Mexico – Definitive Countervailing Measures on Olive Oil from the European Communities

(WT/DS341)

First Written Submission of the European Communities

Geneva, 30 March 2007
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I.  INTRODUCTION

1. In August 2005 the United Mexican States (‘Mexico’) imposed countervailing duties against olive oil from the European Union following an investigation that seriously failed in many respects to comply with the requirements of WTO law. Having sought without success to achieve a mutually acceptable settlement of its differences with Mexico, the European Communities (‘EC’) invoked the dispute settlement procedures of the WTO and now presents the details of its complaint to the Panel that has been established to determine that matter.

2. After providing the factual background to the dispute this Submission will examine the applicable standard of review and then identify how Mexico has infringed its WTO obligations. The Submission is accompanied by exhibits in accordance with the usual WTO practice and paragraph 13 of the Panel’s Working Procedures. For the convenience of the Panel has provided unofficial translations into English of Mexico’s Resolutions.

II.  FACTUAL BACKGROUND

A. The measures at issue

3. The measures at issue are contained in the Final Resolution of 11 May 2005, published in the Mexican Diario Oficial (Official Journal) on 1 August 2005 (Exhibits EC-1 and EC-1E). Its full title is:

FINAL RESOLUTION of the investigation on price subsidies on imports of virgin olive oil, which includes the categories of extra virgin, fine virgin and ordinary virgin; refined, which includes first-class refined and second-class refined, and blended oil, which includes first-class blends and second-class blends. These goods are currently classified under tariff items 1509.10.01, 1509.10.99, 1509.90.01, 1509.90.02 and 1509.90.99 of the Tariffs of the General Import-Export Tax Act, originating from the European Union

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1 In the case of documents submitted to the Ministry the EC has provided copies of the registered originals in so far as they could be obtained for inclusion with the present Submission.

2 Where the original is in Spanish, the English version of the exhibit will be given the same number as the Spanish version, but with the addition of the letter E, e.g. Exhibits EC-5 and EC-5E.
This Resolution imposes final countervailing duties on imports of virgin olive oil, including extra virgin, fine virgin and ordinary virgin, refined, including first-class refined and second-class refined and blended oil, including first-class blends and second-class blends, whose value per kilogram for customs purposes is below a benchmark price of USD 4.05 per kilogram, which are currently classified under tariff items 1509.10.01, 1509.10.99, 1509.90.01, 1509.90.02 and 1509.90.99 of the Tariff of the General Import-Export Tax Act, originating from the European Union, regardless of the Member State Member or country from which they originate.

Individual rates of countervailing duty were imposed on imports from eight Spanish and Italian exporters, and on ‘all other imports’ from EU Member States, at rates varying from US$0.40 per kilogram to US$0.73 per kilogram. However, the import price plus duty may not exceed of US$4.05.

The investigation leading to the imposition of these duties was carried out by the Unidad de Prácticas Comerciales Internacionales (International Commercial Practices Office) of the Ministry for the Economy of Mexico. For convenience, in this Submission the EC will refer simply to the ‘Ministry’.

B. The product

1. Olives and olive oil

Olive trees have been grown for olives and olive oil since ancient times. With 98 percent of the world's olive trees, the area around the Mediterranean accounts for the bulk of world olive oil production.

Olive trees take as long as ten years to reach maturity. They produce an annual crop, which often varies greatly in volume. They are harvested in the winter. There are many

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3 Final Resolution, para. 447.
4 Final Resolution, para. 448.
different cultivars of the olive, with different suitabilities for use in producing olive oil and table olives.

9. The great majority of olives produced in the EC are used in the production of olive oil. There is, however, significant production of table olives and of olives for use in prepared foods.

10. The production of olive oil starts with the crushing of the fruit to produce a paste. The paste is malaxed (softened by rolling, etc.) to encourage the oil to form into droplets and thereby facilitate extraction. The extraction of the oil was traditionally achieved by pressing but nowadays centrifuging is most commonly used. Oil extracted by purely physical means in this way qualifies as ‘virgin’. The remaining pomace contains oil that can be extracted by mechanical and chemical means. Where further mechanical means are used the oil will contain impurities and other unwanted characteristics that have to be removed by chemicals. It is called ‘refined olive oil’. The last remaining oil can be removed from the pomace by chemicals, usually hexane, and is known as ‘olive-pomace oil’.

11. There are different qualities of virgin oil. ‘Extra-virgin olive oil’ must contain no more than 0.8 percent oleic acid (1.0 percent until 2003).
5 For ‘virgin olive oil’ the limit is 2 percent, and for ordinary virgin olive oil 3.3 percent. These categories must also meet certain qualitative standards. For marketing purposes virgin and refined oils are often blended.

2. Characteristics of sector

12. A number of features make the olive oil sector substantially different from most other types of agricultural output.

13. Firstly, given the perennial nature of production, a major feature of olive holdings is their structural inflexibility which restricts their ability to take advantage of market opportunities. While the grubbing-up of olive trees is an irreversible process, newly planted trees may take up to ten years to attain maturity.

5 Until 2003 the criterion set by the International Olive Oil Council for extra virgin oil was 1 percent oleic acid. In that year the EC changed its standard to 0.8 percent.
14. Secondly, a feature of olive-oil production is its very marked heterogeneity, both in space and time. Yields tend to alternate successively between good and bad years, but they also depend on weather conditions and the biological variations of the olive trees. In addition, neighbouring parcels can record very different yields in the same year depending on the behaviour of the crop and in particular the existence of irrigation.

15. Thirdly, on fragile or marginal land, olive growing is very frequently the only feasible farming activity and the only alternative to abandonment and desertification.

16. Fourthly, intense fragmentation is a feature of olive cultivation. Many small holdings, often farmed on a part-time basis, constitute a not inconsiderable part of the EC's olive-growing area. The processing industry is equally considerably fragmented.

17. Lastly, the olive is a major cultural factor in most Mediterranean regions and has a role which goes beyond that of mere farming since it is the basis for a whole series of social and cultural events related to gastronomy, tourism, crafts and even the traditions of the people concerned.

3. Production structure

18. In the EC most olive oil production is concentrated in less-developed regions. In Spain and Italy unemployment in the main olive oil growing regions is almost the double the respective national averages. The number of olive growers in the EC is 2.5 million, including in Italy 1.1 million, Spain 450,000 and Greece 850,000. Olive producer organisations (PO) administer the EC aid scheme, grouping and verifying aid applications and distributing the aid itself. They sometimes perform other duties, notably in the field of quality improvement. In Greece and Italy nearly all olive growers belong to a PO (83 and 188 POs respectively). The 71 POs in Spain account for more than 80 percent of the country's olive-growers. (These figures relate to 2002).

19. Like the growing of olives, their processing into oil is highly fragmented. In 2002 there were more than 10,000 mills in operation in the EC. Having a mill close to the olive

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6 This terminology is based on that of the International Olive Oil Council.
grove means that the olives can be crushed immediately after being picked, thus ensuring high quality. This is particularly true of Italy and Greece. In Spain, where production is more heavily concentrated in geographical terms, the mills are fewer in number but have a greater throughput. The following table contains data collected by the EC Commission from Member States.

<table>
<thead>
<tr>
<th></th>
<th>Spain</th>
<th>Italy</th>
</tr>
</thead>
<tbody>
<tr>
<td>Olive oil growers</td>
<td>450,000</td>
<td>1,100,000</td>
</tr>
<tr>
<td>Mills</td>
<td>1715</td>
<td>6076</td>
</tr>
<tr>
<td>Refineries</td>
<td>29</td>
<td>13</td>
</tr>
<tr>
<td>Olive pomace plants</td>
<td>53</td>
<td>45</td>
</tr>
<tr>
<td>Bottling /canning plants</td>
<td>440</td>
<td>300</td>
</tr>
</tbody>
</table>

20. The fragmentation of the sector applies also to bottling/canning firms. The process has become even more marked as a result of the growing market share of extra virgin olive oil and the production of olive oils with specific designations of origin. Such factors have enabled many mills and cooperatives to branch into market presentation.

21. Regarding refining and olive pomace plants, the number of operators remains stable because of the minimum size required, the complexity of the plant and the machinery needed. These two parts of the olive oil sector do not intervene at all in the virgin olive oil chain.

22. The number of firms through whose hands the oil passes before it is sold to consumers differs both within and between the various EC Member States. In the great majority of cases the companies that are engaged in exporting are completely independent of those who grow olives and produce olive oil.

4. Production and trade levels

23. Wide fluctuations in production are a feature of olive growing. They are linked to the uncertainties of the climate (for example, drought in Spain in 1995/96 and frost in Greece in 2001/02 seriously affected the harvest, whereas the exceptional Spanish harvest in 2001/02 was so large as to lead to a drop in world prices) and the phenomenon of alternate bearing.
24. In recent decades olive oil production has featured periods of growth followed by stagnation. At the beginning of the 1980s world production was about 1.8 million tonnes, 40 percent up on the figure recorded in the mid-1960s. After a relatively stable period production again showed an upturn in the second half of the 1990s, to reach 2.5 million tonnes. An International Olive Oil Council (IOOC) table of world production is provided in Exhibit EC-2.

25. The EC is the dominant player in the international market for olive oil. The 1990s saw a rapid rise in production in the EC as a result of increases in acreages and yields. Compared with harvests in the early 1990s the average production for the three marketing years ending in 2003 doubled in Spain, while Italy and Greece recorded increases of 16 percent and 18 percent respectively. Production levels of individual EC Members are shown in the IOOC table in Exhibit EC-3.

26. Since the 1990s significant quantities of olive oil have been consumed outside the production areas. World consumption of olive oil has been progressing fairly steadily, without the fluctuations that are a feature of production. Between 1995/96 and 2002/03 the average annual increase in consumption was 6 percent, with even higher relative growth in new markets, such as Mexico. Consumption in the EC and other countries is shown in the IOOC table in Exhibit EC-4.

27. The EC is the largest exporter of olive oil. IOOC data for world exports are given in Exhibit EC-5, and for exports from the EC in Exhibit EC-6. In terms of categories Greek exports essentially consist of extra virgin olive oil (73 percent in 2001/02), whereas the figures for Italy, Spain and Portugal are 45 percent, 44 percent and 21 percent respectively. In terms of market preparation all of Greek and Portuguese exports and 91 percent of Italian exports are in small immediate containers. Exports in bulk represent an appreciable share of Spain's exports (35 percent), however.

28. The EC is a considerable importer of olive oil, although up to 80 percent of importing is done under inward processing arrangements under which import duty and other commercial policy measures are waived when products are imported from non-member countries for re-exportation in the form of finished products after processing within the EC.
Under ‘by equivalence’ inward processing arrangements the importer must export an equivalent quantity of processed olive oil, but not necessarily the actual goods that were processed. Most of the olive oil imported by the EC comes from Tunisia, either under inward processing arrangements or under a zero-rated import quota (53,000 tonnes in 2001/02, now 56,700 tonnes). World imports of olive oil are given in the IOOC table in Exhibit EC-7.

5. **Customs classification**

29. Under the Harmonized System (2002) olives and olive oil are classified in the following way.

30. Fresh olives are classified under subheading 0709.90 ‘Other’, as part of heading 07.09 Other vegetables fresh or chilled.

31. Olive oil is classified in three categories:

   15.09 Olive oil and its fractions, whether or not refined, but not chemically modified
   
   15.09.10 – Virgin
   
   15.09.90 – Other

   15.10 Other oils and their fractions, obtained solely from olives, whether or not refined, but not chemically modified, including blends of these oils or fractions with oils or fractions with oils or fractions of heading 15.09.

32. Note 2 to Chapter 15 states that ‘Heading 15.09 does not apply to oils obtained from olives by solvent extraction (heading 15.10).’ Thus, the presence of oil obtained by solvent extraction is the principal factor distinguishing products under heading 15.10 from those under heading 15.09.
33. Preserved olives are principally classified either under subheading 0711.20 ‘Olives’, falling under the heading

**07.11 Vegetables provisionally preserved (for example, by sulphur dioxide gas, in brine, in sulphur water or in other preservative solutions), but unsuitable in that state for immediate consumption.**

or under subheading 2005.70 ‘Olives’ under heading

**20.05 Other vegetables prepared or preserved otherwise than by vinegar or acetic acid, not frozen, other than products under heading 20.06.**

C. The EC production aid scheme

34. The EC production aid scheme applicable during the investigation period (April – December 2002) used by the Ministry in the olive oil investigation was set out in a series of EC Regulations. It may be noted that these measures are no longer in force, and that a single payment scheme, not based on production, has applied to olive oil and table olives since 1 January 2006.7

35. The functioning of the scheme was based on the establishment of National Guaranteed Quantities (NGQ) for each Member State; these determined the maximum quantity (expressed in olive oil) produced by olive growers for which the aid would be provided.

