

**FINAL DECISION**

REVIEW OF THE FINAL DETERMINATION  
OF THE ANTIDUMPING INVESTIGATION  
ON IMPORTS OF UREA,  
ORIGINATING IN THE UNITED STATES OF AMERICA  
AND THE RUSIAN FEDERATION  
**CASE: MEX-USA-00-1904-01**

**PUBLIC VERSION**  
**Courtesy Translation**

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## I. INTRODUCTION

This Panel was established in accordance with Article 1904 of the North American Free Trade Agreement (“NAFTA”), to review the final determination issued by the former Ministry of Commerce and Industrial Development (*Secretaría de Comercio and Fomento Industrial*), currently known as the Ministry of Commerce (*Secretaría de Economía*) (indistinctively, the “Ministry of Commerce”), on the imports of urea, product classified under tariff item 3102.10.01 of the Tariff of the Importation General Tax Law, original from the United States of America and the Russian Federation, regardless of the exporting country, as published in the Federal Official Gazette (*Diario Oficial of the Federación*) (the “DOF”) of the United Mexican States (“Mexico”) on April 17, 2000 (the “Final Determination”).

## II. BACKGROUND

### A. OF THE ADMINISTRATIVE INVESTIGATION

1. On September 30, 1998, Agro Nitrogenados, S.A. de C.V., currently known as Agromex Fertilizantes, S.A. de C.V. (“AGROMEX”), requested the Ministry of Commerce the initiation of an administrative investigation on international commercial unfair practices, in the matter of dumping, and the application of countervailing duties, in connection with imports of urea original from the United States of America, the Russian Federation and the Republic of Latvia, regardless the exporting country. AGROMEX argued that during the period from May 1<sup>st</sup>, 1997 thru April 30<sup>th</sup>, 1998, the imports at issue were made under dumping conditions, which allegedly caused damage to the national production of identical or similar goods.

2. On December 14, 1998, the Ministry of Commerce published in the DOF the relevant determination declaring the initiation of the administrative investigation in connection with the imports of urea original from the United States of America and the Russian Federation, for a period of review from May 1<sup>st</sup>, 1997 thru April 30<sup>th</sup>, 1998. The Ministry of Commerce dismissed the request for an administrative investigation regarding the imports original from the Republic of Latvia.

3. On December 10, 1999, the Ministry of Commerce published in the DOF the Preliminary Determination of the administrative investigation at issue, in which the Ministry of Commerce resolved to continue the mentioned investigation without the assessment of provisional countervailing duties whatsoever.

4. On April 17, 2000, the Ministry of Commerce published in the DOF the Final Determination of the administrative investigation at issue, in which the Ministry of Commerce resolved to conclude the mentioned investigation without the assessment of definitive countervailing duties whatsoever, based upon the reasons that are subject to analysis in this review (the “Final Determination”).

#### B. OF THE REVIEW PROCEEDINGS BEFORE THIS BINATIONAL PANEL

1. On May 4, 2000, AGROMEX filed a Request for Panel Review in accordance with Article 1904 of the NAFTA regarding the Final Determination.

2. On June 5, 2000, AGROMEX submitted a Complaint challenging the Final Determination (the “Complaint”).

3. On June 16, 18 and 19, 2000, the Ministry of Commerce, Union Oil Company of California Corporation (“UNOCAL”), Promotora Nacional Agropecuaria Mexicana,

S.A. de C.V. (“PRONAMEX”) and JSC Togliattiazot (“JSC”) submitted, respectively, their corresponding Notices of Appearance in opposition to the Complaint filed by AGROMEX. By means of several pleadings thereafter, the above mentioned participants, including AGROMEX, appointed their respective counsels for record, and requested their authorization and/or revocation for protective orders on confidential information in this review.

4. On September 6, 2000, AGROMEX submitted a Brief in support to its own Complaint (the “Brief in Support to the Complaint”).

5. On October 13, 2000, the Ministry of Commerce submitted the relevant copies of the Final Determination, the index for the administrative record, and both confidential and public versions of the administrative record.

6. On November 1 and 3, 2000, the Ministry of Commerce, PRONAMEX, JSC and UNOCAL submitted, respectively, their corresponding Briefs in opposition to the Complaint filed by AGROMEX (respectively, the “Brief in Opposition to the Complaint” of each participant).

7. On November 21, 2000, AGROMEX filed a response to the Briefs submitted by the Ministry of Commerce, PRONAMEX, JSC and UNOCAL (respectively, the “Brief in Response” to each participant).

8. On December 4, 2000, AGROMEX and the Ministry of Commerce filed the appendix to their respective Briefs.

9. On November 6, 2001, this Binational Panel issued an Order setting the date for the Public Hearing to be held on December 4, 2001. By means of several pleadings

thereafter, the participants appointed their respective representatives to intervene during the Public Hearing.

10. On November 15, 2001, JSC filed a motion to exclude from the Panel review the imports from the Russian Federation.

11. On November 22, 2001, the Ministry of Commerce filed a motion in order for the topics on the standard of review and the scope of the review by the Binational Panel to be discussed during the Public Hearing.

12. On December 3, 2001, this Binational Panel issued an Order by which it granted the motion filed by JSC to exclude from the Panel review the imports of urea from the Russian Federation, based on the reasons referred to in section III. A. hereof.

13. On December 4, 2001, the Public Hearing for this review was held in Mexico City. At the Public Hearing, this Binational Panel denied the motion to hear allegations on the standard of review and the scope of the review by the Binational Panel, upon considering that such issues were not controversial. On the same date, the Ministry of Commerce filed a pleading including a written version of its oral interventions at the Public Hearing.

14. On January 28, 2002, this Binational Panel issued an Order requesting the Ministry of Commerce to submit certain information referred to in items 54, 73 and 74 of the Final Determination, in connection with information allegedly provided by Petroquímica Cosoleacaque, dated December 10, 1999 and January 28, 2000.

15. On January 31, 2002, the Ministry of Commerce submitted information in response to the Order mentioned in the paragraph immediately above.

### III. DECISION

#### A. ON THE IMPORTS FROM THE RUSSIAN FEDERATION

1. This Binational Panel resolved, in first place, on December 3, 2001, certain motion in connection with the merits of this Panel Review on the imports of urea from the Russian Federation, which was granted based on the reasons stated herein below.

2. Specifically, the Ministry of Commerce and the rest of participants in opposition to the Complaint of AGROMEX, argued that there is no basis for this Panel to review the imports from a country that is not a party to the NAFTA, by which this review is governed. Specifically, the Ministry of Commerce stated in its Brief in opposition to the Complaint of AGROMEX, the following:

*“It has no merits at all that by means of a review of a final determination under NAFTA Chapter XIX, the Complainant intends to have imports from the Russian Federation imposed with countervailing duties, taking into consideration that such country is not a party to the NAFTA, and therefore it would be illegal for a panel to make a decision affecting the imports from such country”.*  
Brief in Opposition to the Complaint, Pages 21-38

3. In the same token, it is undisputed that AGROMEX, in its capacity of Complainant, did never intend that this Binational Panel actually extended its review to the imports of urea from the Russian Federation. Specifically, in its Brief in response to the ones submitted by other participants in opposition to the Complaint, AGROMEX stated the following:

*“...it is important to clarify to this Panel, that... in the Brief of the Complainant itself, there is a mention to the imports of urea from the United States of America and the Russian Federation, [and that mention is] because that is a reference of the review proceedings on dumping, that is to say, it is only a mention to the name of the investigation, but in no way that reference is made in the sense that this Complainant has the intention of having this Panel review the Final Determination as for the imports of urea from the Russian Federation too...” Brief in Response, Page 12 (emphasis added)*

4. Accordingly, to the extent that it is undisputed that AGROMEX –as acknowledged by AGROMEX itself–, does not request this Binational Panel to make a review in connection with the imports of urea from the Russian Federation, regardless of the exporting country, this Binational Panel resolved to grant the motion filed by JSC to naturally exclude the imports of urea from the Russian Federation from the current review.

#### B. ON THE SCOPE OF THE REVIEW BY THIS BINATIONAL PANEL

1. Secondly, this Binational Panel resolved certain motion related to the scope of the review that the Panel may perform according to the attributions granted by the Article 1904 of the NAFTA.

2. Specifically, the controversy arose from certain request made by the Complainant AGROMEX, in the sense that this Binational Panel should “declare the plain and total nullity of the Final Determination” Brief in Support to the Complaint, Page 9. On this subject, AGROMEX literally expressed the following:

*“... legally speaking, the final decision of this Panel should be made in order for the [Ministry of Commerce] to revoke the*



*determination at issue in all its terms, so it may issue another one in accordance with law...*" Brief in Response, Page 45

3. In this regard, the Ministry of Commerce –and in the same sense, UNOCAL–, made the following allegation:

*“In the same taken it is important to clarify that panels are not empowered to nullify or revoke a final determination of the investigating authority. According to Article 1904.8 of the NAFTA, panels may only affirm or remand the final determination in order for the investigating authority to adopt measures not incompatibles with its decision...”*. Brief in Opposition to the Complaint, Page 30

4. In the opinion of this Binational Panel, the apparent controversy may and must be resolved strictly in accordance with the NAFTA express provision as stated in Article 1904.8, according to which this Binational Panel may confirm the Final Determination or remand it to the prior instance [the investigation authority] in order for it to take any measure not incompatible with the Panel’s decision. Accordingly, the attributions granted to this Binational Panel are strictly limited to confirm or remand to the Ministry of Commerce the Final Determination at issue. In the latter event, the Ministry of Commerce, as the Investigating Authority, must take any measures not incompatible with this Panel’s Decision.

