but not all importers, the Panel does not believe that the inclusion of particular product in the Nota Nacional automatically requires the exclusion of the products generally from the analysis of injury, although inclusion in the Nota Nacional is highly relevant. Nor is the mere fact that an importer has sought Nota Nacional treatment, persuasive evidence of non-competition from domestic production. Rather, the Nota Nacional is relevant evidence that the Investigating Authority must weigh along with other evidence to determine whether an imported product is injuring domestic producers of like products.

336. In short, this Panel is not persuaded that the Investigating Authority misused the Nota Nacional data in its injury determination. However, because full confidential data was not available to respondents until relatively late in this proceeding, the Panel is not convinced that the Investigating Authority's analysis of this data meets requirements of paragraph 4 of section 238. Accordingly, the Panel remands this issue to the Investigating Authority with instructions to reconsider the relevance of the Nota Nacional data in light of any comments the interested parties may submit within the 60 day period specified herein, and

¹⁴⁹ See Final Determination, paragraph 125.

to indicate explicitly in the remand results how the Nota Nacional data was utilized. To the extent that the interested parties have not had access to all of the relevant Nota Nacional data in the administrative record, the Investigating Authority is directed to provide it on a confidential basis under the terms specified in this Panel's orders of April 19 and May 17, 1995.

C. THE INVESTIGATING AUTHORITY'S USE OF AGGREGATED DATA IN DETERMINING THREAT OF FUTURE INJURY.

337. Article 3.6 of the 1979 GATT Anti-dumping Code provides that a determination of threat of injury must be based "on fact and not merely on allegation, conjecture or remote possibility". The U.S. exporters claim that in the case at hand, the Investigating Authority based its threat of injury determination solely on such allegations or conjecture. This assertion is based in large part on the Investigating Authority's use of aggregated export, inventory and capacity figures compiled by the U.S. International Trade Commission (USITC)¹⁵⁰ as a major basis for its determination that a threat of injury existed.¹⁵¹

338. In particular, Respondents argue that the inclusion of data from LTV and Bethlehem, which companies were explicitly excluded from the future injury determination by the Investigating Authority, is inconsistent and thus irreparably "taints" the USITC data. (The Investigating Authority determined that Bethlehem source imports were not dumped and that the imports from LTV with a dumping margin of 5.4 percent represented only 0.2 percent (%) of all coated steel products¹⁵².). Based on these findings the Investigating Authority found no injury or threat of injury from either LTV Steel or Bethlehem Steel.¹⁵³ U.S. exporters claim

¹⁵⁰ For discussion of capacity and inventory of U.S. producers, See Final Determination at paragraphs 174-179.

¹⁵¹ See Respondents Brief on Injury at 60-68. See also Respondents Reply Brief on Injury at 28-31.

¹⁵² See Final Determination at paragraph 146.

¹⁵³ See Final Determination, at para. 203.

that despite the no injury findings of LTV Steel and Bethlehem Steel by the Investigating Authority, the authority erroneously relied on aggregated USITC data for the overall U.S. industry, which did not exclude products manufactured by LTV nor Bethlehem.

339. The Investigating Authority asserts that the use of aggregated data was within the requirements of the law and the best information available to them about the United States domestic industry.¹⁵⁴ Moreover, at no time during the investigation did the interested parties offer similar data on the U.S. domestic industry (in the aggregate or individually by company), nor comment on the information known to be under consideration for use by the Investigating Authority.¹⁵⁵ The Investigating Authority claims that LTV and Bethlehem form a part of the industry of the United States and therefore should not be excluded when looking at inventory capacity and other trends important in determining price discrimination margins. In any event, according to the Investigating Authority, more than 90 percent of the imports from the United States are like products-- six times the Mexican national market-- so that exclusion of LTV or Bethlehem source products would not have significantly affected the analysis.¹⁵⁶

340. While this Panel agrees that the use of such aggregated data was less than ideal, we do not believe that the use of such data was a violation of the GATT Code or Mexican law, or unreasonable under the circumstances. As all the parties are aware, obtaining accurate and complete data from abroad is not an easy task. The ability of an Investigating authority to obtain complete data on a foreign industry's capacity and inventories, including such data from non-participants in the investigation who are under no obligation to respond to questionnaires, is limited. Thus, the decision of the Investigating Authority, at the initiative of Petitioner, to rely on extensive USITC data is understandable, particularly in view of the fact that LTV imports were not fairly traded.