36. The NGQs for Greece, Italy and Spain for the period from 1998/99 to 2003/04 were:

- Greece 419,529 tonnes
- Italy 543,164 tonnes
- Spain 760,027 tonnes

37. The amount of aid per tonne that the grower received depended on the quantities produced by his home Member State during the given marketing year. The maximum amount of aid per unit was fixed for the marketing years 1998/1999 to 2003/2004 at EUR 1,322.5 per

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7 Export refunds, which have in any case not been operative since 1998, have now been formally abolished.
tonne, but the rate actually paid to farmers was reduced to the extent that overall production in their Member State exceeded the NGQ.

38. In addition, in years when the production of a Member State was below its NGQ, 80 percent of the difference was added to its NGQ for the following year and the remaining 20 percent was distributed among other Member States that had exceeded their NGQs in the current year.

39. Thus, the unit aid to olive growers varied according to the Member State in which the producer was located, the total production of the Member State, the production of the preceding marketing year and the production of other Member States in that same marketing year.

40. The aid was paid to the growers only in respect of the eligible production. However, 1.4% of the total amount was directed to improve the quality of production and its environmental impact and was retained by the authorities. With certain exceptions, olive trees planted after 1 May 1998, and those not covered by a cultivation declaration, were not eligible for aid.

41. As the following below shows, throughout the period of the investigation the amount of aid was below the EUR 1322.5 level.

<table>
<thead>
<tr>
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</tr>
</thead>
<tbody>
<tr>
<td><strong>Spain</strong></td>
<td>1304.0</td>
<td>747,000</td>
<td>939.1</td>
<td>1,074,970</td>
</tr>
<tr>
<td><strong>Greece</strong></td>
<td>1185.6</td>
<td>463,090</td>
<td>1147.6</td>
<td>479,066</td>
</tr>
<tr>
<td><strong>Italy</strong></td>
<td>1017.8</td>
<td>791,595</td>
<td>1304.0</td>
<td>540,864</td>
</tr>
</tbody>
</table>

42. The schedule for distributing the aid to growers was as follows. Before 1 December of each marketing year (November to October) olive growers had to submit to the local
producer organization a ‘crop declaration’ giving data relating to the farm such as location, area and number of olive trees.

43. The olives (harvested mostly between November and March), were handed over to an approved mill for extraction of the oil. The mill owner issued a certificate to the grower stating the amounts of olives received and of oil that they had produced.

44. The grower had to present this certificate and an aid application to the producer organization before 1 July.

45. Member States collected the relevant information and passed it to the EC Commission which determined the level of production and the advance payment (up to 90 percent) that could be given (after 16 October). The final payment was not calculated until the following May, and might not be received by growers for another three months.

46. Regarding the production aid scheme the relevant Regulations in force for the marketing year 2001/2002 were:

1. Regulation No. 136/66/EEC of the Council of 22 September 1966 on the establishment of the common organisation of the market in oils and fats.\(^8\)


5. Commission Regulation (EC) No. 1793/2002 of 9 October 2002 fixing the estimated production of olive oil and the unit amount of the production aid that may be paid in advance for the marketing year 2001/02.\(^12\)

\(^{8}\) Consolidated version Exhibit EC-8.
\(^{9}\) Consolidated version Exhibit EC-9.
\(^{10}\) Consolidated version Exhibit EC-10.
\(^{11}\) Consolidated version Exhibit EC-11.
6. Commission Regulation (EC) No. 1221/2003 of 8 July 2003 setting the actual production of olive oil and the unit amount of the production aid for the 2001/02 marketing year.\textsuperscript{13}

\section*{D. Chronology of the investigation by the Mexican authorities}

47. In this section the EC gives an account of the most significant steps that were taken in the course of the Mexican investigation.

48. On 12 March 2003, Fortuny de México, SA de CV (‘Fortuny’) lodged a complaint alleging material retardation caused by subsidized imports of virgin, extra-virgin and refined olive oil originating in the European Union, mainly in the Kingdom of Spain and the Italian Republic, and requested the initiation of a countervailing duty investigation (Exhibit EC-12).

49. By a Resolution of 2 July 2003 the Ministry accepted Fortuny’s request and the ‘investigation on price subsidies’ on imports of olive oil originating from the European Union, was declared open (Exhibits EC-13, EC-13E). The designated investigation period was April to December 2002. The Resolution was published in the \textit{Diario Oficial} of 16 July 2003.

50. On 4 July 2003 Mexico invited the EC to pre-initiation consultations, and on 11 July the EC sent a letter accepting the invitation (Exhibit EC-14). The consultations took place in Mexico City on 17 July 2003.

51. In response to the invitation of the Ministry contained in the notice of initiation, the Commission, exporting Member State governments, importers, associations, and exporters submitted comments. Questionnaires were sent to the EC and to various interested parties. The Commission submitted its response on 17 September 2003 (Exhibit EC-15).

52. Exercising its right of reply by means of a document of 3 October 2003, Fortuny appeared before the Ministry to submit its counter-arguments in relation to the information, arguments and evidence submitted by other interested parties.

\textsuperscript{12} Exhibit EC-18.

\textsuperscript{13} Exhibit EC-19.
53. On 14 October 2003 the EC wrote to the Ministry complaining about the inadequacy of the information that had been provided in Fortuny’s complaint (Exhibit EC-16).

54. Consultations between Mexico and the EC in accordance with Article 13.2 of the SCM Agreement were held at various points in the course of the investigation. In particular, consultations were held in Mexico City on 17 November 2003 to discuss shortcomings related to the initiation of the investigation.

55. On 5 January 2004 the EC wrote to the Ministry expressing its concerns about, inter alia, the issue of injury (Exhibit EC-17).


57. On 6 February 2004 the Commission replied to a deficiency letter of 20 January 2004, submitting further details on the subsidy schemes and their practical implementation (regarding such subjects as equitable rent, definition of olive grower, and different campaigns) (Exhibit EC-20).

58. On 10 May 2004 the EC wrote to the Ministry underlining its concerns on the injury and pass-through analysis (Exhibit EC-21).

59. The Ministry published in the Diario Oficial on 10 June 2004 a Preliminary Resolution which ordered the continuation of the investigation on price subsidies and imposed provisional countervailing duties on imports of olive oil originating in the European Union with a value per kilogram for customs purposes below the benchmark price of US$4 per kilogram (Exhibits EC-22, EC-22E).

60. Between 21 and 25 June 2004 the Ministry held technical information meetings with the applicant, the importers and an individual exporter, Oleícola Hojiblanca, S.A. (‘Oleícola Hojiblanca’), as well as the Spanish and Italian producer associations (ASOLIVA and
ASSITOL)\textsuperscript{14} and their members. They sought to ascertain the methodology that was used by the Ministry in the Preliminary Resolution in establishing price subsidy margins (subsidy amounts), the basis for injury and causation findings.

61. On 22 July 2004 the Commission submitted comments on the Preliminary Resolution (Exhibits EC-23, EC-23E). Some importers, ASOLIVA, ASSITOL, their respective members, Oleicola Hojiblanca, and Fortuny were granted extensions and submitted their comments on 5 August 2004.

62. On 13 and 15 September 2004 the Mexican authorities performed verification visits to the Spanish exporter Borges.

63. From 7 October 2004 imposition of the provisional measures was suspended because of the four-month time limit set by Article 17.4 of the \textit{SCM Agreement}.

64. On 9 November 2004 Fortuny replied to the request for information issued by the Ministry on 4 October 2004.

65. A public hearing was held on 30 November 2004.

66. On December 2004 consultations were held with the EC in Mexico City in accordance with Article 13.2 of the \textit{SCM Agreement} to discuss issues arising from the Preliminary Resolution.

67. On 6 December 2004 Fortuny submitted written answers to the questions raised during the public hearing.

68. On 10 December 2004 the Commission wrote a final submission completing previous written and oral comments presented during the oral hearing in November but it was not accepted by the investigating authorities because it was delivered, according to the Mexican authorities, four minutes after the deadline (Exhibit EC-24). The EC Commissioner for Trade wrote to the Mexican authorities expressing, \textit{inter alia}, dissatisfaction concerning such excessive procedural strictness (Exhibit EC-25).

\textsuperscript{14} ASOLIVA: Asociación Española de la Industria y Comercio Exportador de Aceite de Oliva; ASSITOL:
69. Notwithstanding the expiry on 2 January 2005 of the 18 months deadline, the Ministry continued the investigation by performing a verification visit at Fortuny’s premises on 19 January 2005 and by sending out new questionnaires. Because of the expiry of the deadline the EC Delegation refused to submit further information, and explained its reasons in a letter of 11 February 2005 to the Ministry (Exhibit EC-26).

70. Definitive measures were imposed in a Final Resolution on 1 August 2005 (Exhibits EC-1, EC-1E).

E. WTO Procedure

71. In August 2004 the Commission made its first request for consultations with Mexico regarding the investigation of olive oil from the EC. The parties eventually met in Geneva on 17 September 2004 but did not reach a mutually satisfactory solution.

72. In April 2006 the European Commission made a second request for consultations with Mexico in accordance with the DSU. Such consultations were held in Geneva on 5 May 2006 but did not reach a mutually satisfactory solution.

73. On 7 December 2006 the EC requested the establishment of a Panel, but this was blocked Mexico. The EC reiterated its request and at its meeting on 23 January 2007 the Dispute Settlement Body (DSB) established a Panel in accordance with Article 6 of the DSU. Its terms of reference were:

To examine, in the light of the relevant provisions of the covered agreements cited by the European Communities in document WT/DS341/2, the matter referred to the DSB by the European Communities in that document, and to make such findings as will assist the DSB in making the recommendations or in giving the rulings provided for in those agreements.

74. On 13 February 2007, the EC requested the Director-General to determine the composition of the Panel pursuant to paragraph 7 of Article 8 of the DSU. The Director-General constituted the Panel on 22 February 2007.
III. STANDARD OF REVIEW

75. The standard of review applicable in this dispute is that stated in Article 11 of the DSU:

The function of panels is to assist the DSB in discharging its responsibilities under this Understanding and the covered agreements. Accordingly, a panel should make an objective assessment of the matter before it, including an objective assessment of the facts of the case and the applicability of and conformity with the relevant covered agreements, and make such other findings as will assist the DSB in making the recommendations or in giving the rulings provided for in the covered agreements. Panels should consult regularly with the parties to the dispute and give them adequate opportunity to develop a mutually satisfactory solution.

76. Regarding the review of ‘factual components’ of findings made by investigating authorities, the Appellate Body said in US – Softwood Lumber VI (Article 21.5 – Canada):15

It is well established that a panel must neither conduct a de novo review nor simply defer to the conclusions of the national authority. A panel’s examination of those conclusions must be critical and searching, and be based on the information contained in the record and the explanations given by the authority in its published report. A panel must examine whether, in the light of the evidence on the record, the conclusions reached by the investigating authority are reasoned and adequate.

77. The ‘reasoned and adequate’ criterion is one that the Appellate Body frequently invokes. The same criterion has also been applied in a parallel set of cases applying the Agreement on Safeguards. So, in US – Line Pipe, the Appellate Body said, in regard to the examination of ‘other factors’ causing injury, that the:16

explanation must be clear and unambiguous. It must not merely imply or suggest an explanation. It must be a straightforward explanation in express terms.

78. Likewise, speaking of the term ‘reasoned conclusion’ in that Agreement it said that such a conclusion is:17

not one where the conclusion does not even refer to the facts that may support that conclusion.

79. Again, in *US – Lamb* the Appellate Body said:18

a panel can assess whether the competent authorities' explanation for its determination is reasoned and adequate only if the panel critically examines that explanation, in depth, and in the light of the facts before the panel. Panels must, therefore, review whether the competent authorities' explanation fully addresses the nature, and, especially, the complexities, of the data, and responds to other plausible interpretations of that data. A panel must find, in particular, that an explanation is not reasoned, or is not adequate, if some alternative explanation of the facts is plausible, and if the competent authorities' explanation does not seem adequate in the light of that alternative explanation.

