

THE INTERNATIONAL  
TRADE LAW  
REVIEW

NINTH EDITION

Editors

Folkert Graafsma and Joris Cornelis

THE LAWREVIEWS

Published in the United Kingdom  
by Law Business Research Ltd  
Holborn Gate, 330 High Holborn, London, WC1V 7QT, UK  
© 2023 Law Business Research Ltd  
[www.thelawreviews.co.uk](http://www.thelawreviews.co.uk)

No photocopying: copyright licences do not apply.

The information provided in this publication is general and may not apply in a specific situation, nor does it necessarily represent the views of authors' firms or their clients. Legal advice should always be sought before taking any legal action based on the information provided. The publishers accept no responsibility for any acts or omissions contained herein. Although the information provided was accurate as at August 2023, be advised that this is a developing area.

Enquiries concerning reproduction should be sent to [info@thelawreviews.co.uk](mailto:info@thelawreviews.co.uk).  
Enquiries concerning editorial content should be directed to the Content Director,  
Clare Bolton – [clare.bolton@lbresearch.com](mailto:clare.bolton@lbresearch.com).

ISBN 978-1-80449-199-7

# ACKNOWLEDGEMENTS

The publisher acknowledges and thanks the following for their assistance throughout the preparation of this book:

ACTECON

AKIN GUMP STRAUSS HAUER & FELD LLP

BAKER MCKENZIE SAS

DUA ASSOCIATES

GH CONSULTS LLC

IBRACHY AND DERMARKAR

LINKLATERS

MCMILLAN LLP

MORI HAMADA & MATSUMOTO

NICOLAJ KUPLEWATZKY

PINHEIRO NETO ADVOGADOS

PORZIO RÍOS GARCÍA ABOGADOS

SÁNCHEZ DEVANNY

SKRINE

S.U.KHAN ASSOCIATES, CORPORATE & LEGAL CONSULTANTS

VAN BAEL & BELLIS

VVGB ADVOCATEN|AVOCATS

WIENER SOTO CAPARRÓS

# MEXICO

*Alberto Campos Vargas, Eduardo Sotelo Cauduro, María Luisa Mendoza López and Juan Carlos Jiménez Labora Mateos<sup>1</sup>*

## I OVERVIEW OF TRADE REMEDIES

### i Introduction

Mexico is a country with a very significant international trade background.

Since the execution of North American Free Trade Agreement in 1994, Mexico has executed and implemented free trade agreements (FTAs) with over 50 countries around the globe and it has possibly one of the largest trade networks worldwide.

The execution and implementation of these FTAs is not free of complexities and challenges for industries engaged in importation and exportation of goods.

Given this background, investors in Mexico that either import or export any kinds of goods must consider a number of factors when carrying out these operations.

Because of Mexico's significant network of trade agreements and commercial relationships with a very varied number of countries in North, Central and South America, Europe and Asia, it is no surprise that conflicts arise when dealing with these kinds of operations, and in many cases the parties concerned rely on the various trade remedies available under both Mexican domestic legislation and applicable trade agreements.

In addition, Mexico's network of FTAs does provide exporters of goods outside Mexico with the option to implement different legal remedies to challenge possible restrictions on the importation and marketing of goods into the Mexican domestic market.

Import and export operations in Mexico are subject to a considerable number of requirements, the nature of which can be varied – either administrative or tariff- or non-tariff-related.

In this regard, trade remedies may have diverse origins, whether arising from domestic industry protection, political or international factors, or international commitments entered into by Mexico.

From a practical perspective, it is challenging to carry out import-export operations in Mexico, since, in general, only entities or individuals having a Mexican tax identification number (RFC) may carry out such operations into or from Mexico.

Some very specific exceptions to this rule may be available, among which are temporary imports for specific purposes or the importation of goods under bonded warehouse regimes.

Import and export operations are also subject to a considerable number of licences and registrations and in the case of goods considered to be sensitive materials (steel, textiles, apparel, shoes, etc.) additional requirements are generally applicable.

---

<sup>1</sup> Alberto Campos Vargas and Eduardo Sotelo Cauduro are partners and María Luisa Mendoza López and Juan Carlos Jiménez Labora Mateos are senior associates at Sánchez Devanny.