¹⁵⁴ See Brief of Investigating Authority, March 3, 1995, at 123, [English version].

¹⁵⁵ Transcript I, at 333-334.

¹⁵⁶ Transcript I, at 337, referring to para. 133 of the Final Determination.

341. In addition, the basic accuracy and completeness of the USITC data used was never contradicted by evidence from any party.¹⁵⁷ Presumably, the incentive for all members of U.S. steel industry to cooperate with the USITC in completing questionnaires was strong, if not compelling. Moreover, in determining the threat of injury from U.S. producers as a group, it is not clear that the GATT Code discourages the use of aggregated data which suggests growing inventories and excess capacities at a time that U.S. steel exports to Mexico are increasing. As cited above, Article 3.6 of the Code simply requires that threat “be based on facts and not merely on allegation, conjecture or remote possibility.” Article 12 of the Mexican Regulations provides even less guidance.¹⁵⁸

342. Significantly, it was obvious to all parties from the outset of this case that the Investigating Authority intended to rely on the USITC data. Respondents had ample opportunity during the course of the proceedings to submit voluntarily their own inventory and capacity data (assuming of course that it was favorable to their position), but for whatever reason chose not to do so.¹⁵⁹ It might well have been preferable, and in some circumstances the Investigating Authority might well be required, to solicit company-specific capacity utilization and inventory data from the various foreign respondents. This Panel, however, is not prepared to conclude that as a matter of law under paragraph IV of Section 238 they were required to do so in this instance, simply became one of the many U.S. firms whose U.S. data was aggregated by the USITC was subsequently found to be selling at less than fair value, and another’s relatively low dumping margins were found not to contribute to a threat of future injury.

¹⁵⁷ Rather, its accuracy was explicitly conceded by counsel for Respondents Inland Steel et al, Transcript I, at 365.

¹⁵⁸ Article 12 of the Regulations Against Unfair International Trade Practices states: “in those cases referred to in Article 14 of the Act, compensatory duties shall be fixed finally only if as a result of this investigation into the possible existence of unfair international trade practices the Secretariat becomes convinced of the occurrence or threat of injury to the domestic production apparatus or that impediments to the establishment of industrial undertakings have arisen owing to import operations already effected or that may be effected under the same conditions.”

343. There are other reasons for permitting the use of such aggregated data on capacity and inventory issues relating to the likelihood of future injury, even if it would have been improper under the law to use aggregated import data that included imports from firms (LTV and Bethlehem) that were not determined to be a threat to the domestic industry or from a firm (Bethlehem) not found to be dumping. The relationship of excess foreign industry capacity and inventories to future exports to Mexico is by its nature imprecise and to some extent speculative. The fact that excess capacity and inventory exists in a foreign country does not mean that all or any portion of the products will be exported to a particular country (Mexico). Moreover, future injury determinations, by their nature, tend to focus on the foreign industry as a whole rather than on individual companies. Accordingly, the Investigating Authority's use of aggregated inventory and capacity data was not a violation of paragraph 4 of section 238, and is thus affirmed.

D. THE INVESTIGATING AUTHORITY'S USE OF PRE AND POST-PERIOD DATA IN THE DETERMINATION OF THREAT OF INJURY

344. Pursuant to Article 19 of the Regulations Against Unfair International Trade Practices, the Investigating Authority is required to examine whether there is injury or threat of injury to the domestic industry from imported products during a representative period prior to the commencement of the investigation. (This is an issue distinct from the question as to whether the verification notices were required, as a matter of law, to indicate the period or periods which were to be covered by the verification, as discussed in Part V/B above.)

345. Article 19, paragraph 1, of the Regulation Against Unfair International Trade Practices, states:

¹⁵⁹ Transcript I, at 294.

“The investigation into unfair international trade practices shall focus on the existence of dumping or subsidization and the damage caused or likely to be caused to national output. It shall consider a period that covers imports of goods identical or similar to possibly affected domestic products over a representative period prior to commencement of the investigations, while also taking into account any other factors relevant to its outcome”.

346. The actual period of investigation in this case for purposes of determining whether dumping existed was July-December 1991. However, in analyzing the issue of injury, the Investigating Authority used data from both before and after this period.

347. U.S exporters claim that the Investigating Authority did not base their findings on the actual period of investigation, but looked to post-period data to see what actually occurred after the period of investigation as a result of the conditions during the period.¹⁶⁰ In other words, U.S. exporters suggest that the Investigating Authority used post-period data to corroborate or confirm any trends they may have noticed during the period of investigation.