80. In the *Softwood Lumber* case (above) it offered guidelines for determining when an authority’s conclusions were ‘adequate’.19

What is “adequate” will inevitably depend on the facts and circumstances of the case and the particular claims made, but several general lines of inquiry are likely to be relevant. The panel’s scrutiny should test whether the reasoning of the authority is coherent and internally consistent. The panel must undertake an in-depth examination of whether the explanations given disclose how the investigating authority treated the facts and evidence in the record and whether there was positive evidence before it to support the inferences made and conclusions reached by it. The panel must examine whether the explanations provided demonstrate that the investigating authority took proper account of the complexities of the data before it, and that it explained why it rejected or discounted alternative explanations and interpretations of the record evidence. A panel must be open to the possibility that the explanations given by the authority are not reasoned or adequate in the light of other plausible alternative explanations, and must take care not to assume itself the role of initial trier of facts, nor to be passive by “simply accept[ing] the conclusions of the competent authorities”. (footnote omitted)

81. Regarding the treatment of individual pieces of evidence as part of a totality the Appellate Body said in *US – Countervailing Duty Investigation on DRAMS*.20

*in many cases a panel will be able to examine the sufficiency of the evidence supporting an investigating authority's conclusion of*
entrustment or direction only by looking at each individual piece of evidence.

82. It added to this the observation that:\footnote{21}

when an investigating authority relies on the totality of circumstantial evidence, this imposes upon a panel the obligation to consider, in the context of the totality of the evidence, how the interaction of certain pieces of evidence may justify certain inferences that could not have been justified by a review of the individual pieces of evidence in isolation.

83. Regarding how a panel should deal with contradictory evidence the Appellate Body has said in the \textit{Softwood Lumber} case (above):\footnote{22}

it is in the nature of anti-dumping and countervailing duty investigations that an investigating authority will gather a variety of information and data from different sources, and that these may suggest different trends and outcomes. The investigating authority will inevitably be called upon to reconcile this divergent information and data. However, the evidentiary path that led to the inferences and overall conclusions of the investigating authority must be clearly discernible in the reasoning and explanations found in its report. When those inferences and conclusions are challenged, it is the task of a panel to assess whether the explanations provided by the authority are “reasoned and adequate” by testing the relationship between the evidence on which the authority relied in drawing specific inferences, and the coherence of its reasoning. In particular, the panel must also examine whether the investigating authority’s reasoning takes sufficient account of conflicting evidence and responds to competing plausible explanations of that evidence. This task may also require a panel to consider whether, in analyzing the record before it, the investigating authority evaluated all of the relevant evidence in an objective and unbiased manner, so as to reach its findings “without favouring the interests of any interested party, or group of interested parties, in the investigation.” (footnote omitted)

84. As well as stating the standard of review to be applied by panels, in these cases the Appellate Body has effectively enunciated the obligations that must be respected by investigating authorities. The EC will have occasion to invoke these obligations as it examines the individual aspects of this dispute.

85. The EC places great emphasis on the duty to provide reasoned and adequate explanations because the Ministry’s failure to do so was a recurring feature of its

\footnote{21} Ibid., para. 157.
Resolutions. As the EC will make clear, the Ministry systematically failed to explain how the facts in the record supported its findings and conclusions, or even to refer to such facts when stating these conclusions. Furthermore, even when an explanation was provided it was often not clear what aspect of the rules the Ministry was applying.

IV. **CLAIMS AND LEGAL ARGUMENTS**

A. Claims concerning procedural violations before or during the course of the investigation

1. Mexico has failed to grant the opportunity for consultations under Article 13.1 of the *SCM Agreement* before the initiation of the investigation

86. In countervailing duty investigations the *SCM Agreement* gives the Member alleged to be conferring the subsidy a special status by requiring the investigating authorities to engage in consultations. The obligation is stated in Article 13.1:

> As soon as possible after an application under Article 11 is accepted, and in any event before the initiation of any investigation, Members the products of which may be subject to such investigation shall be invited for consultations with the aim of clarifying the situation as to the matters referred to in paragraph 2 of Article 11 and arriving at a mutually agreed solution.

87. The Ministry failed to respect this obligation in the olive oil investigation. The decision to initiate was taken on 2 July 2003,\(^{23}\) and the invitation to pre-initiation was sent two days after this.\(^{24}\) As a result the first consultations with the EC took place only on 17 July 2003, a day after the initiation of the investigation was published.

88. As a consequence, because of its failure to hold consultations before the initiation of the investigation on 2 July 2003, Mexico is in outright breach of its obligations under Article 13.1 of the *Agreement*.

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\(^{23}\) It is useful to recall that, according to footnote 37 of the *ASCM Agreement*, “[t]he term ‘initiated’ as used hereinafter means procedural action by which a Member formally commences an investigation as provided in Article 11.”

\(^{24}\) Preliminary Resolution, para. 22.
2. **Mexico initiated the investigation in the absence of an application made by or on behalf of the domestic industry as required by Article 11.4 of the Agreement**

89. Mexico has failed to respect the requirements of Article 11.4 of the *SCM Agreement* regarding the support of the domestic industry for initiation of an investigation. This provision states that:

An investigation shall not be initiated pursuant to paragraph 1 unless the authorities have determined, on the basis of an examination of the degree of support for, or opposition to, the application expressed by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry. The application shall be considered to have been made “by or on behalf of the domestic industry” if it is supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25 per cent of total production of the like product produced by the domestic industry.

38 In the case of fragmented industries involving an exceptionally large number of producers, authorities may determine support and opposition by using statistically valid sampling techniques.

39 Members are aware that in the territory of certain Members employees of domestic producers of the like product or representatives of those employees may make or support an application for an investigation under paragraph 1.

90. The crucial feature of this provision in the present context is the stress on production and output. The point is apparent in the central role assigned to the ‘domestic industry’, which has these notions at its heart. Thus, this term is, according to Article 16 of the Agreement, ‘to be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products’. The point is reinforced by the presumption created by Article 11.4 concerning the degree of support that is necessary. Here again the text, for example in the phrase ‘supported by those domestic producers whose collective output …’, places the emphasis on production and output.

91. In its investigation the Ministry accepted the applicant Fortuny’s assertion that until the early months of 2002 it constituted the entire domestic industry for products like those
imported, and furthermore that it ceased production of olive oil in March 2002.\textsuperscript{25} Fortuny’s application that led to the initiation of the investigation was made on 12 March 2003.\textsuperscript{26} Thus, at the time of the application Fortuny was not a producer of the ‘like product’ and had not been so for twelve months, and yet it was treated by the Ministry as constituting the Mexican domestic industry.

92. The definition of the term ‘domestic industry’ is also relevant to the determination of injury, and in that context it is the subject of a separate claim by the EC (paragraph 158). In its discussion of injury in the Final Resolution the Ministry sought to explain how an entity with no production could nevertheless constitute a ‘domestic industry’. The EC will therefore make its comments on this topic in that context.

93. Article 11.4 requires that the investigating authorities’ determination (that the application is made by or on behalf of the domestic industry) should be reached only ‘on the basis of an examination of the degree of support for, or opposition to, the application expressed by domestic producers of the like product’. In the present case it is evident that the Ministry did not carry out a realistic investigation of this kind. In the Final Resolution the Ministry refers to enquiries that it made \textit{in the course of the investigation} regarding the possible existence of other producers of olive oil\textsuperscript{27} (although, as shown below at paragraph 166, even these enquiries were inadequate). At the time of the initiation of the investigation the Ministry accepted a statement provided by Fortuny from a government department in one Mexican state that Fortuny was the sole Mexican producer, and attempted no investigation regarding the existence of other producers.\textsuperscript{28} That this was the extent of the Ministry’s investigations is confirmed by the Ministry’s later resolutions, which indicate that the only checks which it made were ones concerning Fortuny’s assertions about its own production.\textsuperscript{29} No steps were taken at the time of initiation in order to determine whether there were other producers.

\textsuperscript{25} Final Resolution, para. 210.
\textsuperscript{26} Final Resolution, para. 1.
\textsuperscript{27} Final Resolution, para. 212.
\textsuperscript{28} Initiation Resolution, para. 22.
\textsuperscript{29} Final Resolution, para. 5; Preliminary Resolution, para. 4.
94. It is evident from these facts and arguments that Mexico is in outright breach of its obligations under Article 11.4 of the Agreement as regards the rule that the application must have been made by or on behalf of the domestic industry.
3. **Mexico failed to apply self-restraint in initiating the investigation, as required by Article 13(b)(i) of the *Agreement on Agriculture***

95. Article 13(b)(i) of the *Agreement on Agriculture* imposed certain limitations on the initiation of countervailing duty investigations:30

   Article 13 Due Restraint

   During the implementation period, notwithstanding the provisions of GATT 1994 and the Agreement on Subsidies and Countervailing Measures (referred to in this Article as the "Subsidies Agreement"):

   …

   (b) domestic support measures that conform fully to the provisions of Article 6 of this Agreement including direct payments that conform to the requirements of paragraph 5 thereof, as reflected in each Member's Schedule, as well as domestic support within *de minimis* levels and in conformity with paragraph 2 of Article 6, shall be:

   (i) exempt from the imposition of countervailing duties unless a determination of injury or threat thereof is made in accordance with Article VI of GATT 1994 and Part V of the Subsidies Agreement, and due restraint shall be shown in initiating any countervailing duty investigations;

96. Article 21 of the *Agreement on Agriculture* establishes its priority over the *SCM Agreement*:

   Article 21 Final Provisions

   1. The provisions of GATT 1994 and of other Multilateral Trade Agreements in Annex 1A to the WTO Agreement shall apply subject to the provisions of this Agreement.

97. The production aids provided to olive growers by the EC that are the basis for Mexico’s imposition of countervailing duties constitute ‘domestic support measures that conform fully to the provisions of Article 6 of the Agreement’.

98. Article 13(b)(i) imposed a double restriction on countervailing duty action.

99. First, it prevented countervailing measures being imposed except when a determination was made of injury or threat thereof. Consequently, no action could be taken in

30 Although this provision is no longer operative it was still in operation at the time of the initiation of the investigation.
respect of claims based on ‘material retardation’. Mexico’s Final Resolution shows that this topic was raised a number of times by interested parties during the investigation. Nevertheless, although material retardation was the basis of Fortuny’s claim, the investigation was initiated and countervailing measures were imposed. Consequently Mexico’s olive oil investigation infringed this obligation.

100. Secondly, Article 13(b)(i) required the authorities to ‘show due restraint’ before initiating an investigation, whatever kind of injury was alleged. However, neither the measures published by Mexico in respect of this action, nor the statements made by Ministry in the course of the investigation, indicate that Ministry showed due restraint before initiating the investigation or gave even the least consideration to this issue.

101. On the contrary, the Mexican authorities appear to have embarked on the investigation with exceptional haste. Thus, as shown in the EC’s first claim (paragraph 86, above), they did not wait to hold the consultations with the EC that they were obliged to, but plunged into the investigation at the first possible moment. Again, in examining the degree of industry support (paragraph 89) the Ministry clearly did not spend adequate time investigating the full extent of the domestic industry, but paused only to take account of Fortuny’s position. As yet another way in which the authorities failed to exercise due restraint one can cite the way in which they took what was clearly an application based on ‘material retardation’ to the establishment of a domestic industry and converted it into one of ‘material injury’ of an industry (paragraph 194).

102. The EC has therefore clearly established that Mexico, firstly, by beginning a countervailing duty investigation in response to a complaint based on material retardation, and secondly, by failing to exercise due restraint in initiating that investigation, acted in breach Article 13(b)(i) of the Agreement on Agriculture.

31 Final Resolution, paras. 42.F, 44.A, 143, 272.
4. Mexico failed to require the complainant to provide non-confidential summaries of confidential information, and failed to disclose essential facts, in breach of Articles 12.4.1 and 12.8 of the SCM Agreement

103. Article 12.4.1 of the SCM Agreement requires that non-confidential summaries be supplied to the investigating authorities whenever they accept confidential information:

The authorities shall require interested Members or interested parties providing confidential information to furnish non-confidential summaries thereof. These summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. In exceptional circumstances, such Members or parties may indicate that such information is not susceptible of summary. In such exceptional circumstances, a statement of the reasons why summarization is not possible must be provided.