These requirements often include the existence of trade remedies implemented by the domestic industry to reduce or even, in some cases, prevent imports of certain goods into the country.

In addition to the RFC, all entities that carry out import-export operations must register with the Register of Importers and, in certain cases, it is also necessary to register with the appropriate Register of Importers of Specific Sectors (mainly when dealing with goods considered sensitive). This requirement may entail providing a considerable number of documents and information and its applicability may be determined based on the tariff classification of goods to be imported or exported, as well as their origin and intended final use.

The customs clearance procedures for most import-export operations are carried out through authorised customs brokers, who are individuals duly authorised to carry out these procedures in specific customs offices.

In some cases, it is possible to carry out these operations through an 'in-house authorised customs broker'. However, this alternative represents a considerable burden and liability not only for the entity employing the individual but for the individual itself, thus it is not a commonly used alternative.

Import-export operations may be subject to import duties, dumping duties, countervailing duties, value added tax, excise taxes, governmental fees and customs processing fees, most of which trigger payment obligations based on the goods tariff classification under the Mexican Tariff Schedule and the country of origin of the goods.

These duties and taxes are determined according to the goods customs value, which includes the price paid for their acquisition and brokerage fees, transportation, insurance, storage, handling, loading and unloading costs, etc.

These duties and taxes may be determined upon *ad valorem* or specific duties and rates according to the product quantity, or combinations of these. These taxes and duties may also take account of import-export quotas or temporary and station duties.

Additionally, preferential duties are also established in the case of products originating from countries with which Mexico has entered into FTAs and although, in general, goods originating from these countries may be subject to specific preferences and simplified procedures upon their importation and exportation, they may also be subject to remedies and restrictions according to their overall compliance with the international commitments of Mexico and the other parties concerned.

As a general rule, import or export operations may trigger a customs processing fee payable at the general rate of 0.8 per cent of the product customs value, which is generally exempted in the case of products originating from countries with which Mexico has entered into an FTA.

Other relevant tax to consider upon import and export operations is value added tax (VAT), payable upon importation at the general rate of 16 per cent, with some limited exceptions, and at the rate of zero per cent upon export of goods.

Additional excise taxes may be triggered upon the importation and exportation of certain products, the rate of which will depend on the nature of the product and its tariff classification, such as fuels, alcohol, alcoholic beverages, non-alcoholic beverages, and tobacco.

Mexico has established a number of programmes to support the manufacturing and exportation of goods from Mexican territory that provide manufacturers with the option to import goods on a duty- and VAT-free basis. These include the IMMEX programme (formerly the Maquiladora programme), the Sector Promotion Programme (or Prosec) and

the Eighth Rule programme, and the VAT certification scheme. All of which provide benefits for the importation of raw materials, parts, components and other goods bound for the manufacturing industry in Mexico.

These programmes provide certain relief upon the amounts payable for the importation of goods; however, their implementation and administration entail a considerable administrative cost.

FTAs entered into by Mexico, whether bilateral or multilateral, provide a considerable number of advantages for the importation of goods originating from the countries party to these agreements.

In addition to the above requirements, a considerable number of non-tariff requirements exist for importation and exportation of goods into or from Mexico. These non-tariff requirements are determined according to the customs classification number of the products to be imported or exported, and on the basis of their purpose or use and include, among other things, import and export permits and licences, import and export quotas, compliance with Official Mexican Standards (known as NOMs), and international trade restrictions on goods subject to political interests (agricultural, steel, textiles, tobacco, etc.).

## **ii Trade remedies**

Imposition of trade remedies and the corresponding procedures generally fall within the remit of the Ministry of Economy; however, the actual implementation of a trade remedy will in most cases be overseen by the Ministry of Finance and Public Credit (SHCP), and the National Customs Agency (ANAM).

The International Commercial Practices Unit (UPCI) is a division of the Ministry of Economy and oversees trade remedy investigations and imposes corresponding trade remedies, such as anti-dumping and countervailing duties, or safeguard measures. However, the Tax Administration Service (SAT) oversees the collection and enforcement of the applicable anti-dumping and countervailing duties. The SAT is a division of the SHCP.

For individuals and legal entities engaged in the importation of goods, this division of responsibilities in the administration of trade remedies between different authorities can make import operations complex to administer correctly.