348. U.S. exporters also submit that they were denied an opportunity to comment on post-period data, and suggest that this was a violation of Article 6.7 of the GATT Code.¹⁶¹ Article 6.7 of the GATT Code provides that “Throughout the anti-dumping investigation all parties shall have a full opportunity for the defense of their interests.” This principle may include but is not limited to the ability of an adversely affected party to comment on the information by the authority, as long as confidentially, where appropriate, is retained.

349. The Investigating Authority claims that it acted consistently with Article 19 of the Regulations Against Unfair International Trade Practices by basing its determination of

¹⁶⁰ See Respondents Brief on Injury at 68-78; See also Respondents Reply Brief on Injury at 32-34.

injury solely on the information from the period of investigation¹⁶² as indicated in paragraphs 137 to 202 of the Final Resolution and, in particular, that the threat of future injury determination was not based on 1992 data relating to domestic producers.¹⁶³ The Investigating Authority also argues that the only post-period data relied on by the Investigating Authority was the domestic market data normally submitted by the domestic industry, and that because it was received in the normal manner there was no requirement that respondents be explicitly notified of its existence.¹⁶⁴

350. While it is obvious that the Investigating Authority did in fact analyze prior and post-period data,¹⁶⁵ the Panel does not believe that use of pre-period and post-period data was improper per se. However, the Panel is sympathetic to Respondents' assertion that they were not given an appropriate opportunity to comment on post-period data.

351. At the outset, the Panel does not see how a proper analysis of injury during the period of review could be logically performed without comparison of import volumes and prices during the period to those before (and perhaps after) the period of review. Otherwise, there is no basis of comparison, and nothing in either the GATT nor Mexican law specifically precludes this comparisons. Rather, Article 3.1 of the GATT Code simply requires an "objective examination" of the volume of dumped imports, their effect on prices, and the consequent impact on domestic producers. Because a threat determination necessarily implies a prediction of the future, it is to be hoped that the Investigating Authority would use the most recent actual data ascertainable at the time, before engaging in the more speculative exercise of trying to predict the future.

¹⁶¹ Transcript I, at 301-302.

¹⁶² See Brief of Investigating Authority, March 3, 1995, at 142, [English version].

¹⁶³ Brief of SECOFI, June 9, 1995, at 14-15.

¹⁶⁴ Brief of SECOFI, June 9, 1995, at 14.

¹⁶⁵ See Final Determination at paragraphs 172-173.

352. Moreover, the Panel notes that use of pre-period and post-period data is common practice with the USITC. For example, in a recent USITC case,¹⁶⁶ the period of review for dumping purposes was September 1993-February 1994, a six month period. However, the USITC, in its final injury determination, considered imports during three full calendar years (1991, 1992, 1993), as well as partial year data for January-September for each of those years, and for January-September 1994. Clearly the latter period was considered directly relevant, even though seven months of that period was post-period of review.¹⁶⁷

353. Thus, the Panel believes that the Investigating Authority, whether in Mexico, the United States or elsewhere, is most likely to discharge its “objective examination” obligation under Article 3 of the GATT Code relating to threat or injury, when it examines imports from both before and after the period of review, to the extent the latter are available to the Investigating Authority prior to the rendering of a final determination under circumstances permitting comment by the interested parties.

354. As discussed in part C, above, all parties were aware that the USITC data, including pre-period data from the point of view of this Mexican case, were being relied upon, and thus had ample practical opportunity to comment, even if no specifically invented to do so by the Investigating Authority. Moreover, the parties presumably were aware the the Investigating Authority would be using pre and post period data in the Final Determination, since 1990, 1991, 1992 data was explicitly requested from the parties.¹⁶⁸

355. The Panel is however, concerned that the U.S. exporters might not have had an opportunity to comment on the post-period data on the domestic market submitted by IMSA

¹⁶⁶ Certain Carbon Steel Butt-Weld Pipe fittings from France, India, Israel, Malaysia, the Republic of Korea, Thailand, the United Kingdom, and Venezuela, Investigations Nos. 701-TA-360 and 361 (Final) and 731-TA-688 through 695 (Final), Publication 2870, (April 1995).