104. The Ministry failed to observe the basic requirement that parties providing confidential information should furnish non-confidential summaries, and did not ensure that such summaries contained sufficient detail. Nor did it make any attempt to justify this omission by invoking ‘exceptional circumstances’. As a consequence the opportunities for the EC exporters and the EC itself to defend their interests were significantly prejudiced. The EC’s concern at the failure to supply such summaries was brought to the attention of the Ministry at an early stage in the proceedings.32

105. The EC notes that confidential information was presented, for example by Fortuny, but that neither the Final nor the Preliminary Resolution contains any reference to non-confidential summaries being either required or provided. Among the categories of confidential information supplied to the Ministry were:

- a number of important aspects of Fortuny’s complaint, e.g. its production process,33 its company structure,34 the sources of data on exporters’ prices,35 numerous annexes (for some which even the subject matter is not revealed).
- Fortuny’s purchases,36

34 Ibid., page 33.
35 Ibid., page 44.
• various details of Fortuny’s business plan; 37
• Formex Ybarra’s purchases; 38
• Distribuidora Ybarra’s purchases from Fortuny and from importers; 39 and
• the sales prices of olive oil in certain supermarkets. 40

106. For none of these is there any mention of non-confidential summaries.

107. Although Article 12.4.1 has no explicit obligation for the investigating authority to require the production of appropriate non-confidential summaries, such a requirement is a necessary concomitant of the rules that it contains. As the Panel in Guatemala – Cement II found, 41 the Agreements impose obligations on WTO Members, and not on private parties.

108. Mexico is in also breach of the specific requirement in the SCM Agreement to make disclosure to interested Members and parties before adopting definitive measures. Article 12.8 of the Agreement states that:

   The authorities shall, before a final determination is made, inform all interested Members and interested parties of the essential facts under consideration which form the basis for the decision whether to apply definitive measures. Such disclosure should take place in sufficient time for the parties to defend their interests.

109. Neither the EC, as an interested Member, nor (as far as the EC is aware) the exporting EC companies nor their associations received any communication from the Ministry that constituted a disclosure of this kind.

110. Article 12.4.1 and 12.8 constitute an important part of the framework of due process rights that the Agreement establishes for interested Members and parties. Failure to respect these rights can substantially impair the capacity of Members and parties to defend their interests in the manner that the Agreement intends.

36 Final Resolution, para. 380.
37 Final Resolution, paras. 332 to 342, 368, 411.A.
38 Final Resolution, para. 380.
39 Final Resolution, para. 359.
40 Final Resolution, para. 388.
41 Panel report Guatemala – Cement II, para. 8.213
111. In sum, the Ministry’s failure to require the production of appropriate non-confidential summaries, and to disclose essential facts, constitute serious breaches of the obligations in Article 12.4.1 and 12.8 of the SCM Agreement.
5. **Mexico failed to comply with the time limit set by Article 11.11 of the SCM Agreement regarding the completion of the investigation**

112. Article 11.11 of the *SCM Agreement* states that:

> Investigations shall, except in special circumstances, be concluded within one year, and in no case more than 18 months, after their initiation.

113. The Mexican investigation into olive oil was initiated on 2 July 2003. Consequently, it should have been concluded, even assuming ‘special circumstances’ existed justifying delay, by 2 January 2005. However, the definitive measures were not adopted until 1 August 2005. Thus, the investigation lasted more than 24 months, and Mexico is in clear breach of the obligation in Article 11.11. In the first place, it gave no reasons why the circumstances were ‘special’ and would therefore have justified exceeding the one year limit. Secondly, it exceeded the absolute limit of 18 months.

114. Despite the passing of the 2 January 2005 deadline, the Ministry continued to send out address various requests for information.\(^{42}\) This action placed the interested Members and parties in the dilemma that if they wished to defend their interests they would have to condone the Ministry’s failure to respect Article 11.11 of the *Agreement*. When they decided that their only means of insisting on the importance of the rules of the *Agreement* was to refrain from responding to such requests, the reaction of the Ministry was to presume that the points that they were maintaining had not been established. In effect, they were penalized for the Ministry’s own failures.

115. Article 12.7 of the *Agreement* provides for the situation where information is not provided:

> In cases in which any interested Member or interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available.\(^{7}\)

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\(^{42}\) Final Resolution, paras. 133, 139 and 140.
116. In effect, on the points on which the interested parties and the EC declined to respond to requests made after the expiry of the deadline the Ministry was making decision on the ‘basis of the facts available’. However, its own failure to observe the time limit set by the Agreement should have debarred it from treating their behaviour as amounting to a refusal of access to, or a failure to provide, necessary information.

117. The Ministry was not ignorant of the situation. In a submission of 10 December 2004 the EC Delegation in Mexico drew the attention of the Ministry to the approaching deadline (Exhibit EC-24). In a further letter of 11 February 2005 it noted the expiry of the 18-month period, saying that the continuation of the proceedings beyond this point lacked any legal basis (Exhibit EC-26).

118. Not only did Mexico’s illegal action place the interested parties and the EC in the dilemma noted above, but by prolonging the period during which traders had to live with uncertainty it had a chilling effect on commercial activity.

119. In sum, the Ministry, by continuing the investigation for nearly six months beyond the 18 month limit was in serious breach of Article 11.11 of the SCM Agreement.
B. Claims concerning the conduct of the investigation and the final affirmative determination

1. Mexico failed to provide a reasoned and adequate explanation of the existence of subsidization, to calculate the benefit conferred on the recipient, and to apply the method used to each particular case as required by Articles 1.1 and 14 of the SCM Agreement

120. In this section the EC will demonstrate that the Ministry failed to provide a reasoned and adequate explanation for the imposition of countervailing duties on EC exports of olive oil in the light of Mexico’s obligations under Articles 1.1 and 14 of the SCM Agreement. The EC will look first at the Ministry’s conclusion that the EC aid in question constituted a countervailable subsidy, and then at its application of this conclusion to the individual exporters.

(a) Subsidization in general

121. The EC has already described the system of production aids that was applied in the olive sector in the period investigated by Mexico (paragraph 34). Two particular features stand out. First, the aid was given to olive growers, for the most part after they had had their olives crushed to produce oil. Second, the great majority of exporting EC companies had no involvement with olive growing and their dealings with growers were entirely carried out at arm’s length.

122. The Ministry attempted to bridge this gap between the persons who received the subsidy (the olive growers) and the persons exporting the products to Mexico, by focusing on the product linked to the subsidy, and the question whether it was olives or olive oil. The EC will address that issue shortly. However, the first step to be taken in approaching this question is, as always, to look at the relevant WTO texts.

123. As regards products, the term that one finds repeatedly in the SCM Agreement’s provisions on countervailing duties is ‘subsidized imports’. Article 15 makes clear that it is when subsidized imports are causing injury that countervailing duties may be imposed. The
crucial issue therefore is whether the olive oil imported into Mexico from the EC can be described as ‘subsidized’.

124. The *SCM Agreement* has little to say about the relationship of the subsidy and the product. On the other hand, *GATT 1994* addresses the issue directly. Article VI:3 speaks of a ‘bounty or subsidy determined to have been granted, directly or indirectly, on the manufacture, production or export of such product’, where ‘such product’ is ‘any product of the territory of any contracting party imported into the territory of another contracting party’. Two points should be noted. Firstly, the provision assumes that subsidies can be given ‘indirectly’. Secondly, the conferring of the subsidy must be linked to some activity concerning the product.

125. What the *Agreement* does have a lot to say about is the notion of benefit. Firstly, by Article 1 it is explicitly made an element of the notion of subsidy. Secondly, specifically in regard to the rules on countervailing duties, Article 14 addresses the ‘calculation of the amount of a subsidy in terms of the benefit to the recipient’.

126. The importance of identifying the beneficiary of the benefit that constitutes the subsidy was emphasized by the Appellate Body in *Canada – Aircraft*:

> A “benefit” does not exist in the abstract, but must be received and enjoyed by a beneficiary or a recipient. Logically, a “benefit” can be said to arise only if a person, natural or legal, or a group of persons, has in fact received something. The term “benefit”, therefore, implies that there must be a recipient.

127. Finally, reference should be made again to Article VI:3, and in particular to the definition given there of the term ‘countervailing duty’: ‘a special duty levied for the purpose of offsetting any bounty or subsidy bestowed, directly or indirectly, upon the manufacture, production or export of any merchandise’. The significant phrase in the present context is ‘for the purpose of offsetting’. Clearly, what is to be offset is the benefit conferred by the subsidy.

128. Where, as in the present case, the subsidy is given to one person, but it is another person that has exported the product to the Member claiming that injury has been caused, the
authorities must establish that the subsidy has in some way ‘passed through’ to the second person. The issue is one that has arisen in a small number of disputes, the most significant of which is *US – Softwood Lumber IV*. In that case the Appellate Body observed that:\(^{44}\)

> The phrase “subsid[ies] bestowed ... indirectly”, as used in Article VI:3, implies that financial contributions by the government to the production of *inputs* used in manufacturing products subject to an investigation are not, in principle, excluded from the amount of subsidies that may be offset through the imposition of countervailing duties on the *processed product*. Where the producer of the input is not the same entity as the producer of the processed product, it cannot be presumed, however, that the subsidy bestowed on the input passes through to the processed product. In such case, it is necessary to analyze to what extent subsidies on inputs may be included in the determination of the total amount of subsidies bestowed upon processed products. For it is only the subsidies determined to have been granted upon the *processed products* that may be offset by levying countervailing duties on those products.

129. The Appellate Body found support for this view in the provisions mentioned above, viz., the rule in Article VI:3 of *GATT 1994* that countervailing duties are a mechanism designed to offset subsidies, and in the requirements in the definition of subsidy in Article 1 of the *SCM Agreement* that a subsidy should constitute a financial contribution by government and should confer a benefit.\(^{45}\) As regards benefit, it emphasised that:\(^{46}\)

> Where the input producers and producers of the processed products operate at *arm’s length*, the pass-through of input subsidy benefits from the direct recipients to the indirect recipients downstream cannot simply be presumed; it must be established by the investigating authority.

130. The nature of the enquiry that is necessary in order to determine whether and to what extent there is pass through of input subsidy benefits was indicated by the panel in a GATT Subsidies Code dispute where the question was the extent of subsidies on swine that were passed on to producers of pork. According to this panel the basic criterion was one of how much prices of the input product were lowered. The panel suggested that among the relevant

\(^{43}\) Appellate Body Report *Canada – Aircraft*, para. 154.
4.9 The Panel found that, given the existence of separate industries for swine and pork production in Canada operating at arm's length, the subsidies granted to swine producers could be considered to be bestowed on the production of pork only if they had led to a decrease in the level of prices for Canadian swine paid by Canadian pork producers below the level they have to pay for swine from other commercially available sources of supply. The Panel fully recognized that subsidies need not in all cases, particularly in cases involving only one industry, have a price effect to be countervailable; its finding was merely that Canadian pork producers, as an industry separate from the swine producers and operating at arm's length, could not have been considered to be subsidized unless the subsidy bestowed on swine production has had a price effect. For this reason, the determination that pork production had been subsidized as a result of the subsidies provided to swine producers required an examination of the impact of the subsidies on the price of swine.

4.10 The Panel noted that the impact of a subsidy granted to raw material producers on the price which processors of that material have to pay does not normally depend only on the proportion of the material consumed in processed form and the value added through processing. The Panel therefore found that the two factors which the United States established in accordance with Section 771B, namely the substantial dependence of the demand for swine on the demand for pork and the limited value added in the production of swine into pork, could not justify the conclusion that the subsidies granted to swine producers had led to a decrease in the level of prices for Canadian swine paid by Canadian pork producers below the level they have to pay for swine from other commercially available sources of supply and that this decrease was equivalent to the full amount of the subsidy. Other factors would need to be examined in order to arrive at such a conclusion. The Panel noted that it was not its task to identify these other factors; however it considered that, for example, they could include the extent to which Canadian swine is internationally traded (because it is less likely that competition among the Canadian swine producers cause the domestic price of swine to decline by the full amount of the subsidies if the Canadian swine producers can export at international prices) and the per unit cost of producing the additional output of swine that the subsidies may have caused (because the extent to which such additional output affects the price for swine depends in part on the cost of producing that output). The Panel therefore concluded that the determination of the United States that the Canadian government had bestowed a subsidy on the production of pork equal to the amount granted to the producers of swine on the basis of the finding that the conditions set out in Section 771B were met could not be considered a

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47 Panel report US – Canadian Pork, pars. 4.9 et seq.
determination based on all facts necessary to meet the requirements of Article VI:3.

131. The Appellate Body has also used the criterion of arm’s-length sale when considering whether a subsidy given to a state-owned company can be taken to benefit the private body that emerges when that company is privatised (in this instance the term ‘pass through’ was not used). The criterion of arm’s-length’ sale was coupled with that of sale for ‘fair market value’.48

Privatization at arm's length and for fair market value may result in extinguishing the benefit. Indeed, we find that there is a rebuttable presumption that a benefit ceases to exist after such a privatization. Nevertheless, it does not necessarily do so. There is no inflexible rule requiring that investigating authorities, in future cases, automatically determine that a “benefit” derived from pre-privatization financial contributions expires following privatization at arm's length and for fair market value. It depends on the facts of each case.