The most commonly used procedures in Mexico are anti-dumping investigations. According to official records from the UPCI, as at 1 June 2023, there were 81 anti-dumping duties in force, most of them (42 per cent) on products originating in China and (65 per cent) on steel or other similar products and other metals.

Currently, only two countervailing duties are in force in Mexico; these apply to metoprolol tartrate and amoxicillin trihydrate originating from India.

Notably, it has been over a decade since the most recent safeguard investigation was carried out by the government, in a case in which no actual measures were taken ultimately, as the authority concluded that there was no objective evidence that increased imports of the product concerned caused serious injury to the domestic industry.

The current anti-dumping proceedings include new investigations, reviews of the duties and sunset reviews on a variety of products, such as: plastics, steel and metals products, paper, caustic soda, balloons and tyres; from several different countries of origin, including Mexico's most important commercial partner, the United States.

It is difficult to predict when these ongoing proceedings will be concluded, as, in practice, the deadlines established in WTO Agreements are seldom met; however, based on current trends, it is most likely that these investigations will result in the imposition or confirmation of anti-dumping duties upon the importation of goods into Mexico.

It should be noted that the implementation and follow-up procedures for these types of investigations are highly formalistic in Mexico. Exporters, importers and domestic industry participants need be fully aware of this situation and of the challenges that these formal requirements may present to successful participation in the investigations, both legally and economically.

## **II LEGAL FRAMEWORK**

Trade remedies, including anti-dumping duties, subsidies and safeguards are regulated by the Constitution, the World Trade Organization agreements (the WTO Agreements), the Foreign Trade Law (FTL) and its Regulations (FTLRs), and jurisprudential criteria issued by Mexican federal courts.

The FTL and the FTLRs regulate unfair international trade practices (anti-dumping, subsidies and circumvention of duties) and safeguard measures, as well as administrative procedures to investigate their existence and the imposition of applicable duties or measures.

Under Mexican law and jurisprudential criteria, international treaties (such as the WTO Agreements) are considered part of the Mexican legal system and are superior to federal laws.

Therefore, although the FTL and the FTLRs are 'mirrored provisions' of the WTO Agreements, the latter are themselves applicable, compulsory and enforceable by the Mexican authorities in trade remedy matters.

Further to the administrative procedures held to determine the existence or imposition of anti-dumping and countervailing duties or measures, interested parties have access to judicial review of these investigations and their results, provided for by the FTL and the FTLRs, the Federal Administrative Procedure Law and the Federal Constitutional Appeal Law.

Finally, once anti-dumping and countervailing duties have been imposed and become collectible contributions following the importation of goods, the Customs Law and its regulations, the Foreign Trade Law and its regulations, and the Federal Tax Code are the legal provisions applicable to the collection, payment and enforcement of these duties.

## **III TREATY FRAMEWORK**

As mentioned, Mexico has a very broad network of international trade agreements, both bilateral and multilateral.

The legal basis for the execution and implementation of international agreements (whether trade or other kinds of agreement) lies in Articles 76, 89 and 133 of the Constitution and the express authority of the President to enter into international treaties, which shall be considered supreme and binding law, provided that these are further approved by the Senate and published in the Official Federal Gazette.

Additionally, the FTL specifies the Ministry of Economy as the authority in charge of establishing rules of origin, non-tariff regulations and restrictions, and administrative provisions, among other responsibilities, in compliance with international treaty commitments and obligations.

Mexico has entered into FTAs with over 50 countries, including the following:

- a* the European Free Trade Association agreement between Mexico and Iceland, Liechtenstein, Norway and Switzerland;
- b* the EU–Mexico agreement, which encompasses Austria, Belgium, Bulgaria, Croatia, Cyprus, Czechia, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain and Sweden. Additionally, a related trade continuity agreement with the United Kingdom was established following Brexit;
- c* the United States–Mexico–Canada Agreement (USMCA);
- d* the Comprehensive and Progressive Agreement for Trans-Pacific Partnership (CPTPP) involving 10 countries in the Asia-Pacific region: Australia, Brunei, Canada, Chile, Japan, Malaysia, New Zealand, Peru, Singapore and Vietnam;
- e* the Central America–Mexico Free Trade Agreement with Costa Rica, El Salvador, Guatemala, Honduras and Nicaragua; and
- f* individual agreements with Israel, Panama, Colombia, Japan, Peru and Chile, among others.