### C. ON THE STANDARD OF REVIEW

1. A last issue prior to the controversial ones with respect to the Final Determination, deals with the standard of review that this Binational Panel must apply to review it.

2. The apparent dispute on this issue arises from several statements made by the Complainant AGROMEX, in regard to the alleged possibility that a Binational Panel has to apply, besides of the standard of review set forth in Annex 1911 of the NAFTA –that is to say, Article 238 of the Federal Tax Code (*Código Fiscal of the Federación*) (“CFF”), or any other law that may substitute it, based only on the record–, additional or supplemental provisions to the CFF. Specifically, AGROMEX stated essentially the following:

*“...among the laws infringed we may point out the Mexican Constitution, the 1994 [Antidumping Code], the Foreign Trade Law and its Regulations, as well as several provisions of supplemental application such as the Federal Tax Code and the Federal Code on Civil Procedures...” Brief in Support to the Complaint, Page 12*

*“...in the reviews before a panel, several law provisions may apply, and this circumstance is based on what is provided for in Article 1902.1 of the NAFTA, which indicates... [“]The law provisions on antidumping and duties, as may apply for the domestic laws of each Party, are the legislative precedents, the regulations, the administrative practice and the judicial precedents or authorities [”] ...it is legally acceptable for the panel to take into consideration such law provisions as mentioned by the Complainant in its brief... so that... the panel... may take into account each and all of these provisions as mentioned by the Complainant in its brief, for all applicable legal effects...” Brief in Response, Pages 14-17*

3. The Ministry of Commerce –and the participants in opposition to the Complaint– argued essentially that this Binational Panel should only follow and apply the language of Article 1904.3 of the NAFTA, which states that a Panel shall apply the standard of review set forth in Annex 1911 [i.e., the standard provided for in Article 238 of the CFF, or any other law that may substitute it, based only on the record] and the general legal principles (*principios generales de derecho*) that a court of the importing

Party would otherwise apply to review a determination issued by the competent investigating authority.

*“The standard of review that panels must apply is set forth in Article 1904.3 of the NAFTA, which provides that: [“]The panel shall apply the standard of review set forth in Appendix 1911 and the general legal principles...[”] Moreover, the Appendix 1911 of the NAFTA provides that... [“] in the case of Mexico, the standard of review provided for in Article 238 of the Federal Tax Code, or any other law that may substitute it, based only on the record[”].”*  
Brief in Opposition to the Complaint, Page 26

The discussion on the matter even reached the *would-be* “intention” of the “negotiators” of the NAFTA, of allegedly including purportedly additional or supplemental provisions to the CFF or other laws. In this regard, the Ministry of Commerce sustained the following:

*“... the negotiators of NAFTA did not have the intention of including, as part of the standard of review, any other provision different to the one of the Federal Tax Code, because if they had so intended, they would have indicated it expressly... ...the standard of review must not be confused with the scope of the review or the faculties that a jurisdictional entity has, such as the [former] Federal Tax Court or panels... ...the investigating authority denies the supplementary application of the several law provisions mentioned by the Complainant... ...we must not incur in the error of considering that this panel, upon performing its review, is an arbitral entity in charge of the constitutional control, because in Mexico only the Federal Courts are empowered to do that...”*  
Brief in Opposition to the Complaint, Pages 26-37

The above was replied by AGROMEX as follows:

*“...In this regard, a panel review may be based in several law provisions, and this circumstance is supported by what is provided for in Article 1902.1 of the NAFTA... In the same token, it is*

*worth mentioning that the Investigation Authority itself agrees that... Article 85 of the Foreign Trade Law provides that in the absence of express provision of such law in regard to administrative proceedings on the matter of unfair international trade practices, Article 197 of the Federal Tax Code shall apply, and that Article 197 of the Federal Tax Code provides that in the absence of express provision the Federal Code of Civil Procedures shall apply.. ...it has been demonstrated that the negotiators of NAFTA did have the intention of including as part of the standard of review several law provisions as stated in Article 1902.1 of the NAFTA...* Brief in Response, Pages 10-12

4. This Binational Panel is in agreement with what is expressed by the Ministry of Commerce and the participants in opposition to the Complaint of AGROMEX. In opinion of this Binational Panel, the language provided for in Article 1904.3 of the NAFTA with respect to the standard of review that a Binational Panel must apply, does not create any confusion whatsoever.

The language of such provision does expressly refer to Article 238 of the CFF (or any law that may substitute it), based only on the record, and to the general legal principles that a court of the importing Party would otherwise apply to review a final determination issued by the investigating authority.

5. Under the provision at issue, the only remaining possible discussion on the standard of review would deal with the determination of the manner of application and scope of the general legal principles that “would otherwise be applied by a court of the importing Party to review a final determination issued by the investigating authority”.

6. In first place, the Mexican court that “would otherwise review the Final Determination and apply the general legal principles” –that is, in the event that the Final Determination were not actually under review by this Binational Panel, but Complainant had decided to challenge it by means of a contentious administrative proceeding– would

be, in principle, the Federal Court on Tax and Administrative Justice (*Tribunal Federal de Justicia Fiscal and Administrativa*).

7. As for the manner in which the Federal Court on Tax and Administrative Justice would apply the general legal principles in reviewing a determination issued by the investigating authority, it must be taken into consideration what is provided for in Article 14 of the Mexican Constitution, whose provisions have traditionally been extended to administrative matters. According to said article, “...the final judgment must be issued in accordance with the literal provision stated in the law, and in the lack of such, [the final judgment] shall be grounded on the general legal principles.” That is to say, the Federal Court on Tax and Administrative Justice should resolve, in first place, according to the literal provision, and only if there is a lack of such express provision, it would be entitled to apply the general legal principles.

8. Finally, it would be only needed to determine the content and scope of the general legal principles that, in the lack of an express provision, would be applied by a Mexican court. In this regard, while it is true that their content may have a wide variety, Article 1911 of the NAFTA provides an exemplificative list of the type of principles that are included within the concept at issue. So, said article mentions that general legal principles, at least for the purposes of Chapter XIX of the NAFTA, include “principles such as legitimacy of legal standing, due process, rules for interpretation of law, matters on non-validity of law and exhaustiveness of administrative resources or appeals”.

9. Therefore, in opinion of this Binational Panel, the controversy with respect to the applicable standard of review –in the sense that this Binational Panel may review the Final Determination based on criteria, provisions or laws different to the one set forth in Article 1904.3–, is only apparent.

10. In opinion of this Binational Panel, the alleged controversy derives, in any event, from an apparent confusion in the allegations made by the Complainant, with respect to what must be understood within the standard of review –to which Article 1904.3 of the NAFTA makes reference–, in connection with the legal provisions and laws to which this Binational Panel must refer to determine whether the Final Determination was issued in accordance with the applicable “Mexican legal provisions in the matter of *antidumping* and countervailing duties –which is a matter referred to in Article 1904.2 of the NAFTA–.

The matter is so simple like this: the manner in which a binational panel decides whether a determination was issued in accordance or not with the Mexican laws (including all the laws of Mexico), is by applying the criteria set forth in Article 238 of the CFF and the general legal principles, as they would be applied by a Mexican court.

Accordingly, the list of laws referred to in Article 1904.2 (including the Mexican including the Mexican Constitution, international treaties, ordinary laws, etc.) is not, evidently, the standard of review that a panel must apply, but rather precisely the legal provisions that will be the basis to perform the review.<sup>1</sup>

11. Based on the above, according to the provisions of the NAFTA, this Binational Panel is obliged to determine whether the Final Determination was issued in accordance with the applicable Mexican law provisions on *antidumping* and countervailing duties (as provided for in Article 1904 of the NAFTA), by applying the standard of review as set forth in Article 238 of the CFF, based only on the record, and

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<sup>1</sup> This is true by only reading Article 1904.2, which expressly provides that the panel shall decide whether the final determination at issue was in accordance with or not to said laws, “to the same extent that a Mexican court could otherwise base on such documents its review of a final determination of the investigating authority.” (emphasis added)

in the lack of an express provision, the general legal principles in the same manner that they would otherwise be applied by a Mexican court.

D. ON THE ALLEGED CHANGE OF THE LEGAL STANDING OF THE COMPLAINANT

1. The following topic at issue is, in the opinion of this Binational Panel, the most important issue in this review. The controversy essentially arises from the following reasoning as expressed by the Ministry of Commerce in the Final Determination:

*76. At the time of requesting the initiation of the investigation on dumping, [AGROMEX] evidenced its character of national producer of urea, and as a consequence of that [it evidenced], its legal standing for such purpose. However, to the extent that there is not currently –and since several months ago– national production of urea due to the several reasons mentioned in the prior items, it cannot be an affectation to the national production of identical or similar goods, which is an indispensable requisite for the existence of an unfair practice. That is to say, in view that [the petitioner] cannot be considered as a national producer anymore, it loses its legal standing as a plaintiff [legitimación procesal activa], and therefore the investigation is left without subject matter, according to Articles 28, 40, 50 and 51 of the Foreign Trade Law [Ley de Comercio Exterior] and 76 of its Regulations, reason by which, based on Articles 59 section I of the Foreign Trade Law and 83, section II of its Regulations, the following RESOLUTION is hereby issued:*

*77. The administrative investigation on the matter of unfair international trade practices, on its dumping modality, is hereby terminated without imposing any countervailing duty whatsoever to the imports of urea, product classified in the tariff section 3102.10.01 of the Tariff of the Importation General Tax Law, original from the United States of America and the Russian Federation, in view that the petitioner [AGROMEX] did not evidence during the course of the investigation, the maintenance of its character as national producer, which is a fundamental*

*hypothesis of legal standing as a plaintiff [legitimación procesal activa] on the matter. That is to say, that it does not produce urea, circumstance that causes a material change in its legal situation in this investigation.” Final Determination, Page 107*

2. AGROMEX challenged the alleged illegality of the determination by the Ministry of Commerce to conclude the administrative proceeding without assessing definitive countervailing duties whatsoever, based on the reasoning that, upon the issuance of the Final Determination, AGROMEX had lost the character of national producer and that, accordingly, it lacked of the legal standing as plaintiff (*legitimación procesal activa*) in the administrative investigation.