¹⁶⁷ See also Disposable Lighters from Thailand, Investigation NO. 731-TA-701 (Final) Publication 2876, (April 1995); Where period of investigation was Dec. 1, 1993-May 31, 1994 and the USITC looked at calendar 1991, 1992, 1993, Jan.-Sep. 1993, 1994, (i.e., data from four months after period of investigation).

and perhaps could not reasonably have believed that this data would be relied on by the Investigating Authority.¹⁶⁹ Accordingly, this Panel affirms in general the use of pre-period and post-period import data as being consistent with paragraph IV of Article 238. However, the Panel remands this issue with directions to the Investigating Authority to re-evaluate the use of post-data after permitting all interested parties and opportunity to comment on the content and relevance of any such data relied upon by the Investigating Authority in its Final Resolution.

E. EXCLUSION OF LTV AND BETHLEHEM IMPORTS FROM THE DETERMINATION OF THREAT OF INJURY

356. An essential principle of any injury determination is that the dumping of the subject goods must be a cause of material injury.¹⁷⁰ To the domestic industry. Article 3.4 of the GATT Code specifically states that:

“[I]t must be demonstrated that the dumped imports are, through the effects of dumping, causing injury within the meaning of this Code. There may be other factors which at the same time are injuring the industry, and the injuries caused by other factors must not be attributed to the dumped imports”.

357. There is no requirement that the dumped goods be the only cause or even the major or the most significant cause. However, as a matter of law the dumped product must be a cause. The Investigating Authority is obligated to determine whether the goods in question are being dumped and if so, whether the dumping is causing injury to the domestic industry.¹⁷¹

¹⁶⁸ Transcript I, at 303-304.

¹⁶⁹ See Transcript I, at 306.

¹⁷⁰ See Article 3, Footnote 3 of the GATT Anti-Dumping Code (1979).

¹⁷¹ See for example, in the Matter of Synthetic Baler Twine with a Knot Strength of 200 lbs. or Less, Originating in or Exported from the United States of America, CAN-94-1904-01, April 10, 1995 at 19.20.

358. In the case at hand, the Petitioner, IMSA, claims that the Investigating Authority erroneously excluded the imports of LTV and, apparently, Bethlehem from its injury calculations. Essentially two grounds are advanced. First, IMSA asserts that LTV and Bethlehem's margins were not respectively, 5.4% and zero, but had the Investigating Authority treated LTV and Bethlehem's submissions correctly, using constructed value their margins would have been much higher. Secondly, assuming LTV's margin was only 5.4% and Bethlehem's was zero, LTV's and perhaps Bethlehem's imports should not have been excluded from the threat of injury determination.

359. The first issue is dealt with in Part VI of this opinion, devoted to dumping issues, in which the Panel concludes that the Investigating Authority acted reasonably and within its discretion in accepting and using LTV's and Bethlehem's cost data, notwithstanding their arguable failure to provide all of the sales data requested by the Investigating Authority. Thus, we deal here only the second issue, by company.

1. Bethlehem's Exclusion from the Injury Determination.

360. Assuming that Bethlehem's margin actually was zero, the Investigating Authority had no choice but to exclude those sales from its injury calculations. If there is no dumping, there logically can be no injury or threat of injury as a result of such sales. Article 3.1 of the GATT Code makes it abundantly clear that an injury determination is based on dumped imports and the impact of those imports on the domestic industry:

"A determination of injuries of Article IV of the General Agreement shall be based on positive evidence and involve an objective examination of both
(a) the volume of the dumped imports and their effect on prices in the

This action was also decided under the 1979 GATT code, as applied by the Investigating Authority (Canadian

domestic market for like products, and (b) the consequent impact of these imports on domestic producers of such products.” (Emphasis added.)

361. Article 12 of the Mexican Regulation Against Unfair Trade Practices similarly provides for a determination as to whether “Unfair Trade Practices”, (in this instance dumping), resulted in “occurrence or threat of injury.”.

The Investigating Authority found, and the Panel has affirmed, that the imports from Bethlehem Steel were not dumped (i.e. they were not unfairly traded). Therefore, they must be excluded from the injury analysis, as the Investigating Authority has properly recognized¹⁷².

2. LTV’s Exclusion from the Injury Determination.

362. The remaining question is whether the Investigating Authority acted contrary to law in deciding that LTV’s sales at margin of only 5.4% were properly excluded from the analysis of those sales that contributed to future injury. Once again, the GATT Code and the Regulations Against Unfair International Trade Practices are less than specific on the issue. Clearly, there was no requirement under the law that they be excluded. The question then is whether they must be included. Arguably, as Article 3.1 of the GATT Code states that an injury determination “shall be based” on an examination of the volume and its effects on the price of dumped imports, all dumped imports should be included in the determination.