Although there has been preliminary interest in negotiating additional FTAs with countries such as Turkey or South Korea, no formal negotiations are expected to be initiated by the current administration, which concludes its term of office on 30 September 2024.

#### **IV RECENT CHANGES TO THE REGIME**

From a formal perspective, no particular or specific amendments to the trade remedies regime or customs restrictions have been formally implemented in recent months; however, from a practical and implementation perspective, very significant changes and amendments have been enforced by the relevant authorities.

Possibly the most high-profile changes regarding import and export operations and related restrictions are those affecting non-tariff restrictions and regulations.

Since Mexico is part of the WTO and World Customs Organization, it is very complex for the executive or legislative branches of the Mexican government to implement changes to the country's tariff schedule and the import duty-related provisions that govern increases in duties payable upon the importation of goods.

This situation has resulted in alternative means being found to restrict or in other ways limit the importation and marketing of certain goods into Mexico, in particular through restrictions that stem from or serve a political agenda.

Restriction of the importation or marketing of several products has been attempted for political reasons, such as cultural heritage protection, human health protection, food security



and independence. Products have been subject to a considerable number of restrictions, whether in the form of permits, authorisations, registrations or even, in many cases, express prohibition of their importation, as well as the imposition of export duties.

The following are among the most significant products subject to these kinds of limitations in the past.

**i Pre-packaged food and beverages**

Pre-packaged food and beverages have been subject to compliance with extremely onerous labelling changes that were implemented in 2019. In essence, it has been forbidden to import food and beverage products that do not meet the labelling rules prior to importation.

These restrictions have limited the number of products manufactured abroad that can be imported into Mexico and have also entailed increased costs for foreign food and beverage manufacturers in modifying labels of products intended specifically for the Mexican market.

**ii Vaping devices**

Vaping goods were not specifically described in the Mexican Tariff Schedule and thus were classified under electric and electronic products, with no restrictions on their importation.

Despite the executive branch's inflexible opposition to these products, Mexican courts deemed as unconstitutional the decrees and internal legal provisions through which the government tried to restrict their sale. As a result, the executive branch amended the Tariff Schedule to create specific tariff classification numbers for these products thereby prohibiting their importation.

**iii Fossil fuels**

Since the current administration took office, the President has expressed his intention to close down private operation of the oil and fuels market. Accordingly, a great number of requirements and registrations have been imposed on companies engaged in the importation and marketing of these products, with a view to limiting and restricting their operations. These restrictions have even prompted a potential litigation process with the United States under the USMCA.

Although currently certain restrictions and limitations have been relaxed to a degree, it remains very likely that these procedures will resume shortly.

**iv Transgenic corn**

Possibly the latest restrictions to be imposed on imports and exports of goods are the one on corn exports in the form of extremely high export duties, and the restriction on imports into Mexico of transgenic or yellow corn bound for human consumption.

Arguments justifying the export duties for this product refer to national food sovereignty and the urgent need to supply the domestic market before exporting goods of this kind.

Simultaneously, the importation of corn with transgenic properties has been restricted on the basis that it represents a health risk to the Mexican population, as well as a risk to the domestic and indigenous corn varieties.

Although only corn bound for human consumption is subject to this constraint, to date no clear rules have been issued regarding the importation of transgenic corn for other uses, such as industrial and animal food products.

This situation has also derived possible litigious procedures with the United States of America based on violations to the USMCA, since the restriction has no clear scientific or technical grounds.

As in the case of fuels, there has been some easing of the rules in this area, but indications suggest that there may be potentially significant litigation between the United States and Mexico in the near future.

## V SIGNIFICANT LEGAL AND PRACTICAL DEVELOPMENTS

Although, as mentioned above, there have been no significant formal or legal developments regarding trade, importation, exportation and trade-related remedies recently, some practical restrictions and changes have had a very considerable impact on these kinds of operations.

One of the most important of these changes was the creation in 2021 of ANAM, the National Customs Agency ( which now has responsibility for a range of procedures concerning the import and export of products into Mexico. Many officials in this new agency were formerly members of the Mexican Army, Navy, Police and other security agencies.