In general terms, AGROMEX sustains that there are no valid reasoning nor legal grounds (*motivación* and *fundamentación*) on which the Ministry of Commerce may have supported its determination to terminate the investigation at issue, based on the alleged lack of legal standing as plaintiff, derived from the undisputed fact that at the time of the issuance of the Final Determination, AGROMEX did not produce urea (and therefore, it could not be considered as a “national producer”). In support to this allegation, AGROMEX points out the fact that the Ministry of Commerce had previously acknowledged its character as national producer, both in the determination by which the investigation was initiated, and the Preliminary Determination.

*“According to the transcription of paragraph 75 of the Final Determination at issue, the [Ministry of Commerce], sustains on an unlawful basis that the Complainant does not have the capacity as national producer, without any legal ground or reasoning whatsoever... Such capacity as national producer was fully evidenced... at the corresponding procedural times. The above is fully accepted and validated in the administrative record itself, as it is evidenced by the fact that the [investigating] authority, in both the Determination declaring the initiation of the investigation, and the Preliminary Determination, specifically in item 4 of them, acknowledges the Complainant’s capacity as national producer during the period of review, which is a*



*requirement sine qua non to initiate, continue and conclude a dumping investigation... therefore, since the capacity as national producer was fully evidenced during the period of review, it has no merits, legally speaking, to now conclude unilaterally, on an arbitrary basis and without legal grounds, that the Complainant has lost its character as national producer...* Brief in Response, Pages 17-18

*“...the Investigating Authority ... concludes in the absurd sense that in order for the capacity of national producer to exist, a person must be actually producing, which is evidently mistaken. The investigating authority makes such a statement without any legal grounds or reasoning whatsoever... it does not rely on any law provision stating expressly that in order to have the capacity of national producer, one must be actually producing... in this case, the Complainant has the capacity of national producer, since it has with the installed capacity to produce the merchandise at issue... now, the fact that the Complainant is not currently producing, is evidently due to the... injury that the imports under review caused to it...”* Brief in Response, Pages 19-24

3. The Ministry of Commerce –in the same sense that the participants in opposition to the Complaint of AGROMEX–, argues that the petitioner of an administrative investigation must maintain its capacity as national producer during all the time of the course of the administrative investigation, including the time of issuance of the final determination. The Ministry of Commerce opines that the fact that AGROMEX did not produce urea at the time of the termination of the administrative investigation –besides the undisputed fact that there was no any other national producer, so there was not national production neither–, is a conclusive explanation that, under any circumstance, AGROMEX was or could be considered as a national producer, that is, representative of any national production whatsoever, and therefore, upon the issuance of the Final Determination, it definitively lacked of legal standing as a plaintiff.

Moreover, as for the fact of the inexistence of national production at the time of termination of the administrative investigation, the Ministry of Commerce, particularly

in its interventions during the Public Hearing, argued that the inexistence of national production is a determinative factor to conclude that “there is no a legally protected interest (*bien jurídico que proteger*), fact which lead [the Ministry of Commerce] to the determination of not assessing... countervailing duties..., because such duties have as their purpose the elimination of distortions that may exist within a market as a consequence of an unfair practice, and therefore they may equilibrate it, [because] they are not a punishment nor they can be assessed to protect an inexistent national production.”

*“...in the Final Determination published in the DOF on April 17, 2000, it is clearly stated that the [Ministry of Commerce] relied and reasoned its determination on the fact that in the final stage of the investigation, the Complainant did not maintain its capacity as national producer, which is a sine qua non requisite in a review of this nature, and that it would not recover such capacity within the short or medium term... Moreover, items 75 and 76 of the Final Determination... specifically indicate the result derived from the analysis of the information and allegations [provided by the Complainant]. Specifically, item 76 provides the following: [“]... pursuant to Articles 28, 40, 50 and 51 of the Foreign Trade Law and 76 of its Regulations, and based on Articles 59, Section I of the Foreign Trade Law and 83, Section II of its Regulations, the following determination is hereby issued [”]. According to the above, it is clear that the allegation brought by the Complainant that the Determination at issue was not based on any law provisions nor provided any reasoning, it is evidently untrue by making only a simple reference to item 75 of the [Final] Determination, so [that allegation] is groundless, malicious and made only with the intention to create confusion to this Panel... the Complainant says that the capacity of national producer must be maintained only during the period of review... the statement in the sense of limiting [such capacity] only to the period of review is contrary to the spirit and nature of the unfair international trade practices [regime]... as a matter of simple logic, and taking into consideration the meaning of the word producer and production, according to the Dictionary from the Royal Spanish Language and the Encyclopedia of Martín Alonso, it is clear that the capacity of producer may only be maintained by actually producing... The*

*fact of interpreting the phrase “national producer” in such a way that does not describe a person who is actually producing, but a person who produced in the past, would lead to the absurd scenario in which the annual reviews and quarterly tests had no merit nor purpose at all.. the Complainant acknowledges that the capacity of national producer is a sine qua non requisite to initiate, continue and finish a review on unfair international trade practices. Lastly, and just in case the allegations above mentioned were not enough by themselves, it is worth mentioning that the Complainant does not render any information, allegations or evidences to demonstrate that during the investigation it recovered the capacity of national producer...” Brief in Opposition to the Complaint, Pages 39-54 (emphasis in the original).*

*“...Once the production was absent, the Complainant suffered a change in its legal standing, and therefore the determination of the investigating authority was the only one that it could make, that is to say, to determine that no countervailing duties could be imposed. Moreover, and assuming that the allegation from the Complainant were true, it would lead us to the absurd scenario of leaving without any effect articles such as [Article] 99, first paragraph of the Regulations of the Foreign Trade Law, which provides the reasons upon which countervailing duties may be eliminated if no national production exists: [“]The [Ministry of Commerce] shall review countervailing duties based on the change of circumstances that originated the existence of dumping or subvention, pursuant to Article 68 of the Foreign Trade Law[”]. As a reference of recent determinations in which the corresponding countervailing duties have been eliminated in the absence of national production are the following cases: florfenicol and sulfato de gentamicina (reviews), clorhidrato de procaina and clorhidrato de l-cisteina (product covering cases)...” Brief in Opposition to the Complaint, Page 104*

4. The first matter to resolve has to do with the concept of “national producer”. In principle, it is necessary to determine whether such concept does exist within the Foreign Trade Law (*Ley de Comercio Exterior*) (“LCE”), its Regulations or any other applicable law, as a legal term with a single meaning, whose definition, scope and content is provided by law.

5. Article 40 of the LCE makes reference expressly to the term “national production”. Among other things, it states that for purposes of such law, the term “national production” shall be understood “in the sense of comprising, at least, the 25% of the national production of the merchandise at issue”. The reference to the term “national production” is indispensable in connection with Article 50 of the LCE, which provides the hypothesis for the initiation of an administrative investigation upon the request of a petitioner. In this regard, it provides that “the request by a petitioner may be filed by the producer individuals or legal entities”, and that “petitioners must be representative of the national production, according to Article 40 [of the LCE]...”

Article 60 of the Regulations of the LCE states that “petitioners referred to in Article 50 of the [LCE], must evidence that they represent at least the 25% of the national production of the merchandise at issue.” Article 63 of the above mentioned Regulations, provides among other things that “to determine the existence of injury, the [Ministry of Commerce] must evaluate the impact of the investigated imports on the total national production, or on those national producers whose joint production constitutes the principal part of the total national production of the merchandise at issue... The [Ministry of Commerce] must assure that the determination of the corresponding injury be representative of the situation of the total national production. For such purposes, the [Ministry of Commerce] must gather all necessary information from non-petitioners national producers, and they must submit to the [Ministry of Commerce] all information they are required to produce”.

In view that there are no judicial precedents or any other provisions that may define the concept, the above mentioned provisions may be the clearest expressions of the term “national producer”. Based strictly on the literal expression of law, this Binational Panel realizes, in first place, that the term is used in direct relationship with the

representativeness criterion that a person has with respect to what is defined in law as national production.

6. This Binational Panel opines that, within the global context of the LCE, the term “national producer” should not nor cannot be exclusively referred to the persons that in a given time –as may be the time of the issuance of a final determination in an administrative investigation– are actually *producing* in fact.

It is the opinion of this Binational Panel, as further supported in item 20 of this Decision, that such a statement would lead us to accept that the LCE or in general, the *antidumping* or countervailing duties related laws in Mexico, do tolerate or encourage the existence of unfair practices that, if they are harmful enough, may have nullified the national producers before the issuance of a final determination in an administrative investigation, which consequently, would apparently leave the Ministry of Commerce with no possibility to sanction the injury caused by such unfair practice.

That does not seem to be the sense of the law. Let us think, for example, in a case involving the Mexican agricultural field. Under the interpretation suggested by the Ministry of Commerce and the participants in opposition to the Complaint of AGROMEX, the Mexican law would be insufficient to duly protect, among others, the agricultural producers, who usually interrupt their production between the end of a season and the beginning of the next one.