132. The EC does not at this point offer a view as to whether the particular methodology for calculating pass through that was suggested by the GATT Panel in US – Canadian Pork is the right one or is applicable in all situations. What it does say, however, is that the notion of pass through must be properly examined and a coherent and convincing methodology must be adopted in its application. This much is apparent from the Appellate Body’s conclusion in the Softwood Lumber case (above) that pass through cannot be assumed.

133. It is in the light of this legal analysis that one turns to examine the way in which the Ministry addressed this issue in its investigation of olive oil from the EC. In its Final Resolution, in a section entitled ‘System of pass through’, the Ministry had this to say:49

the supply of olive oil and its prices were affected by the subsidy, since if the subsidy had not existed, olive oil production would not have been attractive for many producers, which would force them to grow other types of crops.

The subsidy on olive oil production allows production to be artificially maintained, which affects the supply and therefore the price. This allows exporters of the product investigated to access the product and export it at lower prices than would have been the case if the subsidy had not existed.

49 Final Resolution, para. 117.
134. Finally, the Ministry said that:\(^50\)

It is important to clarify that the exporters appearing in this investigation exported a subsidized product to the United Mexican States, which is the product being investigated. Even though these companies are not the direct recipients of the subsidy in monetary terms, they do benefit when they process and sell subsidized olive oil, since that situation allows them to supply the product at a lower price than would have been the case if the subsidy had not existed.

135. Thus, the Ministry asserted that the supply of olive oil and its prices were affected by the subsidy. Firstly, the supply increased because olive production was rendered more attractive than that of other crops. Secondly, the increased supply led to lower prices. However, as arguments in support of a notion of pass through as regards the EC scheme these propositions suffer from two fatal weaknesses. Firstly, they are mere assertions. Secondly, even if true, they would not explain how a subsidy could have passed through to the exporters.

136. That the Ministry’s statements are mere assertions is quite evident from an examination of the two Resolutions. These contain no indication of any attempt by the Ministry to support its statements with evidence. This cannot have been for lack of basic data. Much information regarding the production, prices and exports of olives and olive oil was available to it. More was supplied by the EC and interested parties in the course of the investigation.

137. For example, in its response of 17 September 2003 to the Ministry Questionnaire the EC provided arguments to show the lack of connection between the levels of the production subsidy and those of prices over the period between 1992 and 2003.\(^51\) In the words of the EC, ‘The object of the production aid is not to cover a part of the cost of production but to guarantee an equitable income to farmers’.\(^52\)

138. The EC also explained how the arrangement of enterprises involved in the olive oil business meant that olive growers were quite distinct from olive oil exporters, and that, as a

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\(^50\) Final Resolution, para. 118.

\(^51\) Exhibit EC-15, point 2.5 ‘Mercado Internacional’.

\(^52\) ‘El objetivo de la ayuda a la producción no es el cubrir una parte de los costes de producción sino garantizar una renta equitativa a los agricultores.’
consequence of this and other factors, prices were determined not by the production subsidies but by the operation of demand and supply.\textsuperscript{53} The EC criticised the failure of the Ministry not to extend its enquiries to olive growers, but to limit them to exporters and/or producers of olive oil.\textsuperscript{54} This failure occurred despite the comprehensive explanation of the aid system which showed that the aid was paid only to growers and only if they fulfilled three conditions: (1) lodged a crop declaration at the beginning of the crop year identifying the number of trees being cultivated; (2) obtained from the crusher a certificate of the entry and pressing of the olives; and (3) lodged an aid application at the end of the year indicating the level of production that had been obtained.\textsuperscript{55}

139. In this context it is worth quoting the conclusions of an Australian investigation into imports of EC olive oil, which was virtually contemporaneous with the Mexican investigation. The report of the Australian investigating authority, which was known to the Ministry, shows the kind of enquiries that should be made in this context, as well as indicating the conclusions that would result from an objective investigation:\textsuperscript{56}

> Customs visited exporters of about 80\% of the combined exports of the GUC to Australia. In the case of these exporters there were arms length transactions in the sales chain between the olive growers and the exporters.

\textsuperscript{53} EC Response to Ministry Questionnaire, point 2.7. Exhibit EC-15.

\textsuperscript{54} EC Response to Ministry Questionnaire, point 2.8. Also in EC Delegation submission of 6 February 2004, point 3. Exhibit EC-20.

\textsuperscript{55} EC Response to Ministry Questionnaire, point 2.15.

\textsuperscript{56} Certain Olive Oil from Greece, Italy and Spain, Report No. 77, Trade Measures Branch, Australian Customs Service, 24 May 2004, page 27. Exhibit EC-27.
For example:

- a sale from the mill or grower to a refiner or filterer (often through a trader or ‘middleman’ and an olive oil exchange); and/or
- a sale to a blender or packer who prepares the olive oil for domestic or export sale.

Customs is therefore satisfied that olive oil produced by the grower is an input product to the goods exported to Australia. Customs is also satisfied that there is little vertical integration for the companies involved in the exportation of olive oil to Australia from Greece, Italy and Spain.

The economist engaged by Customs observed that, because of the number of stages in the selling process between olive grower and the exporter, pass through of benefit could not be demonstrated. Based on the information available to him, his view is that market forces alone dictate the price of each transaction.

Customs requested information in respect of pass through from exporters it visited in Italy and Spain. Each of the exporters advised it was not the recipient of a benefit, either directly or indirectly, from the production aid. The purchases of olive oil by exporters from olive oil suppliers were arms length transactions.

At appropriate stages in the investigation, including at formal consultations, Customs requested further information from the EC. The EC partially answered a series of questions put to it by Customs, but the data provided in support of the claim that pass through of benefit did not occur was inconclusive. The EC’s view was that, whether or not there was a benefit from any pass through, the amount of benefit could not be quantified.

140. Unfortunately, the objective nature of the Australian investigation of pass through was not repeated in that carried out by the Ministry.

141. The second of the weaknesses affecting the Ministry’s arguments about increased supply causing lower prices is that even if that were true it would not lead to the conclusion that the olive oil exported from the EC constituted ‘subsidized imports’. A particular feature of the international market in olive oil is the dominant position of EC production and exports. Depending on the level of international demand, if the EC harvest is large prices may fall, but this effect will be felt immediately throughout the international market.

142. Before making its assertions about olive oil supply and prices, the Ministry put forward another argument in the context of pass through. It said that ‘because it is not an investigation on a subsidy on a consumable (olives) but on olive oil, which is the product
itself exported to the United Mexican States for that reason, the investigating authority is not obliged to carry out an analysis of the system for pass through of the subsidy since, in accordance with what is stated in section 100 of this Resolution, Regulation 136/66/EEC and its amendments establish indisputably that the programme of aid is for olive oil.’

143. This attempt to exclude the issue of pass through because the subsidized product and the exported product were in some way the same is wrong or, even if correct, would be irrelevant.

144. The Ministry’s argument is wrong because it assumes that the subsidy was given on the production of olive oil. In fact, as has been explained, the aid was given to those who (a) grew olives, and (b) had them crushed to produce olive oil. In concentrating on the second of these steps the Ministry completely overlooked the first. Thus, even if it could be established (which the Ministry does not try to do) that the olive oil that emerged after the second stage was the same as the oil that was exported to Mexico, the olive that was produced after the first stage certainly was not. Consequently the proposition that the aid was given on the production of olive oil is simply not accurate.

145. In this context further mention should be made of a contemporaneous Australian investigation into olive oil from the EC (paragraph 139, above). In that case the investigating authority found that the oil produced by the crusher was not the same product as that imported into Australia because the imported oil had first been filtered and blended by the exporter. It concluded that the oil sold by the producer was an upstream product of the exported oil.

146. The Ministry’s arguments regarding the sameness of the subsidized and the exported products are irrelevant because they are in effect an application of a test of ‘likeness’, and there is no WTO rule specifying such a test as between, on the one hand, the product on the production of which the aid is granted and, on the other, the product that is exported to the

57  This double requirement was repeatedly emphasised to the Ministry by the EC Delegation, e.g., Letter of 10 December 2004 (Exhibit EC-24).

58  Certain Olive Oil from Greece, Italy and Spain, Report No. 77, Trade Measures Branch, Australian Customs Service, 24 May 2004, pages 22 to 23. Exhibit EC-27. Having reached this conclusion the authority went on to consider the question of pass through of the aid.
Member taking countervailing measures. The sole requirement of likeness that is found in WTO countervailing duty law is the one which exists as between the ‘subsidized import’ and the product being produced in the importing country. This requirement arises in the context of injury causation, as defined in the *SCM Agreement*. It is clearly expressed at several points in Article 15, for example in paragraph 1 in the phrase ‘the effect of the subsidized imports on prices in the domestic market for like products’. It is also found in corresponding parts of Article 11 in regard to the information that must be included in an application for countervailing measures. However, there is nothing in the WTO rules on countervailing measures that corresponds to the way in which the ‘like product’ test is applied anti-dumping law as between an exported product and one sold domestically.

147. The Ministry’s argument is possibly the result of a misreading of Article VI:3 of *GATT 1994*. That provision speaks of a subsidy granted on the manufacture, production or export of ‘such product’. In doing so it is speaking of the particular product that has been subsidized. However, if the phrase were read to say ‘such a product’ then it could be taken to mean that the investigating authority need only show that the subsidy is given in respect of products of the same kind or type as that being exported. Since the phrase does not take that form it should not be interpreted as though it did.

148. In sum, this analysis has shown that the Ministry should have applied a pass through test to the aid given to olive growers, and that such attempts as it made in this regard were completely inadequate.

(b) Calculation of subsidy margins

149. The EC has shown in the previous section how the Ministry completely failed to take account of the effect on the subsidy of the transfer of the olive oil from the producers to the exporters. As explained, in the EC’s view none of the subsidy passed through to the exporters. However, even if one were, for the sake of argument, to suppose that such a transfer had occurred, it is nevertheless clear that the Ministry failed to make appropriate adjustments to the value that the subsidy would have had for the exporters. Various

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59 *SCM Agreement*, Art. 11.2(i), 11.2(iv)
arguments were presented by and on behalf of the exporters regarding the adjustments that should be made in any calculation of subsidization. Although some of these arguments were accepted by the Ministry, it rejected several other claims without giving a reasoned or adequate explanation for that rejection.

150. Firstly, the Ministry refused, without giving a reasoned and adequate explanation, to make any adjustment for the fact that a proportion of the exports from the EC to Mexico consisted of oil that had not been in any way subject to the EC aid scheme. For the most part this consisted of oil on inward processing arrangements. This was oil that had been imported into the EC from non-EC countries (mostly from Tunisia) and blended with EC-origin oil before being exported to Mexico. Of course, such oil could in no way, not even on the Ministry’s mistaken methodology, be said to have benefited from the EC’s aid programme. Oil of this kind was estimated to be about 7 percent of Spanish production and 10 percent of Italian production. Even supposing that exports from the EC had benefited from the aid scheme, such benefits should have been reduced by these amounts to take account of oil that had not been affected by the scheme.

151. Although the Ministry acknowledged receiving information on the EC’s inward processing regime, it made no adjustment for this factor in either of its measures.

152. Secondly, the Ministry calculated the margin of subsidy for each company by comparing the amount of the subsidy with the exporter’s sales prices adjusted to an ex-factory level. The effect of such a comparison is to produce an artificially high margin. To understand how this distortion occurs one has to keep in mind the purpose of determining the margin of subsidy. This purpose is to produce a margin that, if applied to imports as a (countervailing) duty would offset the subsidy (the significance of the offsetting role of countervailing duties is explained at paragraph 127, above). The duty is imposed at the border of the importing country. At this point the value of the goods is not the ex-factory (or ex-works) price, but the CIF price (that is the ex-factory price plus the costs of getting the product to the importing country). It is on this basis that the countervailing duty will be

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60 Final Resolution, para. 41.A.
imposed. To make a valid comparison the margin of subsidy should be determined on the same basis. By comparing the subsidy to the ex-works price (necessarily a lower figure than the CIF price) Mexico has produced an inflated figure.

153. In addition to these substantive errors the Ministry was also guilty of serious failings in the way in which it went about its investigations. These occurred when it was making adjustments for costs incurred between the receipt of the subsidy and the export of the olive oil to Mexico.