363. However, there is also considerable basis in the Code for concluding that some imports which are dumped may not necessarily be causing injury. First, the injury

International Trade Tribunal).

¹⁷² See Final Determination at paragraph 146.

determination requires an “evaluation of all relevant economic factors”¹⁷³ and, in the case of threat, “special care” in the analysis¹⁷⁴

“...The investigating authority concluded that imports shipped from the United States of America did not cause injury to the domestic industry, among them, of course, imports from LTV. In its determination of threat of injury, the Investigating Authority acted according to provisions in Article 3, paragraph 7 of the Antidumping Code, anticipating that the application of Antidumping measures must be very carefully studied.”¹⁷⁵

364. In this instance, the Investigating Authority looked not only at the relatively low margin of dumping for LTV but the very small volume of sales, the fact that some of the products from LTV were not dumped, and the fact that the dumped product competed with the products of only one Mexican producer of flat coated steel.¹⁷⁶ Those facts apparently convinced the Investigating Authority that LTV dumped imports were not causing injury.

365. The margin of dumping is also highly relevant to injury determinations. To consider a hypothetical example, if the margin of dumping were 38 percent, and the foreign products are undercutting domestic prices by 15 percent it seems obvious that the dumping is taking away domestic sales and causing injury. However, if the margin of dumping is 5 percent and the domestic producers are being undercut by 15 percent, it is clear that the dumping is not a cause of injury, because even in the absence of dumping the domestic

¹⁷³ Article 3.3 of the GATT Anti-dumping Code (1979) states:

“The examination of the impact on the industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry such as profits, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; actual and potential negative effects on cash flow, inventories, employment, wages, not exhaustive, nor can one or several of these factors necessarily give decisive guidance.

¹⁷⁴ Article 3.7 of the GATT Anti-dumping Code states: “With respect to cases where injury is threatened by dumped imports, the application of anti-dumping measures shall be studied and decided with special care”.

¹⁷⁵ Brief of Investigating Authority, March 3, 1995, at 198. [English version].

¹⁷⁶ Brief of Investigating Authority, March 3, 1995, at 199-201. [English version].

producers would be undersold by 10 percent.¹⁷⁷ The Panel notes that the relevance of the magnitude of dumping margins has been explicitly recognized in Article 3.4 of the World Trade Organization Agreement on Interpretation of Article VI of GATT 1994 (corresponding to Article 3.2 of the 1979 GATT Code).¹⁷⁸ This WTO agreement is not of course, controlling in this case but the inclusion of this concept supports the Panel's conclusion in this respect.

365. Moreover, there is nothing in the GATT Code or Mexican law that requires a finding that all dumped imports are causing injury. Rather, the reverse is true. In Article 8.2 of the GATT Code, relating to the imposition of antidumping duties there is a requirement that the duty be collected "on a non-discriminatory basis on imports of such product from all sources found to be dumped and causing injury..." This conjunctive suggests recognition that some dumped imports might not be causing injury, and therefore, should not be the subject of dumping duties.

366. Under these circumstances, the Panel believes that the Investigating Authority acted reasonably and exercised its discretion consistent with the requirements of paragraph 5 of section 238 in excluding the LTV's sales as factor threatening injury to domestic producers.

F. PRICE AND VOLUME COMPARISON METHODOLOGIES USED IN THE DETERMINATION OF INJURY.

368. The existence of price undercutting or price depression caused by imported goods is considered a critical part of the analysis. The GATT Code states that the dumping inquiry: "shall be based on ...(a) the volume of the dumped imports and the effect on prices in the domestic market for like products, and (b) the consequent impact of these [dumped] imports on domestic producers of such products."¹⁷⁹ It continues,

¹⁷⁷ See 1979 GATT Anti-dumping Code, Article 3.4.

¹⁷⁸ Agreement Establishing the World Trade Organization, Annex IA, effective January 2, 1995.

¹⁷⁹ See Article 3.1 of the GATT Code, supra note 30.

“With regard to the effect of dumped imports on prices, the investigating authorities shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product of the importing country, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases...”.¹⁸⁰

369. The U.S. exporters have criticized the methodologies used by the Investigating Authority in determining the existence of price underselling and price suppression in that the Investigating Authority allegedly used weighted average prices of all coated sheet imports for comparison to weighted average prices of domestic products, instead of undertaking price comparisons based on specific products.¹⁸¹ The Final Resolution further suggests that weighted average comparisons were used¹⁸².