Indeed, it is worth mentioning that during the Public Hearing, the representatives of the Ministry of Commerce did acknowledge that the character of national producer may be maintained even if the production is interrupted –as may be the case as a consequence of the existence of international commercial unfair trade practices–

“...I’d like to make it clear that that is not our interpretation. The fact that a company that requests we initiate an investigation stops producing because of unfair trade practices does not mean that the investigation is automatically abandoned for practical purposes. In fact, in the case before us, the point is that the petitioner was unable to demonstrate that it could continue or reinstate production in the short or medium term and, consequently, maintain the status or constitute the national production that the Mexican antidumping system protects...” Transcription of the Public Hearing, without page (emphasis added)

The Ministry of Commerce further said:

“Yes, it’s a different scenario, but I’d say that the authority would listen to and review the arguments put forward by importers and exporters in order to reach a decision in this hypothetical case. And if it were necessary for the investigating authority to request any other information or carry out any other due diligence in order to make its decision in this hypothetical case, then it would do so. Just as occurred in this case, where the arguments and opinions put forward were heard and evidence was sought as a basis on which to make the decision. So we would insist that the authority’s decision, in this case and in the hypothetical case you are putting to me, was based on this combination of elements, not on the simple fact that production was stopped or suspended...” Transcription of the Public Hearing, without page (emphasis added)

7. In the present case, in the Final Resolution the Ministry of Commerce did not provide adequate legal grounds or reasoning (*fundamentación y motivación*) to explain why the Complainant “was not a national producer anymore”. An adequate analysis based on the applicable law provisions and reasoning (*fundamentación y motivación*) requires that, in this case, the Ministry of Commerce explain the legal grounds and rationale for distinguishing the case in which a national producer retains its standing even

though it is not producing, and the one in which a national producer ceases to have standing precisely because it is no longer producing.

Accordingly, this Binational Panel opines that an adequate determination of the scope of the term “national producer”, must take into consideration the entirety of elements gathered throughout the course of an administrative investigation with respect to the capacity of a petitioner (or other participants) to produce identical or similar goods to the ones that are the subject matter of the relevant investigation, since such interpretation seems to be according to the express purpose of the LCE as set forth in Article 1 of such law, and on the contrary, an interpretation in other sense seems not to be consistent.

8. Now therefore, the matter on its merits consist of determining whether the Ministry of Commerce did rely on the applicable legal provisions and provide an adequate reasoning to terminate the administrative investigation without assessing any countervailing duty whatsoever, based on the reasoning that AGROMEX had lost, during the course of the investigation, its character as national producer and, as a consequence of that, it lost its “legal standing as a plaintiff”, as well as whether such circumstance may validly cause the termination of the investigation because of “lack of subject matter” of the investigation.

9. In first place, this Binational Panel analyzed the concept of the legal standing of the plaintiff (*legitimación procesal activa*), in order to determine whether the reasoning expressed by the Ministry of Commerce, and the legal provisions mentioned in the Final Determination, do actually correspond to such feature.

10. In general terms, the nature of the legal standing of the plaintiff, also identified in our legal systems as legal standing ad procesum, is not disputed by the participants. Essentially, all participants agree that the legal standing of the plaintiff or ad procesum corresponds to the ability of a party to a trial to request a jurisdictional entity to

resolve a controversy. However, the participants did controvert the scope and the application of such feature in reference to an administrative proceeding on the matter of unfair international trade practices. .

11. AGROMEX sustained in this regard that, in general terms, the legal standing of the plaintiff is necessarily referred to the legal standing that a petitioner must have only at the time of requesting the initiation of an administrative investigation upon the request of such petitioner. In other words, AGROMEX argued that the legal standing of the plaintiff must only be evidenced at the time of the initiation of the investigation, and not during its course.

*“...The Investigating Authority erroneously argues that in this case a change of legal standing occurred with respect to the Complainant, allegedly because there was a lack of legal standing as a plaintiff [legitimación procesal activa] ...because the Complainant did not demonstrate during the course of the investigation that it maintained its capacity as national producer, which is allegedly a fundamental hypothesis for a legal standing of plaintiff on this subject, because it did not produce urea anymore... According to paragraph 77 of the determination at issue, it is clear that the investigating authority acted on an unlawful basis, in view that said determination is not duly relied upon any law provision or reasoning that may support it, and is actually limited to state that there is an alleged compliance with a hypothesis of legal standing of a plaintiff on the subject, without making any reference to the alleged law provision in which it is provided what the legal standing on this subject consists of, and if such legal standing may have merits in this particular case. That is to say, the legal standing of a plaintiff, as defined by the investigating authority itself, is a general legal principle, and therefore is not a fundamental hypothesis on the matter, because the legal standing of a plaintiff as such, must be understood as the legal capacity to excite a jurisdictional entity in order for such jurisdictional entity to initiate a trial, circumstance that in the present case was fully evidenced... with the simple fact of admitting the denunciation writ and acknowledging its legal personality, since such facts recognized the existence and*



*demonstration of the legal standing as a plaintiff or ad procesum...*” Brief in Support to the Complaint, Pages 30-49.

12. The Ministry of Commerce and the participants in opposition to the Complaint of AGROMEX says otherwise. They say that the legal standing of the plaintiff, because of its very nature, must be evidenced at all times during the course of the investigation, and not only at the time of the request for initiation.

*”...it is clear that the Complainant lost its capacity of national producer by the final stage of the investigation, without any possibility to recover it within the short or medium term and, therefore, the legal standing as a plaintiff [legitimación procesal activa]... the legal standing consists of two essential elements: the legal standing of the plaintiff [legitimación procesal activa or ad procesum] and the legal standing regarding the cause itself [legitimación procesal causal or “ad causam”]. The first one is an essential requisite for a trial to initiate and must be evidenced during the whole process... The second one is an essential requisite for the judge to issue a favorable judgment [to the plaintiff]... due to the change on the legal standing of the Complainant by not having demonstrated its capacity as national producer during the final stage of the investigation, the investigating authority correctly applied the concept of legal standing of a plaintiff in its Final Determination...”* Brief in Opposition to the Complaint, Pages 57-71

13. In principle, this Binational Panel feels inclined to sustain that the legal standing of the plaintiff, as such, must be maintained at all times during the course of a trial.. However, the opinion of this Binational Panel is that the discussion on the application of the feature of the legal standing of the plaintiff, as argued by the participants, has no sense in relationship with an administrative investigation on the matter of unfair international trade practices, as it is the case at issue.

14. Reasons are several, but all of them have to do with the very nature of, on one hand, what it is known in our legal systems as legal standing of the plaintiff and, on

the other one, of the administrative proceeding on the matter of unfair international trade practices.

15. In first place, the concept of legal standing of the plaintiff is necessarily referred to the existence of a trial, that is to say, to rights in dispute to be resolved during the trial. Using the same words that have been employed by the Mexican Supreme Court of Justice in this regard, the legal standing of the plaintiff “occurs when the action is brought in trial by the person who has the ability to assert the right to be disputed...” So it may be read in the following *jurisprudence* precedent:

*“LEGAL STANDING OF A PLAINTIFF [LEGITIMACIÓN PROCESAL ACTIVA]. CONCEPT. The legal standing of a plaintiff is the ability to appear before the jurisdictional entity and be entitled to request the initiation of a trial or an instance. This legal standing is also known as legal standing ad procesum and occurs when the right that is going to be disputed is brought by the person who is entitled to assert such right, different from the legal standing ad causam that implies [that a person has] the title of the disputed right in trial. The legal standing of a plaintiff in the process occurs when the action is brought in trial by the person who has the ability to assert the right to be disputed, whether because he/she presents himself/herself as the holder of such right, whether because he/she has the legal representation of the holder. The legal standing ad procesum is a requisite for the trial to develop, while the [legal standing] ad causam, is [a requisite] to obtain a favorable judgment.*

*Tax Review 80/83. Seguros América Banamex, S.A. October 17, 1984. Four Votes Unanimity. Absent: Eduardo Langle Martínez. Speaker: Carlos of the Río Rodríguez. Secretary: Diana Bernal Ladrón de Guevara.*

*Amparo in Review (Complaint) 1873/84. Francisco Toscano Castro. May 15, 1985. Four Votes Unanimity. Absent: Fausta Moreno Flores. Speaker: Carlos de Silva Nava. Secretary: Jorge Mario Montellano Díaz.*

*Complaint 11/85. Timoteo Peralta et.al. November 25, 1985. Four Votes Unanimity. Absent: Manuel Gutiérrez de Velasco. Speaker: Carlos de Silva Nava. Secretary: Jorge Mario Montellano Díaz.*

*Amparo in Review 6659/85. Epifanio Serrano et.al. January 22, 1986. Five Votes. Speaker: Carlos de Silva Nava. Secretary: Jorge Mario Montellano Díaz.*

*Amparo in review 1947/97. Néstor Faustino Luna Juárez. October 17, 1997. Five Votes. Speaker: Sergio Salvador Aguirre Anguiano. Secretary: Adela Domínguez Salazar.*

*Jurisprudence Resolution 75/97. Approved by the Second Courthouse, Supreme Court of Justice, Private Session of December 3, 1997, Five Votes Unanimity, Justices Juan Díaz Romero, Mariano Azuela Güitrón, Sergio Salvador Aguirre Anguiano, Guillermo I. Ortíz Mayagoitia and Chairman Genaro David Góngora Pimentel.*

*Ninth Epoch; Second Courthouse, Supreme Court of Justice, Weekly Federal Judiciary Gazette, Volume VII, January, 1998; Resolution: 2a./J. 75/97, Page 351” (emphasis added)*

16. Now hence, the nature of the administrative investigation on the matter of unfair international trade practices is not the same than the one of a trial. There is no controversy whatsoever, nor there is an investigation followed under the form of a trial (in which the Ministry of Commerce acts with a jurisdictional function, or even lesser, as a party). The Ministry of Commerce acts strictly in compliance with attributes of administrative nature that do not create rights to persons.