154. The first thing Ministry did wrong was to abandon its obligation to investigate the relevant facts. To be specific, the Ministry undertook the task of investigating the costs incurred by companies engaged in bringing the olive oil to market with a view to making adjustments to the benefit derived from the aid. To this end it asked the exporting companies to give an account of their costs. This was a reasonable step for it to take. However, the Ministry also asked these companies to give an account of the costs of other companies that had been involved with the oil.62 Of course, it was not the responsibility of those companies to undertake such investigations on behalf of the Ministry. An investigating authority cannot escape its responsibility to investigate and determine the level of subsidization by passing the task on to exporting companies. The nature of those companies’ responsibilities is reflected in Article 12.7 of the *SCM Agreement* regarding the use of ‘facts available’ by an investigating authority. The condition set by the *Agreement* for resorting to this kind of evidence is that an interested Member or party ‘refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation’. It goes without saying that a company cannot be expected to provide information that it does not possess.

155. Secondly, the Ministry continued addressing questions to the companies on this issue after the date when the investigation should have finished, thus putting them in the dilemma described at paragraph 114.

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61 Final Resolution, para. 149. More precisely, what the Ministry did was to use the amount of the subsidy to derive a notional unsubsidized price from the actual price, and then compare the first to the second.

62 Final Resolution, para. 139.
156. By failing in these ways to exercise properly its responsibilities to investigate the effect of costs on the level of benefit the Ministry has necessarily also failed to give a reasoned and adequate explanation for its determination.

157. To sum up to the conclusions in the two parts of this section, the Mexican authorities acted inconsistently with Articles 1 and 14 of the SCM Agreement by failing to give a reasoned and adequate explanation of (a) why they concluded that the benefit of the subsidy was passed through to the exporters of olive oil, and (b) how, as regards non-subsidized oil and the costs of exporting companies, the level of the alleged subsidy was calculated.
2. **Mexico failed to correctly define the domestic industry as required by GATT 1994 and the SCM Agreement**

(a) **Introduction**

158. The Ministry failed in several important respects to give a reasoned and adequate explanation of the existence of a domestic industry and consequently acted inconsistently with Article VI:6 of the *GATT 1994* and Articles 15.4, 15.5 and 16 of the *SCM Agreement*.

159. Article VI:6 of the *GATT 1994* states that:

> No contracting party shall levy any anti-dumping or countervailing duty on the importation of any product of the territory of another contracting party unless it determines that the effect of the dumping or subsidization, as the case may be, is such as to cause or threaten material injury to an established domestic industry, or is such as to retard materially the establishment of a domestic industry.

160. Rules for making the determination of injury in accordance with Article VI:6 are elaborated in Article 15.1 of the *Agreement*. This states, in particular, that ‘A determination of injury for purposes of Article VI of GATT 1994 shall be based on positive evidence’. This requirement also applies to the identification of the domestic industry since that forms a part of the determination of injury. According to the Appellate Body the requirement concerns the quality of the evidence, which must be affirmative, objective, verifiable and credible.\(^{63}\) It has also said that when a national determination rests upon assumptions these should be derived as reasonable inferences from a credible basis of facts, and should be sufficiently explained so that their objectivity and credibility can be verified.\(^{64}\) One panel has said that conclusion derived from successive prejudicial assumptions is not one based on positive evidence.\(^{65}\) Article 15.1 goes on to require an ‘objective examination’ of the various elements that are relevant to an injury finding.

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\(^{64}\) Appellate Body Report *Mexico – Anti-Dumping Measures on Rice*, para. 204. Investigating authorities have a certain discretion in adopting a methodology, ibid.

\(^{65}\) Panel Report *Mexico – Anti-Dumping Measures on Rice*, paras. 7.11 et seq.
(b) Fortuny

161. Fortuny was the complainant in the Mexican proceedings that led to the imposition of countervailing duties against olive oil from the EC. It was found by the Ministry to comprise the domestic industry. Its status and history require some explanation.

162. From the various instruments issued by the Ministry it appears that a company named ‘Formex Ybarra, SA de CV’ (‘Formex Ybarra’) was engaged in both importing and producing olive oil until October 2001.66 In May 1999 it placed distribution of olive oil in the hands of a related company, Distribuidora Ybarra, SA de CV (‘Distribuidora Ybarra’).67 In October 2001 Formex Ybarra underwent certain further changes. Although in places the Ministry describes these as merely a change of name to ‘Fortuny de México, SA de CV’, 68 something more was involved since Fortuny was also said to constitute a ‘new legal entity’.69

163. In practical terms, Fortuny took over the production activities of Formex Ybarra but, unlike its predecessor, it did not import olive oil.70 Fortuny continued to rely on Distribuidora Ybarra for distribution of a large part of its olive oil, but with diminishing success, until it ceased production.71 Of course, Fortuny and Distribuidora Ybarra had ceased to be related in December 2001,72 and Distribuidora Ybarra was purchasing increasing amounts of olive oil from foreign suppliers.73

164. For the situation of the company in the period prior to 2002 the Ministry relied on information relating to Formex Ybarra.74
165. As will be explained in the next section (paragraph 190), the Ministry’s Resolutions reveal considerable confusion regarding the nature of its injury finding. Although the complaint was brought alleging ‘material retardation’, the finding that was finally made by the Ministry was one of ‘material injury’, and it is on that basis that the EC will examine how the Ministry carried out its investigation.

(c) Failure to determine extent of domestic industry

166. The Ministry accepted Fortuny’s claim that it was the only olive oil producer in Mexico (until it ceased production in 2002), but it signally failed to provide a reasoned and adequate explanation for this conclusion. In particular it is evident that the Ministry failed to carry out a proper investigation of this matter. This failure occurred despite the fact, admitted by the Ministry, that the exporters’ associations repeatedly raised the issue.

167. The extent of the Ministry’s investigations regarding the existence of other producers was as follows.

168. Firstly, it contacted a Mexican firm, Maprinsa, alleged by the exporters to be producing olive oil. The Ministry reported that Maprinsa explained that it was engaged solely in bottling and packaging olive oil, and not in producing it. However, the Ministry apparently made no attempt to discover from Maprinsa whether the oil that it bought was of Mexican or foreign origin.

169. Secondly, the Ministry showed a similar lack of initiative when investigating two other firms that were revealed to be engaged in bottling only, and in regard to yet two more firms that were named as possible producers the Ministry either relied on a third party’s view or did nothing at all to determine the nature of their activities. In addition, the Ministry

75 Final Resolution, paras. 212 to 255.
76 Final Resolution, para. 225.
77 Final Resolution, para. 229.
78 Conserves Vermex and Olivarera Tulyehualco. Final Resolution, para. 240.
simply dismissed artisan production as irrelevant because it was not distributed through the same channels as imports.  

170. Thirdly, the Ministry contacted a national association of oil and edible fat industries, but this association merely confirmed that Fortuny was the only olive oil producer registered with it and that it had no registrations of any domestic producer other than the Fortuny. This carefully worded response, by avoiding the larger issue of whether the association knew of any other producers, does not inspire confidence.

171. Fourthly, it contacted several government organisations, but these proved unable to provide relevant information. Despite this failure the Ministry made no further efforts to gain information from government sources.

172. These very limited enquiries produced answers that any serious body would have regarded as demanding follow-up questions. By themselves they did not constitute an adequate investigation of even the most minor issue. But the question whether Fortuny was the sole Mexican producer was quite the opposite of a minor matter. Rather it was an issue on which the whole case turned. The Ministry’s shortcomings in the determination of the existence or non-existence of producers should be seen in the light of the data produced by the IOOC which, presumably relying Mexican government sources, shows Mexican production levels of 1000 tonnes in 1999/2000, 1500 tonnes in 2000/01, and 2000 tonnes in 2001/02.  

173. The failure to determine properly whether or not there were producers of olive oil in Mexico during the investigation period completely undermines the reliability of the injury finding made by the Ministry. As a consequence, in this instance as in others, the Ministry has failed to provide a reasoned and adequate explanation of its conclusions. More specifically, the failure to investigate properly the extent of the domestic industry means that

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80 Final Resolution, para. 213.
81 Final Resolution, para. 230.
82 Final Resolution, para. 231.
83 Exhibit EC-2. Mexico’s production is omitted from the Ministry’s table of world production data attributed to the IOOC. Final Resolution, para. 257. The EC drew the attention of the Ministry to such data in its submission of 9 January 2004, Exhibit EC-28.
the Ministry could not possibly comply with the stipulation in Article 15.1 that a
determination of injury for the purposes of Article VI of GATT 1994 must involve an
objective examination of the impact of the subsidized imports on the domestic producers of
the product. As a consequence, the obligation in Article VI:6 would necessarily be infringed.

(d) Non-existence of domestic industry – material injury

174. In order to appreciate the complete inadequacy of the Ministry’s conclusions on
industry one must make the assumption that it was correct in concluding that there was no
production of olive oil during the investigation period. The question that must then be
addressed is how there could be said to be a domestic industry capable of suffering material
injury (which was the Ministry’s conclusion).

175. The Ministry’s finding on industry suffers fatally from the fact that it rests on a
finding that there was no domestic production during the period of investigation used for the
determination of the existence and amount of subsidy. That some level of domestic
production must exist is clear from the terms of Article 16 of the Agreement. Paragraph 1
reads follows:

For the purposes of this Agreement, the term “domestic industry”
shall, except as provided in paragraph 2, be interpreted as referring to
the domestic producers as a whole of the like products or to those of
them whose collective output of the products constitutes a major
proportion of the total domestic production of those products, except
that when producers are related to the exporters or importers or are
themselves importers of the allegedly subsidized product or a like
product from other countries, the term “domestic industry” may be
interpreted as referring to the rest of the producers. [footnote omitted]

176. Thus, as was argued during the investigation, the existence of domestic producers is
essential, and those producers must have ‘output’. Consequently, if, as the Ministry
maintains, there was no output, there can have been no production, and if there was no
production there can have been no industry. No dictionary is necessary in order to be
confident of the ordinary meaning of these terms.

84 E.g., EC Submission, 22 July 2004, part 2. Exhibits EC-23, EC-23E.
177. This interpretation is reinforced by considering the context of Article 16. Article 15.4 and 15.5 are of particular relevance. Article 15.4 lists the factors to be considered in examining the impact of the subsidized imports:

The examination of the impact of the subsidized imports on the domestic industry shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in output, sales, market share, profits, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments and, in the case of agriculture, whether there has been an increased burden on government support programmes. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.

178. The important feature of these factors (in providing context for the interpretation of Article 16) is that they all refer to the condition of an existing industry. Thus, factors such as sales, market share, profits, and productivity all concern an activity that is ongoing.

179. The same conclusion follows from a consideration of Article 15.5:

It must be demonstrated that the subsidized imports are, through the effects of subsidies, causing injury within the meaning of this Agreement. The demonstration of a causal relationship between the subsidized imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the authorities. The authorities shall also examine any known factors other than the subsidized imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the subsidized imports. Factors which may be relevant in this respect include, inter alia, the volumes and prices of non-subsidized imports of the product in question, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.

47 As set forth in paragraphs 2 and 4.

180. Thus, this paragraph speaks of subsidized imports that ‘are … causing injury’. The reference is clearly to the present, to what is happening when the investigation is carried out, not to what might have happened in the past. Likewise, at another point Article 15.5 speaks of ‘any known factors … which at the same time are injuring the domestic industry’ (emphasis added).
181. The third of the factors given in Article 31(1) of the Vienna Convention on the Law of Treaties (‘Vienna Convention’) is the ‘object and purpose’ of the treaty. The Appellate Body has said the object and purpose of the SCM Agreement is to strengthen and improve GATT disciplines relating to the use of both subsidies and countervailing measures, while recognizing at the same time, the right of Members to impose such measures under certain conditions. In a similar vein it has described them as reflecting a ‘delicate balance between the Members that sought to impose more disciplines on the use of subsidies and those that sought to impose more disciplines on the application of countervailing measures. These views suggest that it would be a mistake to look for particular economic theories as an aid to interpretation.

182. In conclusion, it is apparent that the investigation of injury is not an inquest into the causes of an industry’s death, but an examination of its present condition and of the present causes of that condition. For that to be possible there must be an industry presently in existence; in other words, there must be existing producers.

183. In support of its argument that there need be no national production during the investigation period of the product subject to investigation the Ministry invoked a decision of a Binational Panel established under the North American Free Trade Agreement (NAFTA) where the anti-dumping proceedings were found not to be affected by the fact that production at the only domestic producer had ceased. That Panel said:

   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, …’

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87 Final Resolution, para. 219.
184. However, that determination differs from the present investigation in a number of important particulars which serve to make its observations irrelevant. Firstly, the panel was interpreting Mexican law, whereas the present dispute is entirely governed by WTO rules.