In this context, the actual administration of the customs offices, whether inland or maritime, has been allocated to the Army or the Navy respectively, which has, in some cases, created complex environments for international operations because of these authorities' lack of experience in the clearance of goods for import and export.

Under the current administration, restrictions on the use and consumption of a number of different products have been realised through limits on their importation, on the specific authority of the executive branch of the federal government on the basis of health risks and national security considerations.

Although some of these restrictions and prohibitions may be deemed contrary to the Constitution and to certain of Mexico's international commitments, this approach has proved an effective alternative means of limiting the availability of specific products in Mexico.

## VI TRADE DISPUTES

Mexico has not recently been actively involved in trade disputes under the WTO, nor under any of the many FTAs to which it is a party.

The following disputes were the most recent involving Mexico:

- a Mexico – Additional Duties on Certain Products from the United States* (16 July 2018), as a respondent (complainant: United States);
- b United States – Certain Measures on Steel and Aluminum Products* (5 July 2018), as a complainant;
- c Costa Rica – Measures Concerning the Importation of Fresh Avocados from Mexico* (8 March 2017), as a complainant;
- d China – Measures Relating to the Production and Exportation of Apparel and Textile Products* (15 October 2012), as a complainant; and
- e Argentina – Measures Affecting the Importation of Goods* (24 August 2012), as a complainant.

However, there are three notable cases in which Mexico is currently involved pursuant to the USMCA, specifically under Chapter 31 (Dispute Settlement), which establishes procedures for monitoring and enforcing rules within the agreement, including the establishment of panels upon request and the option to seek consultations.

**i United States – Automotive Rules of Origin**

This dispute, in which both Mexico and Canada are complainants, concerns the methodologies for determining whether a passenger vehicle or light truck qualifies for preferential treatment under the USMCA. The issue revolves around how a producer may determine the regional value content of these vehicles, particularly in relation to the ‘roll-up’ provision, which the United States considers does not apply to core parts origination requirements.

The roll-up provision is applicable when goods that qualify as originating under the USMCA are incorporated into the production process of a subsequent good. It allows the producer to disregard the value of non-originating inputs used to produce that good when determining if the subsequent good qualifies as originating based on the regional value content threshold set out in the rules of origin.

In August 2021, Mexico requested consultations and Canada notified its intention to participate in these consultations. Subsequently, in January 2022, Mexico requested the establishment of a panel and Canada joined the dispute.

On 14 December 2022, the panel issued a final report concluding that the United States’ interpretation is inconsistent with the USMCA’s rules of origin. The panel ruled that the roll-up provision, as claimed by Mexico and Canada, is applicable.

Following this decision, the three parties have yet to reach a resolution, and Mexico and Canada have not imposed retaliatory measures.

**ii Consultations over Mexico’s energy policies**

On 20 July 2022, the United States announced its request for dispute settlement consultations with Mexico under the USMCA. The dispute pertains to certain measures and energy policies that the United States claims favour Mexican state-owned enterprises. However, Mexico denies these allegations. All parties involved have expressed their intention to reach a resolution before a formal dispute resolution panel is established.

However, at present, although the United States has the right to request the establishment of a panel, no formal request has been made. The parties are currently focused on attempting to reach a resolution during the consultation phase.

**iii Consultations over Mexico’s agricultural biotechnology measures and particularly transgenic corn**

On 2 June 2022, the United States formally requested dispute settlement consultations with Mexico regarding certain measures related to agricultural biotechnology. These measures are outlined in a February 2023 decree and pertain to the ban on the use of genetically modified corn and on instructions given to Mexican government agencies to gradually replace the use of this type of corn in human consumption and animal feed.

The United States has argued that these measures are not based on scientific evidence and, therefore, are inconsistent with the provisions of the USMCA.

If the parties are unable to reach a resolution during the consultation phase, the United States has the option to request the establishment of a panel, which could ultimately lead to retaliatory measures in the event of a ruling favourable to the United States.

It is very likely that such a formal panel request will be presented by the United States in the near future, and Canada would most likely follow suit, since the ban on the importation of such corn will also have a considerable impact on Canadian exports.

## VII OUTLOOK

In general, Mexico's participation as an important jurisdiction in international trade has not suffered any major setbacks or lessening under the current administration.