17. This matter is essential. In a trial, there is a right (or alleged right) of a person that will be disputed in trial. In protection of principles of procedural economy and legal certainty, *inter alia*, there is an evident interest that the person who brought the action be the person legally able to act during the whole course of the trial, because

his/her right (or alleged right) is precisely the subject matter of such trial, with respect to which the controversy will be resolved (whether declared or constituted).

18. On the contrary, in the administrative investigation on the matter of unfair international trade practices, which may be even initiated *ex officio*, there are no particular rights in dispute. It may certainly happen that the investigation begins upon the request of a petitioner, but that does not mean that such petitioner becomes a “party” to the investigation, in the sense that such investigation becomes a sort of trial, or in the sense that any rights of the petitioner be in dispute, or that based on such rights a controversy must be resolved.<sup>2</sup>

In support of the above, the federal Courts have pointed out, as evidenced in the following precedent that an administrative investigation on the matter of unfair international trade practices has a nature of public policy, in which there are not plaintiffs and respondents (and therefore, it cannot be said there is a legal standing of the plaintiff).

*“COUNTERVAILING DUTIES DETERMINED BY THE MINISTRY OF COMMERCE AND INDUSTRIAL DEVELOPMENT UPON THE ISSUANCE OF FINAL DETERMINATIONS IN THE ADMINISTRATIVE INVESTIGATION ON UNFAIR INTERNATIONAL COMMERCIAL PRACTICES. THEY ARE OF GENERAL APPLICATION FOR ALL IMPORTERS OR CONSIGNEES OF THE MERCHANDISE REFERRED BY THE MINISTRY OF COMMERCE IN THE RELEVANT DETERMINATION, REGARDLESS THAT THEY HAD INTERVENED OR NOT IN THE RESPECTIVE INVESTIGATION. The countervailing duties referred to in the [LCE], are applied once the administrative investigation on the matter of unfair international trade practices have taken place, which may be initiated ex officio or upon the request of a*

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<sup>2</sup> It is worth mentioning that the Foreign Trade Law makes reference to “interested parties” to an antidumping investigation. However, as supported in this Decision, such terminology does not imply in any manner whatsoever that a petitioner becomes a “party” –in the sense of a trial, being in dispute a right of such petitioner–.

*petitioner, as provided by Article 49 of such law; so, the investigation on unfair international trade practices is regulated by Articles 49 to 60, wherein is regulated the time of initiation of the investigation, and the time of termination, upon which the final determination may resolve the assessment of countervailing duties in provisional manner (Article 57), or determining definitive countervailing duties, and such resolution may even revoke provisional countervailing duties, or declaring the termination of the investigation without imposing any countervailing duties (Article 59). Moreover, pursuant to Article 89 of the [LCE], the countervailing duties determined by the [Ministry of Commerce] are mandatory as of the day following the date of publication in the [DOF]; accordingly, as from such date, all importers and consignees shall be obliged to calculate in the corresponding importation request, the amount of provisional or definitive duties, that shall pay along with the taxes applicable to foreign trade. This circumstance evidences that the countervailing duties determined by the [Ministry of Commerce], once that they have been issued in a final determination in an administrative investigation on unfair trade practices, are mandatory for all importers or consignees of the merchandise that is subject to the final determination, that is published in the [DOF]; therefore, it is irrelevant that the particular to which these countervailing duties are applied, has participated or not in the relevant investigation, in view that as mentioned, Article 89 of the [LCE] is conclusive when it provides that importers or their consignees shall apply themselves the mentioned duties, without prejudice that the customs authorities may otherwise apply them. The above is strengthened by the fact that the investigation on unfair international trade practices performed by the [Ministry of Commerce] is not a proceeding to "resolve particular cases", but it is an investigation of public interest whose purpose is the protection of the national production in front of unfair practices that may result injurious for the same, by means of this investigation and the assessment of countervailing duties, it is protected the interests of all producers and not any particular rights, and because of that there are no plaintiffs or respondents, but the proceeding may be initiated upon request of a petitioner or ex officio.*

**COLLEGIATE COURT ON ADMINISTRATIVE MATTERS, SIXTH CIRCUIT.**

*Tax Review 393/99. Under-Administrator, Contentious Department "1" of the State Income Administration Office, Puebla. July 6, 2000. Unanimity. Speaker: Francisco Javier Cárdenas Ramírez. Secretary: Luz Idalia Osorio Rojas.*

*Ninth Epoch, Collegiate Court on Administrative Matters, Sixth Circuit, Federal Weekly Judiciary Gazette, Volume XII, September, 2000, Resolution VI.A. 79 A, Page 736” (emphasis added)*

19. In any event, and based on the above, it becomes clear that the requisite of certain percentage to be considered as a person representative of the national production, as required by the LCE and its Regulations, could be referred to as –if there is any need to classify it– as a *requisite to proceed*, that is to say, as a simple requirement to initiate the investigation upon the request of a petitioner.

This is so true, that the Mexican courts have explicitly sustained, in several resolutions, the independence of the request to initiate the investigation on the matter of unfair international trade practices, with respect to the investigation itself.

According to the interpretation of the federal courts, the petitioner is, to the greatest extent, just a coadjutant of the investigation –so this situation implies that he/she has an adjective right to provide information and render evidences–, but in no way such petitioner may be considered as a “party” –within the meaning of a trial–, whose rights are in dispute, or upon which depends, in any manner whatsoever, the development and the termination of the investigation itself. This is supported by the following precedent:

*“MINISTRY OF COMMERCE AND INDUSTRIAL DEVELOPMENT. AMPARO HAS NO MERITS AGAINST FINAL DETERMINATIONS ISSUED BY, ON DUMPING. APPLICATION OF SECTION V, ARTICULE 73 OF THE AMPARO LAW. When final determinations issued by the [Ministry*

*of Commerce] on dumping are challenged through the amparo trial, including violations to the respective administrative investigation, such trial has not merits, because such final determinations do not affect the legal sphere of particulars. That is so by reading the relevant articles of the [LCE] and its Regulations in connection with the subject matter at issue, according to which it is clear that such provisions provide, with respect to an investigation on unfair international trade practices, and administrative proceeding in which the petitioners act only as such, because while it is true that Articles. 10 of the [former] Ley Reglamentaria del Artículo 131 Constitucional en Materia de Comercio Exterior and 13 of its Regulations Against Unfair International Commercial Practices require that the individuals or legal entities producers of identical or similar goods to those that are being imported or intend to be imported, do represent at least the 25% of the national production of such merchandise, they may petition for the [Ministry of Commerce] [to investigate] the facts that may constitute dumping, and that Article 27 of the above mentioned Regulations provides that during the period of the investigation, the parties who have evidenced their interest in the results may render and submit all type of evidence except for the confessions or those against the public order or the good customs, but that does not mean that the participation of the petitioners in any way creates in their favor any right to the assessment of a countervailing duty, and even less that such countervailing duty may generate a right or benefit whatsoever for a petitioner to feel affected by its modification; on the contrary, it is a procedure in which the [Ministry of Commerce], whether ex officio or upon the request of a petitioner, is the only one in charge of investigating and determining the existence or inexistence of dumping, that is, of the unfair international commercial practice consisting of the importation to the domestic market of foreign merchandise at a lower price to their normal value; it must be said that the original intention of the Congress, upon the issuance of the relevant law, was not to favor particular interests of a determined individual or legal entity, but to regulate and promote the foreign trade, the national economy, the stability of the national production or the performance of any other similar purpose for the benefit (of the country), as provided for in Article 1o. of the Ley Reglamentaria del Artículo 131 Constitucional en Materia de Comercio Exterior. It is so true that the role of a petitioner is only as such, that once that a request has been filed (whether it has been accepted in all*

*its terms or if it has been remanded for clarification), [the Ministry of Commerce] is devoted to perform the respective administrative investigation, in order for which, within a term of five working days, issues a provisional determination, if so is applicable, imposing the provisional countervailing duty (Article 11); within the term of thirty days counted as from the date on which the provisional determination is effective, this may be confirmed, modified or revoked as applicable; it declares the initiation of the investigation; receive evidence and orders the rendering of any other evidence applicable and, finally, issues a final determination (Articles 12 and 13). Therefore, the fact that the provisions from which derives the act that is being challenged, specifically Articles 13 of the law and 27 of the Regulations provide that the petitioners may render all type of evidence except for those prohibited, do only mean that such individuals or legal entities act, in any event, as coadjutants of the investigating authorities in order for it to determine whether a dumping practice exists or not. In view of the above, it is clear that the fact that the investigating authority admit evidences, based on what is provided by the law, does not affect the plaintiff, since the now petitioner, now plaintiff in this trial, was only limited to make aware the investigating authority the facts that it considered to constitute an unfair practice... Another additional element confirming the criterion that final determinations on dumping do not affect the legal standing of petitioners, is the one related to the nature of the countervailing duties imposed by the authority, which in principle are a contribution imposed to individuals or legal entities who import merchandise into the national territory under unfair international trade practices (Article 35, Section I, item c, of the Customs Law), and whose purpose is to punish, prevent or dissuade imports under such unfair trade practices, besides to the fact that they are applicable independently of the tax tariff that may correspond to the merchandise at issue, therefore being a regulatory or restrictive measure to the importation of products, because they are intended to protect the stability of the national production, and prevent the establishment of new industries or the development of the already existing ones (Articles 1<sup>st</sup> and 8<sup>th</sup> of the Law). Therefore, it is evident that the attribution to impose countervailing duties and their collection, are own and exclusive attributions to the Government, and not to particulars, so their modification, revocation or confirmation is an act which only affects to the Government itself, or in any event, to the importers*



*of merchandise under an unfair trade practice, because they are over whom the relevant countervailing duty is imposed, but in no way to the national producers in view of the mentioned above.*

*FOURTH COLLEGIATE COURT ON ADMINISTRATIVE MATTERS, FIRST CIRCUIT.*

*Amparo in Review 334/92. Fibras Sintéticas, S. A. de C. V. May 14, 1992. Unanimity. Speaker: José Méndez Calderón. Secretary: Benito Alva Zenteno.*

*Eight Epoch, Fourth Collegiate Court on Administrative Matters, First Circuit, Federal Weekly Judiciary Gazette, Volume X, December, 1992, Page 363.” (emphasis added)*

20. Based on the above, this Binational Panel does not agree with the participants in opposition to the Complaint de AGROMEX, that the lack of the character of national producer by AGROMEX –that according to the Ministry of Commerce, causes the lack of its “legal standing as a plaintiff”– upon the issuance of the Final Determination at issue, may indeed be any of the hypotheses set forth in the law provisions mentioned in the Final Determination at issue, upon which the Ministry of Commerce allegedly grounded the Final Determination, or that in any other manner, such circumstance may leave the investigation “without subject matter”.