185. Secondly, the situation being considered by the Binational panel was not one where domestic production had ceased during the course of the investigation, but only after the end of the investigation period. Its attention was focused on the notion of ‘standing’ as that was understood in Mexican law. In the present case, the circumstances were not simply that the applicant had ceased to produce in the course of the investigation. It had no production at the time when the subsidy investigation was commenced or at any point of time during the investigation period.

186. The sole facts on which the Ministry relied for its acceptance of the applicant as constituting the domestic industry were (a) that it had previously produced olive oil, (b) that it allegedly had been forced to stop producing because of the imports of olive oil from the EC, and (c) that it intended to recommence production and did indeed do so to some degree following the investigation period.

187. None of these considerations, some of which were in any case unfounded, alter the basic inadequacy of the Ministry’s findings. In particular, if the fact that there had previously been a domestic producer of olive oil was acknowledged to be sufficient, the concept of domestic industry would entirely lose its integrity.

188. At the beginning of this section the assumption was made that the Ministry was correct in concluding that Fortuny had constituted the entire domestic industry. The EC has already demonstrated that there was no reasoned or adequate explanation of this conclusion. Of course, if other producers had existed during the investigation period then they would have constituted the domestic industry. However, because of the Ministry’s failure adequately to investigate this possibility any consideration of the injury suffered by that industry would be purely speculative.

189. The only conclusion that one can draw from this analysis is that the Ministry’s examination of industry failed to give a reasoned and adequate explanation of its findings and
was therefore inconsistent with Article 16 of the SCM Agreement. As a consequence, its findings regarding injury were in breach of the Article VI:6 of GATT 1994.
3. **Mexico failed to the make a proper determination of injury in accordance with Article 15 of the SCM Agreement**

(a) **Introduction**

190. The Ministry has failed to give a reasoned and adequate explanation of its injury determination, based on positive evidence, and involving an objective examination of all relevant economic factors and indices having a bearing on the state of the industry. As a consequence it has violated Article VI:6 of the *GATT 1994* and Articles 15.1 and 15.4 of the *SCM Agreement*.

191. Article 15 of the *SCM Agreement* addresses the ‘Determination of Injury. Footnote 45 provides a definition of injury (which is based on that given in Article VI:6 of the *GATT 1994*):

> Under this Agreement the term “injury” shall, unless otherwise specified, be taken to mean material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry and shall be interpreted in accordance with the provisions of this Article.

192. The requirements of the first paragraph of Article 15 regarding the way in which injury must be determined (they have already been considered in regard to the definition of industry, paragraph 160) govern the Ministry’s analysis of this issue. Thus, the determination must ‘be based on positive evidence and involve an objective examination’.

193. Article 15.4, which specifies the factors by which the existence of injury is to be determined, is quoted at paragraph 177.

(b) **Confusion regarding nature of injury finding**

194. The complaint that was brought by Fortuny alleged the existence of the third of the types of injury mentioned in Article VI:6 of *GATT 1994*. Thus, it alleged subsidization that
was such as to ‘retard materially the establishment of a domestic industry’. However, in the Initiation Resolution:89

the Ministry concluded that there is evidence that the injury to the domestic industry is linked to the subsidies granted to imports from the European Union.

195. In other words, it referred to injury that had already occurred. Furthermore, the factors listed in the Resolution were largely ones concerning alleged past harm to the domestic industry, although it also found that ‘resumption of operations would be economically viable if the distortion caused by subsidized imports is eliminated’.90

196. This ambiguous approach continued throughout the investigation, so that in the Final Resolution:91

The Ministry agreed with the arguments put forward by the European olive oil associations and the importers that the situation alleged by the domestic industry conformed more to the concept of significant or material injury than to material retardation in the establishment of a domestic industry, if the domestic olive oil industry was considered to have existed since the 1940s.

197. The Ministry explained its approach in the following terms:92

Nevertheless, the [observation quoted above] did not prevent evaluation of the applicant’s argument that, during the period investigated, it was unable to resume operations due to the subsidies granted by the European government. On that point, the Ministry also evaluated that argument and the possible causes for the closure of the industry as a relevant variable forming part of the analysis of the viability or feasibility (financial and technical) of a resumption of operations and the causal relationship with the imports allegedly subsidized in the terms described in the following sections.

198. Thus, it seems that the Ministry saw the causes of closure of the industry as a ‘relevant variable’ (variable relevante) to a finding of material retardation.

199. However, the Ministry’s ultimate conclusion came down in favour of ‘material injury’. It stated that it had:93
decided that sufficient evidence existed to prove that subsidized olive oil imports originating from the European Union caused material injury to the domestic industry.

200. In any case, it should be said that a simultaneous finding of both ‘material injury’ and ‘material retardation’ on the same facts is not possible. The GATT panel in Korea – Resins considered such a situation when examining an anti-dumping ruling of the Korean Trade Commission (KTC).  

… if the conclusion at the end of this section [of the KTC report] were to be interpreted to mean that the KTC had made a finding of injury based simultaneously on all three standards of injury, this would necessarily mean that the KTC’s statement was internally contradictory: the KTC could not logically have found that a domestic industry was being injured by dumped imports (which presupposed that such an industry was already established) and at the same time that the establishment of a domestic industry was materially retarded by those imports.

(c) Examination of volume and price – Article 15.1

201. As a first step in the determination of injury Article 15.1(a) of the SCM Agreement requires investigating authorities to make an objective examination of ‘the volume of the subsidized imports and the effect of the subsidized imports on prices in the domestic market for like products’. This double obligation is elaborated in Article 15.2:

With regard to the volume of the subsidized imports, the investigating authorities shall consider whether there has been a significant increase in subsidized imports, either in absolute terms or relative to production or consumption in the importing Member. With regard to the effect of the subsidized imports on prices, the investigating authorities shall consider whether there has been a significant price undercutting by the subsidized imports as compared with the price of a like product of the importing Member, or whether the effect of such imports is otherwise to depress prices to a significant degree or to prevent price increases, which otherwise would have occurred, to a significant degree. No one or several of these factors can necessarily give decisive guidance.

202. The Ministry appears to have responded to these requirements in two successive sections of its Final Resolution.

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92 Final Resolution, para. 279.F.
93 Final Resolution, para. 438.
203. As regards volume, the Ministry looked at imports from the EC and other countries in successive 9-month periods (April to December) in three years, 2000, 2001 and 2002 (the last of these periods being the subsidy investigation period). It found that there had been significant increases.

204. As regards ‘the effect of the subsidized imports on prices in the domestic market for like products’ the Ministry engaged in an evaluation of ‘the effect of European Union subsidies on the price of the domestic product’. The Ministry concluded that there was ‘significant price undercutting’ by EC olive oil of that of Fortuny in the years 2000 and 2001. Of course, because Fortuny ceased selling in March 2002, there were no data for undercutting for that year, the subsidy investigation period.

205. The Ministry found that the level of subsidization of 26.5 percent which it calculated for the EC imports ‘largely’ explained the undercutting. However, the only calculations of subsidization that the Ministry had made (and which, as the EC has explained, were completely flawed) were for the investigation period in 2002. In other words, its determination of 26.5 percent subsidization in 2002 was invoked to explain the level of undercutting for the years 2000 and 2001.

206. Such a disjunction cannot be reconciled with the obligation in Article 15.1 of the Agreement that determinations of injury must be ‘based on positive evidence’, and that they must ‘involve an objective examination’ of the effect of the subsidized imports on prices in the domestic market for like products (see paragraph 160). Likewise, it conflicts with the basic obligation on national authorities to give reasoned and adequate explanations of their decisions (see paragraph 76).

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95 Final Resolution, paras. 296 to 293. The section is entitled ‘Imports receiving subsidies’.
96 The Ministry spoke (Final Resolution, para. 289) of ‘incrementos significativos’, which, while not the exact wording of the Spanish text of Article 15.2 (‘un aumento significativo’), appears to mean the same.
97 Final Resolution, para. 305. The relevant section runs from paras. 294 to 327.
98 Final Resolution, para. 313.
99 The derivation of this figure is not explained.
100 Final Resolution, para. 315.
207. It is also worth noting that in making the undercutting calculation, such as it was, the Ministry never explained the basis for the prices assigned to domestic (Fortuny’s) olive oil. In fact, the efforts of the Ministry to identify buyers of Fortuny’s oil, or even firms that had received offers from Fortuny, were wholly unsuccessful. Such firms might have provided corroboration of the evidence on prices that, presumably, was supplied by Fortuny. Uncertainty about Fortuny’s prices may be the reason why the Ministry placed considerable emphasis on Fortuny’s costs as well as on comparisons between those costs and the prices of imports, although these factors are irrelevant to the issue of undercutting.

(d) Determination of ‘material injury’

208. Having purported to examine the factors identified in Articles 15.1(a) and 15.2, the Ministry turned its attention to the ‘Effects on domestic production’, referring to Article 15.4 (see paragraph 177).

209. This provision deals with the ‘examination of the impact of the subsidized imports on the domestic industry.’ It says that this examination is to include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, and names sixteen of these.

210. The proper interpretation of this provision has been elucidated by rulings of the Appellate Body and panels. The wording of the corresponding provision in the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (‘Anti-Dumping Agreement’) is virtually identical, and no distinction is drawn between the two provisions regarding their interpretation. All the factors listed in Article 15.4 must be evaluated in every investigation. Thus, in Thailand – H-Beams, an anti-dumping case, the Appellate Body endorsed the panel’s statement that ‘each of the … individual factors listed in the mandatory list of factors … must be evaluated by the investigating authorities …’.

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101 Final Resolution, paras. 320 to 322.
102 Final Resolution, para. 328.
211. However, in this context the Ministry was faced with the obvious problem that during the investigation period there was no production. That in itself would be sufficient to prevent any examination of injury that was compatible with Article 15.4, and this fundamental flaw may account for the confused state of the Ministry’s presentation of data pertaining to injury. An examination of the Final Resolution shows that topics are addressed, and then a few paragraphs later are addressed again. Furthermore, the time frame is repeatedly moved, sometimes the focus is on what happened in the investigation period and earlier, and sometimes on what Fortuny planned for the future. The objectiveness of the examination was also undermined by the choice of investigation periods of nine months in three successive years, of which the last period, although coinciding with the investigation period for subsidization, started only after the shut down of Fortuny’s production.

212. In addition, some of the trends noted by the Ministry appear to contradict the notion that Fortuny was suffering injury in the period prior to its cessation of production. Thus, production and prices actually increased at this time. The data used by the Ministry are in any case open to question because, prior to the break-up of the company at the end of 2001, the sales in question were been made (by Fortuny’s predecessor, Formex Ybarra) to an affiliated company (Distribuidora Ybarra). This consideration also puts in doubt the meaningfulness of the data on profits. Nevertheless, the profit data also show a mixed picture, with a marked increase in performance in 2001, which is also reflected in return on investment. Other factors, such as employment, also increased in 2001.

213. Thus, even viewed in isolation, the Ministry’s examination of injury factors was unsatisfactory. However, the whole process was essentially irrelevant because, as the

104 For example, the issue of inventories is addressed in three different places: Final Resolution, paras. 330, 336, and 353.
105 For example, in para. 333 it examines past sales performance, and in para. 334 looks at how sales might evolve in the future if measures were imposed. A similar shift is found in paras. 341 and 342 as regard installed capacity.
106 Final Resolution, para. 331 (although this is contradicted by the graph at para. 333).
107 Final Resolution, para. 306; Preliminary Resolution, para, 242.
108 Final Resolution, para. 350.
109 Final Resolution, para. 352.
110 Final Resolution, para. 337.
previous analysis has shown, production, although only one element of this examination, is the central and irreplaceable element of the concept of industry. If there is no production there is no industry. Consequently, because (according to the Ministry) there was no industry in Mexico, the deterioration in the well-being of Fortuny ceased to be of significance as a justification for imposing countervailing duties.

214. To conclude, the Ministry’s examination of injury did not give a reasoned and adequate explanation of its conclusions on the issue, and it thereby failed to comply with the obligations laid down in Articles 15.1 and 15.4 of the SCM Agreement and as a result infringed its obligations under Article VI:6 of GATT 1994.
4. **Mexico has failed to properly consider, as required by Article 15.5 of the SCM Agreement, any known factors, other than the alleged subsidized imports, which were causing injury to the domestic industry**

215. Article 15.5 of the **SCM Agreement** (paragraph 179) sets out the rules that Members must observe in regard to the *causation* of injury. The Ministry failed to comply with the obligation set out there, in particular the obligation to ‘examine any known factors other than the subsidized imports which at the same time are injuring the domestic industry’. The *Agreement* also specifies that ‘the injuries caused by these other factors must not be attributed to the subsidized imports’.