370. U.S. exporters demonstrated in their briefs and at the public hearing that the weighted average prices for comparison purposes could cause significant distortion, because the “product mix” of import products necessarily could be considerably different from the “product mix” of domestic products. The “like product” comparisons they assert, cannot legally be founded on price comparisons that aggregate different like products, because of the resulting distortions.¹⁸³

371. The Investigating Authority argues that Article 3.2 of the GATT Code and Article 15.2 of the Law Regulating Article 131 of the Constitution require that the comparisons be made based on identical or similar products as the case may be. The Authority

¹⁸⁰ Article 3.2 of the GATT Antidumping Code 1979.

¹⁸¹ See Respondents Brief on Injury at 79-70; See also Respondents Reply Brief on Injury at 37-44.

¹⁸² See Final Determination, at paragraph 140-50.

¹⁸³ Transcript I, at 308.

also states that these legal requirements are satisfied by the use of weighted average prices. There is no requirement in either that identical products be compared:

“As clearly seen in the aforementioned legal rules, the investigating authority is not compelled to evaluate the impact of the prices of imports [that are the] subject matter of dumping on the prices of domestic products identical to the imported products, as falsely pointed out by the complainants, and it will only be sufficient for them to evaluate and compare the prices of similar products; same comparison which was properly made by the investigating authority.”¹⁸⁴

372. Moreover, according to the Investigating Authority non similar products were excluded from both volume and price comparisons:

“Both the value and the volume of non similar imported products were excluded from the total amount of imports of flat coated steel products made through investigated tariff; consequently, it was guaranteed that the remaining products solely belonged to imports of products similar to domestic products”.¹⁸⁵

373. The Investigating Authority asserts that it estimated together the weighted average prices of import and the duties and import expenses “with the purpose of obtaining a price for the imported product set in Mexico”.¹⁸⁶ These prices were then compared with the average sale prices of similar products of the domestic industry. According to the Investigating Authority in its analysis of the price data submitted from 176 Mexican

¹⁸⁴ Brief of Investigating Authority March 3, 1995, at 145. [English version]

¹⁸⁵ Brief of Investigating Authority, March 3, 1995, at 149. [English version], Brief of Investigating Authority, June 9, 1995 at 17.

¹⁸⁶ Brief of Investigating Authority, March 3, 1995, at 150. [English version].

importers, 96 percent acquired the imported like product at prices less than those offered by the domestic producers¹⁸⁷.

374. Although this Panel agrees that the use of such weighted average pricing maybe less than ideal, the Panel does not believe that the use of such average price comparisons violated the basic requirements of Mexican Law or the GATT Code unless the result is a significant distortion of the price comparisons used by the Investigating Authority to support of finding of a threat of injury. Even though other methodologies might have provided more accurate comparisons, it would be inappropriate for the panel to require as a matter of law that the Authority make a product by product comparison. Therefore, the Panel affirms the Investigating Authority's use of the weighted average prices (i.e. the methodology) as a statistically valid indicator to determine price suppression of undercutting, as consistent with the requirements of Article 238.

375. This Panel, is, however, remanding this aspect of the Final Determination to the Investigating Authority for further proceedings, to determine whether similar products were in fact properly compared with this methodology, as the Investigating Authority asserts, for purposes of demonstrating current or future injury to domestic industry. The Investigating Authority will provide the interested parties, now that they have access to the administrative record, with a period of 60 days to comment on the comparisons actually used, and to demonstrate specifically, if they are able to do so, that the price comparison methodology used by the Investigating Authority resulted in distortions that falsely suggested that dumped imports undercutting or suppression domestic prices for like or similar products.

¹⁸⁷ Transcript I, at 342.

G. THE DETERMINATION OF NO (CURRENT) INJURY TO THE DOMESTIC INDUSTRY BY THE INVESTIGATING AUTHORITY.

376. Petitioner IMSA argues that erroneous calculation of LTV and Bethlehem's dumping margins, and exclusion of LTV and Bethlehem's imports, resulted, inter alia, in an erroneous finding of no current injury by the Investigating Authority.¹⁸⁸ IMSA also argues more generally that the facts as determined in the investigation and the Final Determination do not support the Investigating Authority's conclusion that dumped imports were not a cause of present injury to the domestic manufacturers.¹⁸⁹

377. In the event that this Panel had determined that the calculations of dumping margin for LTV and Bethlehem erroneously understated those margins, it would have had to address (or require) the Investigating Authority on remand, to address) the impact or higher margins on the Investigating Authority's determination that imports were not currently injuring the domestic Market. Likewise, had the Panel determined that it was improper for the Investigating Authority to exclude LTV's sales with weighted average margins of 5.4 percent, from those considered as a cause of injury, a remand would have been necessary on this issue.