21. Moreover, this Binational Panel is also aware of several statements from the Ministry of Commerce during this review, in the sense that “to the extent that there was not national production upon the issuance of the Final Determination, there was no a legally protected interest”, as well as the allegations that such statement is supported in the alleged impossibility of the petitioner –actual or not, demonstrable or not– of producing again “within the short or medium term”, as argued by the Ministry of Commerce during the Public Hearing:

*“...it is worth mentioning that the investigating authority at the time of issuing its final determination could not impose countervailing duties on a product that was not produced in the country and with respect to which there were no indications that it would be produced within the short or medium term.”*

Transcription of the Public Hearing, without page

As same as the allegation on the “legal standing of the plaintiff” on an administrative investigation on unfair international trade practices, this Binational Panel has found no law provisions whatsoever upon which it may be grounded any of the above mentioned allegations, in the sense that the national production must actually exist at the very time of the issuance of a final determination following an investigation on the matter of unfair international trade practices, or in the sense that its termination depends on the possibility of a petitioner to produce or not the merchandise at issue, within the short, medium or any other term.

Indeed, the sole suggestion that an investigation may be terminated based on the possibility or impossibility of a petitioner to produce, seems to imply that the outcome of the investigation depends on a substantive right of such petitioner. As mentioned before, there is no such right in favor of any participant.

Furthermore, the concept of “national production” may certainly have *time content* (it may be certainly said that the national production is the existing one). But however, there is no law provision whatsoever in the LCE, its Regulations or any other law, to the best knowledge of this Binational Panel, according to which the injury or threat of injury associated to an unfair commercial practice must be caused, have caused or continue be causing, yet, during or at the very same time of the issuance of a final resolution resulting from an investigation on the matter of unfair international trade practices, in order for the Ministry of Commerce to be able to assess countervailing duties to the imports that had caused the injury or the threat of injury.

Actually, the allegation of the Ministry of Commerce may be reduced to such extreme, by stating that if there is not national production at the very same time of the issuance of the final resolution, there is not a legally protected interest, and therefore no countervailing duty may be imposed.

This reasoning is dangerous itself, not only because there is no law provision to support it –only by reading the Article 1 of the LCE, it becomes clear that the purpose of the LCE is far broader than the mere protection of the *existing* national production–, but also because such argument would be equal to the notion that if an unfair international commercial practice is carried out in such an effective manner that could exterminate the national production during the course of an administrative investigation, but before the issuance of the final determination, that would be sufficient to definitively retain the domestic market, and also sufficient to avoid any future possibility of being imposed with countervailing duties in the interest of new domestic industry, protected by the *technicality* that “upon the termination of the administrative investigation, there was not national production (to protect) anymore.”

Again, according to the precedent recently mentioned above, the federal courts have interpreted that the administrative investigations on the matter of unfair international trade practices, are conducted not only to protect the existing national production, but also the future industry.

*“MINISTRY OF COMMERCE AND INDUSTRIAL DEVELOPMENT. AMPARO HAS NO MERITS AGAINST FINAL DETERMINATIONS ISSUED BY, ON DUMPING. APPLICATION OF SECTION V, ARTICULO 73 OF THE AMPARO LAW. ... Another additional element confirming the criterion that final determinations on dumping do not affect the legal standing of petitioners, is the one related to the nature of the countervailing duties imposed by the authority, which in principle*

*are a contribution imposed to individuals or legal entities who import merchandise into the national territory under unfair international trade practices (Article 35, Section I, item c, of the Customs Law), and whose purpose is to punish, prevent or dissuade imports under such unfair trade practices, besides to the fact that they are applicable independently of the tax tariff that may correspond to the merchandise at issue, therefore being a regulatory or restrictive measure to the importation of products, because they are intended to protect the stability of the national production, and prevent the establishment of new industries or the development of the already existing ones (Articles 1<sup>st</sup> and 8<sup>th</sup> of the Law)...*

**FOURTH COLLEGIATE COURT ON ADMINISTRATIVE MATTERS, FIRST CIRCUIT.**

*Amparo in Review 334/92. Fibras Sintéticas, S. A. de C. V. May 14, 1992. Unanimity. Speaker: José Méndez Calderón. Secretary: Benito Alva Zenteno.*

*Eight Epoch, Fourth Collegiate Court on Administrative Matters, First Circuit, Federal Weekly Judiciary Gazette, Volume X, December, 1992, Page 363.” (emphasis added)*

22. Based on the above, this Binational Panel finds merits on the claim at issue, in the sense that the Final Determination lacks of reasoning and legal grounds to support the Ministry of Commerce’s determination to terminate the administrative investigation on the basis that such investigation was allegedly left “without subject matter”, derived from circumstances due to the petitioner, including the alleged lack of “legal standing of the plaintiff” by the time of the issuance of the Final Determination, circumstance which affected the defense of Complainant and affected the sense of the resolution, in violation to Article 238, section II of the CFF.

**E. ON THE ALLEGED LACK OF ANALYSIS TO ALLEGATIONS AND EVIDENCE SUBMITTED BY THE COMPLAINANT**

1. The Complainant further claims that, in its opinion, the Ministry of Commerce “did not take into consideration” allegations and means of evidence that, as stated by such participant, were sufficient to demonstrate the injury that the imports of urea at issue allegedly caused to the national production. Essentially, AGROMEX claims that the Final Determination does not contain any evaluation whatsoever of the evidence rendered during the administrative investigation.

In general terms, AGROMEX argued the following:

*“...some of the evidence and arguments submitted by the Complainant during the investigation, were not evaluated in accordance with the applicable formalities... The authority has the obligation to evaluate diligently each and all evidence submitted... likewise, it must grant each evidence submitted, the corresponding evaluation and value in accordance with law... Hence, the investigating authority did not take into consideration the arguments and means of proof submitted by the Complainant on October 25, 1999, means of proof and arguments that are enough to demonstrate the existence of the unfair trade practice... In the Preliminary Determination, item 185, it is established: [“]In the next stage of the investigation, the Ministry of Commerce will gather more elements... that may allow it to make a final determination regarding the effects on prices...[”] According to the facts and rationale as established in the Final Determination, the investigating authority did not analyze the information provided on October 25, 1999 to pursue what it had previously stated in item 185 of its Preliminary Determination, and did not provide the legal grounds for its lack of consideration, so to speak, or its [“]unilateral dismiss of requested evidence... [”] Moreover, the injury was proved, as it is expressed in paragraph 164 of the Final Determination... Based on the arguments and means of proof provided by the national producers companies, which are specified in item 33 of the Final Determination at issue, the investigating authority had all necessary elements to acknowledge and sanction the existence of the unfair trade practice (dumping), circumstance that inexplicably and unlawfully did not occur... Just by reading the Final Determination, it may be seen that the investigating authority did only mention which*

*were the arguments and means of evidence submitted, but they were not duly evaluated upon the issuance of the above mentioned Final Determination... by reading the Final Determination, it cannot be determined in what portion of the same there is a listing and evaluation of the evidence submitted... there is no diligence in connection with such evidence or the evaluation... the fact of not valuating the evidence submitted by the petitioner, is a fact that infringes the formalities required by law... [the Ministry of Commerce] should have examined the opportunity and value of such evidence... to determine if there are enough evidences to support the petitioner's claim... ..” Brief in Support to the Complaint, Pages 51-67*

2. The Ministry of Commerce –and in the same sense, the participants in opposition to the Complaint of AGROMEX–, on other hand, argues that the Complaint of AGROMEX on this issue, does not identify the evidence that was not allegedly evaluated, and that it does not provide any explanation of their alleged evidentiary value.

Essentially, the Ministry of Commerce argued the following:

*“...The Complainant only says that the investigating authority did not evaluate the evidence submitted by such participant during the course of the investigation, and mentions the law provisions that were allegedly infringed, but it does not explain the reason for which they were allegedly infringed, besides that there is no indication whatsoever of the proofs that were not allegedly taken into consideration, and in any event, what would be the alleged evidentiary value... [the Complainant] only mentions that the investigating authority did not evaluate evidence provided by such participant during the investigation... such omission may only prejudice the Complainant, and therefore this argument should be dismissed by this Panel. Notwithstanding the above, and only on an ad cautelam basis, the investigating authority challenges all statements made by the Complainant in its Brief... it was not possible to analyze the merits of the case because the petitioner lost its legal standing as a plaintiff [legitimación procesal activa], and therefore this investigating authority terminated the investigation without analyzing the merits and evaluating the*

*arguments and evidence provided by the participants in the final stage of the investigation... in its Preliminary Determination, the investigating authority did not acknowledge to have all necessary elements to recognize the existence of an unfair international trade practice... the investigating authority was not obliged to analyze the merits of the case... in view that the Complainant did lose its legal standing as a plaintiff...*” Brief in Opposition to the Complaint, Pages 74-88

3. In opinion of this Binational Panel, it is not actually strange that the Ministry of Commerce had not analyzed the merits of evidence rendered by AGROMEX during the final stage of the administrative investigation, taking into consideration that, according to what has been analyzed in this decision, the Ministry of Commerce did terminate the investigation on the basis that there was no “subject matter” anymore, as a consequence of the alleged lack of “legal standing of the plaintiff”.