216. The arguments put forward by Ministry to support its conclusions on causation suffer from the same insuperable difficulties that serve to negate its arguments regarding injury. Thus, the Ministry’s failure to identify an industry that had suffered material injury has the consequence that its conclusions regarding causation in general, and the effect of ‘other factors’ in particular, were made in a vacuum, and have no significance.

217. However, even if one were to put out of mind the problems that arise from the lack of a relevant industry, the Ministry’s analysis of ‘other factors’ was marked by failures that were sufficient in themselves to render that analysis ineffective.

218. WTO jurisprudence has established that the investigation of ‘other factors’ has to be taken very seriously. Where such factors are present, the authorities must separate and distinguish the injury caused by such factors, however difficult this may be. For the purposes of this ‘non-attribution’ analysis the authority must do more than simply list other known factors and then dismiss their role with bare qualitative assertions, such as that ‘the factor did not contribute in any significant way to the injury’, or ‘the factor did not break the causal link between subsidized imports and material injury’; it should at least give an

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111 Appellate Body report *US – Hot-Rolled Steel*, paras. 223 et seq. Although this was a dumping case the same principles apply to countervailing duty investigations, see Panel report *US – Softwood Lumber VI*, para. 7.129.
explanation of the nature and extent of the injurious effect of the other factors, preferably on a quantitative basis.\textsuperscript{112}

219. The Ministry’s analysis completely failed to meet these standards.

220. The EC and the exporters raised a number of factors, other than exports from the EC, which they said were causes of any injury that was suffered by the Mexican industry (assuming, for the sake of argument, that such an industry existed). These factors were therefore ‘known’ to the Ministry for the purposes of Article 15.5.

221. In particular, the EC and various interested parties challenged Fortuny’s explanation that its poor performance in the market was due to unfair competition from imports. They identified a number of specific reasons for Fortuny’s failure.\textsuperscript{113} In addition, serious weaknesses in Fortuny’s business operations were apparent in the examination carried out by the Ministry as reported in the Resolutions. As a result, the following factors were known to the Ministry:

- the loss of the sales network previously provided by Distribuidora Ybarra coupled with unsuccessful attempts to develop other outlets (see paragraph 163, above);
- the abandonment of a Spanish leading brand (Ybarra) with the loss of the trademark that it previously used (see paragraph 162);
- the loss of the guaranty of supply that the market demanded;
- the lack of a guaranty of a product of the quality demanded by its purchasers;
- the fact that before 2002 Fortuny’s predecessor, Formex Ybarra, was related to Distribuida Ybarra which was importing increasing amounts from the EC; and
- the high level of Fortuny’s costs, which were much in excess of those of other producers.\textsuperscript{114} For example, Fortuny was competing for its supplies with purchasers of table olives,\textsuperscript{115} and the yield of oil that it could obtain from its olives was only 16 percent.\textsuperscript{116}

\textsuperscript{112} Panel report \textit{EC – Countervailing Measures on DRAM Chips}, paras. 7.405, 7.437.

\textsuperscript{113} Final Resolution, para. 434; Submission of EC Delegation, 22 July 2004, page 6, Exhibit EC-23, EC-23E.

\textsuperscript{114} Submission of EC Delegation, 22 July 2004, page 7, Exhibit EC-23, EC-23E. Final Resolution, para. 350, shows that Fortuny and its predecessor had been making losses for several years.

\textsuperscript{115} Final Resolution, para. 376.

\textsuperscript{116} Final Resolution, para. 404. Yields of up to 28 percent are common in Spain, for example.
222. The Ministry’s examination of these factors was cursory. Firstly, it said that there did not seem to be a problem with new brands since at least nine new brands (Spanish and Italian) had appeared and they had had no problems entering the domestic market in spite of their being previously unknown. Secondly, the Ministry said, one would expect higher relative prices in the market for products of recognised brands, whereas olive oil imported from the EC was systematically lower priced.\footnote{Final Resolution, para. 437.} As regards the loss of links with the distribution network the Ministry ignored Fortuny’s experience of the period from 2000 to 2002 in favour of comments regarding the future. It said that it was reasonable to believe that the distributors would identify the product of the new applicant because of the years of manufacturing oil in Mexico and because it was using the same production facilities that had been used previously.\footnote{Preliminary Resolution, para. 327.} Likewise, in regard to the issue of guaranty of supply, the Ministry looked only to the future in the form of Fortuny’s expected levels of production.\footnote{Preliminary Resolution, para. 328.}

223. Regarding the alleged lack of a guaranty of product quality the Ministry confined itself to calling for more information, saying that there was no universally accepted definition of what the market might regard as ‘quality’ in relation to olive oil.\footnote{Preliminary Resolution, para. 329.}

224. Finally, the Ministry gave no consideration to the high level of Fortuny’s costs in its discussion of ‘other factors’.

225. What has been elaborated here regarding the Ministry’s analysis is not just a summary but is a full account of what it said on these matters in the Preliminary and Final Resolutions. As such it fails completely to provide the reasoned and adequate explanation of the Ministry’s conclusions that is required by WTO law, as elaborated in the jurisprudence mentioned above.

226. More specifically, there is a serious failure to base its determination on ‘positive evidence’ and to carry out an ‘objective examination’ of the impact of the imports on domestic producers such as is required by Article 15.1 of the Agreement.

\footnotetext[117]{Final Resolution, para. 437.}
\footnotetext[118]{Preliminary Resolution, para. 327.}
\footnotetext[119]{Preliminary Resolution, para. 328.}
\footnotetext[120]{Preliminary Resolution, para. 329.}
227. Consequently, by failing to give a reasoned and adequate explanation of how it took other known factors into account when considering whether the allegedly subsidized imports had caused injury to domestic industry the Ministry acted inconsistently with the obligations in Article 15.5 of the *SCM Agreement* and also failed to base its determination on ‘positive evidence’ and to carry out an ‘objective examination’ of the impact of the imports on domestic producers such as is required by Article 15.1.
V. CONCLUSIONS AND RECOMMENDATION

228. The EC concludes that the investigation carried out by Mexico into alleged subsidized imports of olive oil from the EC was seriously defective in a number of ways and as a result infringed various provisions of WTO law. Specifically:

- Mexico, because of its failure to hold consultations before the initiation of the investigation on 2 July 2003, has not respected its obligations under Article 13.1 of the SCM Agreement.
- Mexico is in breach of its obligations under Article 11.4 of the SCM Agreement as regards the rule that the application must have been made by or on behalf of the domestic industry.
- Mexico, firstly, by beginning a countervailing duty investigation in response to a complaint based on material retardation, and secondly, by failing to exercise due restraint in initiating that investigation, acted in breach Article 13(b)(i) of the Agreement on Agriculture.
- Mexico’s failure to require the production of appropriate non-confidential summaries, and to disclose essential facts, constitute serious breaches of the obligations in Article 12.4.1 and 12.8 of the SCM Agreement.
- Mexico, by continuing the investigation for nearly six months beyond the 18 month limit, is in serious breach of Article 11.11 of the SCM Agreement.
- Mexico has acted inconsistently with Articles 1 and 14 of the SCM Agreement by failing to give a reasoned and adequate explanation of (a) why they concluded that the benefit of the subsidy was passed through to the exporters of olive oil, and (b) how the level of the alleged subsidy was calculated.
- Mexico’s examination of injury did not give a reasoned and adequate explanation of its conclusions on the issue, and it has thereby failed to comply with the obligations in Articles 15.1 and 15.4 of the SCM Agreement and as a result has infringed its obligations under Article VI:6 of GATT 1994.
- Finally, Mexico, by failing to given a reasoned and adequate explanation of how it took other known factors into account when considering whether the allegedly subsidized imports had caused injury to domestic industry, has acted inconsistently with the obligations in Article 15.5 of the SCM Agreement and has also failed to base its determination on ‘positive evidence’ and to carry out an ‘objective examination’ of the impact of the imports on domestic producers, as is required by Article 15.1.

229. The EC calls on the Panel to find, in accordance with Article 3.8 of the DSU that there have been infringements of the SCM Agreement and of the GATT 1994, and that consequently there is a prima facie case of nullification or impairment. In the absence of any
refutation by Mexico of this presumption the EC requests the Panel, in accordance with Article 19.1 of the DSU and WTO practice, to recommend the Dispute Settlements Body to request Mexico to bring its measure into conformity with these agreements.

230. Furthermore, in the light of the Panel’s authority under Article 19.1, the EC requests that it accompany its recommendation with a suggestion to Mexico that a complete repeal of the measure against EC olive oil would be the most appropriate and/or effective way of bringing the measure into conformity with its WTO obligations. In this respect two factors are of particular relevance. Firstly, the initiation of the investigation was accompanied by serious procedural defects, notably regarding the holding consultations, the exercise of due restraint, the adequacy of the complaint, the provision of non-confidential summaries, and the time limit regarding the completion of the investigation. Secondly, even on Mexico’s view of the situation, the basis for imposing countervailing duties has disappeared because at the beginning of 2006 the system of EC production aids was replaced by an entirely different system (paragraph 34).
LIST OF EXHIBITS

EC-1  Resolución final de la investigación por subvención de precios sobre las importaciones de aceite de oliva virgen, el cual comprende los tipos virgen extra, virgen fino y virgen corriente, refinado, el cual comprende el refinado de primera y refinado de segunda, y el preparado a base de mezclas, el cual comprende las mezclas de primera y mezclas de segunda, mercancías clasificadas actualmente en las fracciones arancelarias 1509.10.01, 1509.10.99, 1509.90.01, 1509.90.02 y 1509.90.99 de la Tariña de la Ley de los Impuestos Generales de Importación y de Exportación, originarias de la Unión Europea (Comunidad Europea), principalmente del Reino de España y la República Italiana, independientemente del país de procedencia. *Diario Oficial*, 1 agosto 2005.

EC-1E  Final Resolution imposing definitive duties on olive oil from the EC, 1 August 2005. Unofficial English translation.

EC-2  World production of olive oil (IOOC).

EC-3  Production of olive oil among EC Members (IOOC).

EC-4  World consumption of olive oil (IOOC).

EC-5  World exports of olive oil (IOOC).

EC-6  EC exports of olive oil (IOOC).

EC-7  World imports of olive oil (IOOC).


EC-12 Application for investigation of subsidies, Fortuny, 12 March 2003.

EC-13 Resolución por la que se acepta la solicitud de parte interesada y se declara el inicio de la investigación por subvención de precios sobre las importaciones de aceite de oliva virgen y refinado, mercancías clasificadas actualmente en las fracciones arancelarias 1509.10.99 y 1509.90.02 de la Tarifa de los Impuestos Generales de Importación y de Exportación, respectivamente, originarias de la Unión Europea (Comunidad Europea), principalmente del Reino de España y la República Italiana, independientemente del país de procedencia. Diario Oficial, 16 julio 2003.


EC-16 Letter from EC Delegation to Ministry, 14 October 2003.


EC-18 Commission Regulation (EC) No. 1793/2002 of 9 October 2002 fixing the estimated production of olive oil and the unit amount of the production aid that may be paid in advance for the marketing year 2001/02.

EC-19 Commission Regulation (EC) No. 1221/2003 of 8 July 2003 setting the actual production of olive oil and the unit amount of the production aid for the 2001/02 marketing year.

EC-20 Submission of EC Delegation in Mexico to Ministry, 6 February 2004.

EC-21 Letter from EC to Ministry, 10 May 2004.

EC-22 Resolución preliminar de la investigación por subvención de precios sobre las importaciones de aceite de oliva virgen, el cual comprende los tipos virgen extra, virgen fino y virgen corriente, refinado, el cual comprende el refinado de primera y refinado de segunda, y los preparados a base de mezclas, el cual comprende las mezclas de primera y mezclas de segunda, mercancías clasificadas actualmente en las
fracciones arancelarias 1509.10.01, 1509.10.99, 1509.90.01, 1509.90.02
y 1509.90.99 de la Tarifa de la Ley de los Impuestos Generales de
Importación y de Exportación, originarias de la Unión Europea
(Comunidad Europea), principalmente del Reino de España y la

EC-22E Preliminary Resolution imposing provisional duties on olive oil from the


(Unofficial translation)


EC-26 Letter from EC Delegation in Mexico to Ministry, 11 February 2005.

EC-27 *Certain Olive Oil from Greece, Italy and Spain*, Report No. 77, Trade


EC-29 *Importaciones De Urea, Originarias De Los Estados Unidos De América
Y De La Federación De Rusia*, Caso: MEX-USA-00-1904-01. Panel
Binacional.

EC-29E *Imports of urea from the United States of America and the Russian
Federation*, case MEX-USA-00-1904-01, Decision of Binational Panel.