Although it is true that the current administration has limited or restricted trade to some extent, for most industries these restrictions have been the exception rather than the norm.

In addition, Mexico has assumed a very significant position internationally in terms of the trend for nearshoring, which aims to simplify logistics and risk management, and reduce costs, for international operations bound for the US market.

Nearshoring trends are likely to generate interest in investing in Mexico among increasing numbers of entities whose operations implicitly require the import and export of all sorts of goods, such as raw materials, parts, components and finished products.

In this regard, the USMCA and other very important FTAs continue to represent a major advantage for Mexico as a manufacturing or trading hub because of its geographical location and, most importantly, its FTA networks.

Notwithstanding, certain important topics should be addressed and considered when carrying out import or export operations into or from Mexico.

### *Forced labour issues*

Among the most significant issues likely to affect international trade in Mexico or to arise in the course of the implementation and imposition of a range of trade-related remedies and restrictions are forced labour agreements and commitments.

On 12 May 1934, Mexico ratified the Forced Labour Convention of the International Labour Organization (ILO), whose promulgating decree was published in the Official Federal Gazette on 13 August 1935.

Article 1 of the ILO Convention states that any member of that organisation that ratifies the Convention undertakes to abolish, as soon as possible, the use of forced labour in all its forms.

On 1 July 2020, the USMCA entered into force between Mexico and the United States. This FTA states in its preamble that among its objectives is the promotion of the protection and observance of labour rights, the improvement of working conditions, the strengthening of cooperation and the capacity of the parties in labour matters.

In this context, Article 23.6 of the USMCA aims to recognise the objective of eliminating all forms of forced and child labour, establishing that the parties undertake to prevent the importation into their territories of goods from other sources produced in whole or in part by forced or child labour.

Considering the above, on 17 February 2023, the Ministry of the Economy published the agreement that establishes the goods whose importation is subject to regulation by the Ministry of Labour and Social Welfare (STPS), which entered into force on 18 May 2023 (the Forced labour Agreement).

The Forced labour Agreement establishes an investigation mechanism to identify and restrict the importation into Mexico of products that have been made totally or partially with forced labour, with the STPS responsible for initiating investigations directly or upon specific request by persons or entities legally incorporated in Mexico.

If the STPS considers that there are sufficient elements to initiate the mechanism, it will request competent authorities or institutions in forced labour matters in the country of origin of the goods under review, or of other countries involved in the transit or final destination of the goods, to collaborate in the verification abroad as to whether or not the merchandise is produced with the use of forced or child labour.

The determination issued by the foreign authorities or institutions in this regard shall be adopted by the STPS in its terms. Where appropriate, the STPS shall include the merchandise in the list of resolutions in its website, thereby triggering prohibition by ANAM of importation into Mexico of the merchandise in question.

In the event that the foreign authorities or institutions consulted confirm the absence of resolutions determining the existence of the use of forced or child labour in the production of the merchandise under investigation, the STPS will notify the importer of the merchandise of commencement of the procedure to determine the existence or absence of the use of forced or child labour in the production of the merchandise, granting the importer 20 business days to assert their rights.

Where these resolutions determine the existence of forced or child labour in the production of the revised goods, the determination shall be added to the list displayed on the STPS website for this purpose and to inform importers of the tariff codes prohibited upon their importation into Mexico. The STPS will also inform ANAM of the issuance of this determination, such that ANAM can implement the restriction on the importation of the goods into Mexico, in accordance with its internal procedures.

In the event that the STPS finds an absence of forced or child labour in the production of the revised merchandise, it will conclude the review procedure. The party that requested the investigation mechanism will have the option to submit a new application with new evidence.

The Forced labour Agreement also allows for national or foreign parties to request review and nullification of STPS determinations on the use of forced or child labour in the production of the merchandise subject to the review process, on the grounds that the use of forced labour in the production of the merchandise has ceased. In this case, the applicant must initiate the review procedure, submitting information and documentation that irrefutably proves that the use of forced or child labour in the production of the merchandise has ceased.

As the Forced Labour Agreement entered into force only recently, there is no history of investigations initiated by STPS, nor as yet any indication of how the review process will be developed by this authority. It will, therefore, be important to monitor the evolution of this review mechanism, which is likely to be subject to refinements by the authority in Mexico in the coming months.