Therefore, there is an explanation –although it is not justifiable, according to the decision that this Binational Panel has adopted in item D above–, to the fact that the Ministry of Commerce acted based consistently on its prior reasoning, and based also on a principle of *procedural economy*, reason why it did not analyze the merits of the case because of having considered first that the lack of “legal standing of the plaintiff” had necessarily left the administrative proceeding on the matter of unfair international trade practices “without subject matter”.

4. To the extent that this Binational Panel has denied the reasoning and legal grounds that allegedly supported the Ministry of Commerce’s determination to terminate the investigation, based on the fact that the investigation lacked “subject matter”, because the petitioner did not allegedly have “legal standing of a plaintiff” –because of the reasons mentioned in item D above–, upon remand of the Final Determination according to this Binational Panel’s decision, the Ministry of Commerce must evaluate the merits of all evidences available in the administrative record of the investigation. The decision on this

particular claim is, therefore, necessarily subsumed and linked to the decision that this Binational Panel has taken previously with respect to the matter on the alleged change of legal standing of the Complainant.

It is worth mentioning that in any event, it is not within the scope of this Panel review, and therefore this Binational Panel makes no decision in that regard, to resolve or make any determination regarding the opportunity, validity or evidentiary value of any evidence referred to by the Complainant.

#### F. ON THE ISSUANCE OF THE PRELIMINARY AND FINAL DETERMINATIONS OUT OF LEGAL TERMS

1. AGROMEX claims that the issuance of the Preliminary and Final Determinations out of the legal terms provided for in the LCE, left AGROMEX defenseless and, as argued by AGROMEX, “increased even more the injury caused” to the national production by the imports of urea.

*“...By issuing the above mentioned determinations out of term, the investigating authority did place the Complainant in a clear defenseless scenario... The investigating authority exceeded the maximum time periods provided for in Articles 57 and 59 of the Foreign Trade Law ...so it has merits for this Panel to determine the illegality of the Final Determination in order for the investigating authority to issue a new one in accordance with law... The unlawful conduct of the investigating authority ...obviously affected the sense of the final determination at issue, such affectation was in the sense that said circumstance increased even more the injury caused to the national producer companies because of the imports of urea...Accordingly, this Panel must order the revocation of the Final Determination at issue, by ordering the absolute nullity of all proceedings leading to it, for violation of the essential due process formalities, specifically for not complying with the time periods as provided by the Foreign*



*Trade Law and its Regulations...*” Brief in Support to the Complaint, Pages 67-79 (emphasis in the original).

2. On the other hand, the Ministry of Commerce and the participants in opposition to the Complaint of AGROMEX, essentially argue that the issuance of the Preliminary and Final Determinations out of the legal terms provided for in the LCE and its Regulations, in no way affected the defense of AGROMEX nor such circumstance varied the sense of the Final Determination.

*“...the issuance of the preliminary and final determinations out of term, did not affect at no time the defense of the Complainant and did not affect the sense of the determination at issue, because the facts submitted during the course of the investigation were the ones which, added to the analysis of the arguments and evidence provided by the participants and those gathered by the Ministry of Commerce itself, determined the sense of the determinations issued... and consequently, the sense of the determination could not be different, and therefore such circumstance cannot constitute a claim of the Complainant based on the alleged excess of the legal terms... Even assuming the argument that the investigating authority exceeded the time periods as set forth in the LCE and its Regulations, that does not imply a violation to the Antidumping Code, because such [Code] provides in its Article 5.10 the following: [“]5.10 Except for extraordinary circumstances, the investigations must have terminated within a year, and in any event within a time period of 18 months, counted as from its initiation...[”]” Brief in Opposition to Complaint, Pages 91-100 (emphasis in the original)*

3. This Binational Panel agrees, in the essence, with the Ministry of Commerce and the participants in opposition to the Complaint of AGROMEX. In opinion of this Binational Panel, there are no elements on the record of this review according to which it may be sustained that AGROMEX suffered an affectation to its possibility of defense, or supporting the circumstances under which it could be asserted that if the Preliminary and

Final Determinations had been issued within the legal terms, the sense of such resolutions would have varied.

In fact, the record of this review actually reveals that AGROMEX was always aware of the development of the investigation, and that it had enough and due opportunity to defend –circumstance that, by the way, is undisputed–. As for the reasons according to which the sense of such resolutions would have allegedly varied, in the event that the Preliminary and Final Resolutions had been issued within the legal terms set forth in the LCE and its Regulations, this Binational Panel does not have any other elements more than mere statements without evidence to support them –stating that the delay in the issuance of the above mentioned determinations “increased” the alleged injury to the national production–, that naturally cannot be the basis for this Binational Panel to make an adverse determination on this claim.

G. ON THE HYPOTHETIC DISPENSE OF COUNTERVAILING DUTIES DUE TO PUBLIC INTEREST REASONS

1. The Complainant further challenges certain statement made by the Ministry of Commerce in item 75 of the Final Determination, stating that “finally, and assuming that the national producer could reopen its facility, reinstantiate the production of urea and, for procedural purposes of the investigation, recover its status of national producer, it would come before us a national interest issue provided for in Article 88 of the [LCE]”. The mentioned item reads literally:

*“75. According to the results of the analysis of the information and arguments submitted by the participants, as well as to the information gathered by the [Ministry of Commerce], it was determined that there are no indications that allow us to assume the possibility of the reestablishment of the production of urea within the short or medium term, not only on labor terms, but on*

*the operational scheme of the producer facilities, particularly in connection with the supply of ammonium under competitive conditions from Petroquímica Cosoleacaque, S.A. de C.V. Besides, it must be taken into consideration that there is a total national closing of the urea producer facilities, since September, 1999, which circumstance leads us to conclude that there is no current national production of urea and that there will not be within the short or medium terms. Finally, and assuming that the national producer could reopen its facility, reinitiate the production of urea and, for procedural purposes of the investigation, recover its status of national producer, it would come before us a national interest issue provided for in Article 88 of the Foreign Trade Law. Accordingly, in such situation and if as a result of the investigation the [Ministry of Commerce] should impose countervailing duties to the imports of urea from the United States of America and the Russian Federation, it is worth mentioning that the effects of such a measure –because of the high dumping margins as mentioned in the preliminary determination–, would have very serious repercussions for final users of this product, the domestic agricultures. That is to say, even if the [Ministry of Commerce] had reached a confirmation that it is the case of imposing countervailing duties, the [Ministry of Commerce] would not impose them anyway pursuant to the above mentioned public interest issue involved, due to the serious adverse repercussions for the domestic agricultural field. Final Determination, Page 107*

2. Essentially, AGROMEX argues that the mention by the Ministry of Commerce of the alleged topic of “public interest”, has no reasoning nor legal grounds, insofar as such hypothesis is not provided for in Article 88 of the LCE. On the contrary, AGROMEX argues that Article 88 of the LCE is, in any event, the law provision that supports the imposition of countervailing duties in protection of the national production. Specifically, AGROMEX mentions the following:

*“The investigating authority, in the final determination at issue, determines not to impose countervailing duties to the imports of urea from the mentioned countries, by unlawfully and illogically arguing an alleged defense of public interest issues, feature that in*

*no way is explained, based on applicable law provisions or reasoned... The investigating authority, by expressing that the assessment of countervailing duties could cause a prejudice to the public interest, made an statement that in no way is duly grounded nor reasoned, because such an argument does not meet the mentioned legal hypothesis. That is so because Article 88 of the Foreign Trade Law provides the following: [“]Art. 88.- Upon the assessment of a countervailing duty, or the proposition to apply a safeguard measure, the [Ministry of Commerce], besides of providing a timely defense to the national production, must avoid to the extent possible that such assessment may have adverse repercussions on other productive processes and in consumers [”]. According to the language of the above mentioned provision, as claimed by the investigating authority, it may be clearly stated that the Ministry of Commerce has a confusion, in view that such provision does precisely provide that the Ministry of Commerce should impose a countervailing duty to provide a timely defense to the national production, but in no way makes reference or mentions the public interest as such, but only in the way that a countervailing duty should avoid a negative repercussion on productive processes and consumers... This constitutes a statement that lacks of all validity, because it has no legal grounds nor any reasoning, that is to say, in order for such statement to be duly grounded and reasoned, it should be expressed the specific applicable law provision, as well as the special circumstances, particular reasons or immediate causes that have been taken into consideration... obviously in reference to the specific case there is no such a reasoning, in view that the investigating authority did only mention an alleged violation to a law provision, namely the Article 88 of the Foreign Trade Law, allegedly supporting its arguments on it, but with no mention on the reasons why such provision would be allegedly infringed...” Brief in Support to the Complaint, Pages 79-90*

3. On the other hand, the Ministry of Commerce –with the support of the participants in opposition to the Complaint–, sustains the validity of the above mentioned criterion of public interest, not only because the Ministry of Commerce argues that Article 88 of the LCE does certainly provide for such criterion, but also because the assessment of countervailing duties to the imports of urea, in the absence of national

production, would attract, in the opinion of the Ministry of Commerce, “serious repercussions to the domestic agricultural sector”.