378. Since this opinion affirms the actions of the Investigating Authority in both instances, it must necessarily affirm the portion of the Final Determination in which the Investigating Authority determines that there is no current injury to domestic producers, unless there is another basis for questioning that finding. In deciding that there was no current injury to the domestic industry the Investigating Authority weighed a variety of evidence¹⁹⁰ IMSA does not provide any legal support for its position beyond its obvious disagreements with the Investigating Authority's weighing of the facts relevant to injury, and thus has not demonstrated that the Investigating Authority's conclusion are reversible errors of fact under

¹⁸⁸ See Memorial de Reclamación para Industrias Monterrey, S.A. de C.V., at 17-29.

¹⁸⁹ IMSA's Brief of January 2, 1995, at 34-35.-Transcript at 353.

¹⁹⁰ See Final Determination paragraphs 151-170.

para. IV of section 238 particularly in light of the extensive analysis provided by the Investigating Authority in paras. 151-169 of the Final Determination. While IMSA or, for that matter, the Panel, might have weighed the available evidence on present injury differently, the Panel is not prepared to conclude that the Investigating Authority's Final Determination was in error. Accordingly, the Panel affirms the determination of the Investigating Authority that U.S. source imports were not a (current) cause of injury to the domestic steel industry.

ORDER

For the reasons stated above and taking into account the requirements of Article 1904, paragraph 8, of NAFTA, the Panel hereby decides and orders unanimously the following:

The Panel upholds the Final Determination in all respects, except as expressly stated below.

Competence and Formality Requirements.

2. The Panel declares illegal, under Article 238, Section I of the Fiscal Code, all administrative determinations within the Final Determination that concern Inland, declares that those administrative determinations may not be given any legal effect, and it instructs the Investigating Authority (a) to consider the evidence Inland has presented, (b) to give Inland an opportunity to present additional evidence and to comment on the Investigating Authority's analysis of Inland's evidence, (c) to modify the Final Determination to make new administrative determinations with respect to Inland taking into account the evidence Inland has presented, and/or (d) to take any other action permitted by applicable law.

Dumping Issues.

3. The Panel declares that SECOFI's determinations on dumping with respect to New Process, in paragraphs 105 through 108 of the Final Determination, are illegal under Sections III and IV of Article 238 of the Federal Fiscal Code; and on remand instructs the Investigating Authority (a) to determine standard values for exports of New Process; (b) to use the cost data

submitted by New Process that appears in the administrative record in determining the standard values, except where there is clear evidence that a particular purchase by New Process was below cost; (c) to use the export prices provided by New Process in determining any price discrimination margins; (d) based on the above, to compute new price discrimination margins for New Process; and (e) based on any price discrimination margins, to determine if exports by New Process caused injury or represented a threat of injury to the domestic industry. In this regard, the Panel suggests that the Investigating Authority take into account the Panel's guidance regarding the computation of one or more values for prime, secondary and scrap steel exported by New Process.

4. The Panel declares that, by failing to give Inland direct notice of all deadlines for filing responses to the questionnaire, the resolution regarding Inland in paragraph 27 of the Final Determination is illegal under Article 238, Section III, of the Federal Fiscal Code, and directs the Investigating Authority to give Inland an opportunity to present additional evidence.

5. The Panel declares that the determination of the profit component of the reconstructed values for USX, as stated in paragraphs 94-97 of the Final Determination, and the use of the incorrect bank finance charge on one export sale, are illegal under Article 238, Section IV, of the Federal Fiscal Code; and on remand instructs the Investigating Authority (a) to determine an overall profit for sales in the domestic market of a "general category" of products that includes the products under investigation; (b) to determine a reasonable amount of profit that is no higher than this overall profit on domestic sales of products in this general category, unless it determines that there has been no overall profit for this general category; (c) to recalculate the reconstructed value for USX based on this recalculated profit component; (d) to use the bank

finance charge proposed by USX in computing the export price on the sale involving that finance charge; (e) to recalculate the price discrimination margins for USX Corporation based on the above; and (f) based on any price discrimination margins, to determine if exports by USX caused injury or represented a threat of injury to the domestic industry. The Panel affirms the determination by the Investigating Authority not to exclude the distress sale referred to by USX.