*“Public interest is a legal feature acknowledged by the Mexican courts and it is not an alleged feature as stated by the Complainant in the page 91 of its Brief... As indicated in the Final Determination, there is no national production of urea, and there is no possibility of reinitiate the same within the short or medium terms, circumstance which leads us to the public interest issue, in the sense that serious repercussions for the agricultural domestic sector might derive from the assessment of countervailing duties, which is an unacceptable event in the absence of national production.” Brief in Opposition to the Complaint, Pages 101-113 (emphasis in the original)*

4. Moreover, both UNOCAL and PRONAMEX support the interpretation made by the Ministry of Commerce, but also point out that the reasoning of the Ministry of Commerce as stated in the Final Determination with respect of the eventual application of the mentioned public interest criterion, is only a hypothetical case, used to support the termination of the investigation without imposing definitive countervailing duties whatsoever.

5. In the opinion of this Binational Panel, the statement of the Ministry of Commerce with respect to the eventual application of a public interest criterion –whether actually provided for or not in Article 88 of the LCE– is certainly a matter only hypothetical. In opinion of this Binational Panel, the reasoning of the Ministry of Commerce does not strengthen any argument stated in the Final Determination –in view of the undisputed fact that the Ministry of Commerce did not analyze the merits of the case in the final stage of the investigation– although it certainly does not affect nor cause any prejudice to the Complainant in this review.

Based on the above, regardless of the agreement or disagreement of this Binational Panel with the gratuitous statements made by the Ministry of Commerce with respect to the potential application of the mentioned public interest criterion, and regardless of their de validity or not –analysis which, in any event, would result unbeneficial to this review– this Binational Panel finds that the statements at issue are made with respect to a hypothesis that is not happening in this review and, therefore, that cannot prejudice the Complainant in this review.

#### H. ON THE ALLEGED OMISSION OF RELEVANT INFORMATION IN THE RECORD

1. AGROMEX also challenges the lack of reasoning and legal grounds of the Final Determination based on the statements made in items 73 and 74, the ones which read as follows:

*“73. The [Ministry of Commerce] asked Petroquímica Cosoleacaque, S.A. de C.V., to provide precise information on the reasons for lack of supply [of ammonium] to [AGROMEX]; the status of the negotiations of a new ammonium supply agreement with such company; and the approximate time for reinitiating the supply of the necessary ammonium to reactivate the production of urea.*

*74. From the information provided by Petroquímica Cosoleacaque, S.A. de C.V., it may be clearly stated that there are no indications that may allow us to assume any possibility of the reestablishment of the production of urea within the short or even medium terms, circumstance that, in addition to the total closing of the domestic producer facilities at a national level, leads us to conclude that there is no current national production of urea and that there will not be within the short or even medium terms.” Final Determination, Page 107*

2. Essentially, AGROMEX claims that the above mentioned information is not included in the administrative record of the investigation, and that as consequence of that, AGROMEX did not have access to it:

*“...the investigating authority, in sections 73 and 74 of the determination at issue, states that it requested information on the Complainant to Petroquímica Cosoleacaque, S.A. de C.V. (PECOSA) and that based on such information, the investigating authority purportedly and unlawfully based the determination at issue, and therefore there is an evident constitutional infringement... because there was no respect to the right of being heard in regard to this issue, since the Complainant never had knowledge of this information, and therefore it could not have any chance of being heard in connection therewith... in the administrative record at issue, there are no requirements made to Petroquímica Cosoleacaque, S.A. de C.V. and even less there is an answer from such company, therefore it is obvious that there is a illegality in the final determination, because the Ministry of Commerce had the obligation to file with the administrative record the alleged communications, and it did not comply it, so by making such an statement without support in the necessary documentation, besides of contravening the mentioned law provisions, left the Complainant totally and absolutely defenseless...” Brief in Support to the Complaint, Pages 92-97*

3. On another hand, the Ministry of Commerce –with the support of the participants in opposition to the Complaint of AGROMEX–, argued that the information requested to Petroquímica Cosoleacaque, S.A. de C.V. (“PECOSA”) is indeed contained in the administrative record in both public and confidential versions, but that with respect to the latter version (the confidential), the information was classified as governmental confidential information, reason why the petitioner had not access to such information.

*“...it is obvious to infer that the Complainant did not review the administrative record and now intends to create a confusion to this Panel... it is widely known that each participant involved in an antidumping investigation, has access to the not confidential*

*version of the administrative record in which it is integrated all public information... it is worth mentioning that there is another type of information which the participants have no access to in accordance with law, as may be the case, for example, of reserved commercial information and governmental confidential information... On December 2, 1999, the investigating authority required PECOSA, among other things, to provide information on the ammonium sale conditions to Agro Nitrogenados, S.A. de C.V., copies of the notifications of supply suspensions to such company, and information on their commercial relationship from May 1997 to April 1998. Such requirement was included in the administrative record as soon as possible in both the confidential and non-confidential versions... PECOSA responded the above mentioned requirement on December 10, 1999. Its response contained information on sale and price conditions of ammonium to the Complainant, explanations on the pricing mechanisms for minimum contractual guaranteed volumes, as well as information on the base price, a summary of the mechanisms applied for each client and information related to communications with the Complainant in connection with the supply suspension. Based on the content of PECOSA's response, on the fact that the Ammonium Supply Agreement provided to [the Ministry of Commerce] by the Complainant itself on October 25, 1999 indicated the confidential character of the information contained therein, as well as on the information related to such agreement, the investigating authority determined to classify the PECOSA's response as confidential governmental information (which is information classified as privileged information in terms of Rule 3 of the Rules of Procedure) ...it must be pointed out that the official writ in connection with the response to the above mentioned requirement is contained in the administrative record, as mentioned precisely in volume 14 of the non-confidential version, page 235, and volume 37 of the confidential version, page 55... Later, on January 21, 2000, the investigating authority considered necessary to make a new requirement to PECOSA to provide information on negotiations to update the ammonium supply agreement with AGROMEX and, if that is the case, on the conditions which in its opinion could vary and the reasons for such modifications. On January 28, 2000, PECOSA responded the request, by providing information related to the ammonium supply agreement with AGROMEX; PECOSA indicated that the commercial relationship was suspended since August, 1999 due to*



*the moratoria incurred by such company. The same way as in the previous response, the information was classified as governmental confidential information (which is privileged information according to Rule 3 of the Rules of Procedure). Additionally, the official writ that was issued in connection with the response to such request was classified as public information. As may be seen, it is clear that this authority made the proper information requests and received the responses indicated in items 73 and 74 of the final determination, which documents provided, the same as the official writs that were issued in connection therewith, are part of the administrative record of the antidumping investigation. The investigating authority complied with the essential due process formalities and in no way it may be argued that there is an infraction to the right to be heard as claimed by the Complainant... The investigating authority does reiterate that both the information requests to PECOSA as the official writs that were issued in connection therewith, were immediately integrated to the administrative record, so the Complainant had full opportunity to act during the investigation to defend itself... the Complainant cannot argue that it had no knowledge of the commercial situation between the mentioned companies [PRIVILEGED INFORMATION]. In any event, it is information dealing with facts of the Complainant itself..." Brief in Opposition to the Complaint, Pages 115-22*

4. In analyzing this issue, this Binational Panel notices in first place that its decision is necessarily subsumed and linked to the determination that this Binational Panel has adopted previously in connection with the issue on the alleged change of legal standing of the Complainant.

5. Accordingly, the opinion that this Binational Panel could provide with respect to the opportunity or validity of the claim argued by the Complainant, or respect with the existence of the documents in the administrative record or their classification, would result evidently unbeneficial to this review to the extent that, as it has been mentioned before, the decision of this Binational Panel in regard to this Complaint, is superseded by the determination that the Binational Panel has adopted in connection with its analysis of

the invalidity of the reasoning and legal grounds of the Final Determination, as expressed by the Ministry of Commerce, to terminate the administrative investigation on the basis of the alleged fact that the investigation was left “without subject matter” due to reasons linked with the petitioner.

## **ORDER**

Now therefore, based on the above and on what is provided for in Article 1904.8 of the NAFTA, this Binational Panel hereby orders to remand the Final Determination to the Ministry of Commerce, in order for the investigating authority to issue the corresponding final determination to be consistent with this Decision, particularly with what it is provided for in sections III. D. and III. E., and in general to adopt any measures not incompatible with this Decision, with respect to the imports of urea, product classified in the tariff item 3102.10.01 of the Tariff of the Importation General Tax Law, original from the United States of America, regardless of the exporting country.

The Investigating Authority shall have a time period of sixty working days, counted as from the day following the date of its notification of this Decision, to submit to the responsible Secretariat the Determination on Remand referred to in Rule 73(1) of the Rules of the NAFTA Article 1904 Panel Rules.

It is so ordered by this Binational Panel on May 23rd, 2002, in this:

Review by a Binational Panel pursuant to Article 1904 of the North American Free Trade Agreement of the Final Determination of the Antidumping Investigation on the Imports of Urea, product classified under Tariff Item 3102.10.01 of the Tariff of the Importation General Tax Law, original from the United States of America and the Russian Federation, regardless of the exporting country.

File Number before the Mexican Section of the Free Trade Agreements Secretariat:  
MEX-USA-00-1904-01.

Signed in the original by:

Issued on May 23, 2002.

Peggy Chaplin  
Peggy Chaplin

May 21, 2002  
Date

Raymundo E. Enríquez  
Raymundo E. Enríquez

May 22, 2002  
Date

Michael W. Gordon  
Michael W. Gordon

May 21, 2002  
Date

Leonard E. Santos  
Leonard E. Santos

May 21, 2002  
Date

Francisco José Contreras Vaca  
Francisco José Contreras Vaca  
Chairman

May 21, 2002  
Date