6. The Panel declares that the determination of the freight adjustment on the export prices for Bethlehem as referred to in Paragraph 76 of the Final Determination, and the allocation of restructuring expenses to the reconstructed value for Bethlehem as stated in Paragraphs 58 through 64 of the Final Determination, were illegal under Section IV of Article 238 of the Federal Fiscal Code.

Injury Issues.

7. The Panel directs the Investigating Authority on remand to consider the comments of the interested parties on the contents of the “dictamen técnico” and to maintain the confidentiality of the identity of the consultant who prepared the dictamen técnico.

8. The Panel directs the Investigating Authority on remand to consider the additional views of the interested parties on whether products included in the “Nota Nacional” should be excluded in determining a threat of future injury; and to make a new determination about threat of future injury after considering these additional views.

9. The Panel directs the Investigating Authority on remand to assure interested parties an appropriate opportunity to comment on the post-period 1992 data used by the Investigating Authority, for the purpose of determining the threat of future injury.

10. The Panel directs the Investigating Authority on remand to consider the additional views of the interested parties on whether the “product mix” methodology used by the

Investigating Authority distorted the price comparisons, and to make a new determination about threat of future injury after considering these additional views.

Time of Remand

11. Pursuant to NAFTA Article 1904(8), the Panel hereby remands this case and directs the Investigating Authority, on remand, to comply with the measures the Panel has directed within 120 days of the date of this Order.

Signed on the original:

<u>September 27, 1996</u> Date	<u>David A. Gantz</u> David A. Gantz
<u>September 27, 1996</u> Date	<u>Eduardo Magallón</u> Eduardo Magallón
<u>September 27, 1996</u> Date	<u>José Luis Soberanes</u> José Luis Soberanes
<u>September 27, 1996</u> Date	<u>Michael D. Sandler</u> Michael D. Sandler
<u>September 27, 1996</u> Date	<u>Gustavo Vega Cánovas</u> Gustavo Vega Cánovas

ANNEX A
CHRONOLOGY OF RELEVANT EVENTS DURING THE ADMINISTRATIVE PROCEEDING AND
THE REVISION BEFORE THE PANEL

<i>DATE</i>	<i>EVENT</i>
1985 Aug. 20	Internal Regulation of SECOFI published in D.O.
1985 Sep. 12	Acuerdo Delegatorio of SECOFI published in D.O.
1986 Oct. 20	Organization Manual of SECOFI published in D.O.
1988 Sep. 19	2nd Organization Manual of SECOFI published in D.O.
1989 Mar. 16	2nd Internal Regulation of SECOFI published in D.O.
1989 Apr. 3	2nd Acuerdo Delegatorio of SECOFI published in D.O.
1989 Jun. 5	3rd Organization Manual of SECOFI published in D.O.
1992 Dec. 24	Provisional Resolution initiating anti-dumping investigation published in D.O.
1993 Jan. 18-22	Voluntary notices of appearance filed by Bethlehem, Inland, LTV, USX and others.
1993 Feb. 2	Request for questionnaire filed by USX.
1993 Feb. 8	Notifications and questionnaire sent by SECOFI to U.S. exporters.
1993 Mar. 2	Requests for extension of time to answer questionnaire filed by Inland and others.
1993 Mar. 5	Requests for extension of time to answer questionnaire denied by SECOFI
1993 Mar. 8	Answers to questionnaire filed by Bethlehem, LTV, New Process, USX
1993 Apr. 1	3rd Internal Regulation of SECOFI published in D.O.
1993 Apr. 28	Revision of Provisional resolution published in D.O.
1993 Jun. 15	Answers to questionnaire filed by Inland and comments on Revision to Provisional Resolution filed by various U.S. exporters.
1993 Jul. 6-14	Verification orders sent to LTV, USX and Bethlehem.
1993 Jul. 19-31	Verification visits to U.S. exporters.
1994 Jan. 1	NAFTA enters into force.
1994 Mar. 29	3rd Acuerdo Delegatorio of SECOFI published in D.O.
1994 Jul. 28	4th Organization Manual of SECOFI published in D.O.
1994 Aug. 2	Final Determination published in D.O.
1994 Sep. 1	Requests for NAFTA Panel Review filed by Inland and USX.
1994 Oct.	Complaints filed by Bethlehem, Inland, LTV, New Process, USX and IMSA under Rule 7, NAFTA Panel Rules.
1995 Apr. 21-22	First public hearing before the Panel.
1996 Jun. 4	Second public hearing before the Panel.