ANNEX D

Procedure. These measures appear to be inconsistent with Mexico's obligations under the provisions of GATT 1994, the AD Agreement, and the SCM Agreement.

In particular, the United States believes that the anti-dumping measures on beef and rice are inconsistent with at least the following provisions:

- Article 3 of the AD Agreement, because Mexico, *inter alia*, based its injury (or threat) and causation analyses on only six months of data for each of the years examined; failed to collect or examine recent data; failed in the beef investigation to evaluate all relevant economic factors and indices having a bearing on the state of the industry; and failed to base its injury determinations on positive evidence or to conduct objective examinations of the volume of dumped imports, the effect of those imports on prices in the domestic market of like products, and the impact of the imports on domestic producers of those products;

- Article 5.8 of the AD Agreement, because Mexico failed to terminate the rice investigation after a negative preliminary determination of injury, and Articles 5.8 and 11.1 of the AD Agreement because Mexico failed to exclude certain respondent US exporters from the beef and rice measures after negative final determinations of dumping;

- Article 6 of the AD Agreement, because Mexico, *inter alia*, failed to provide respondent US exporters with ample opportunity to present in writing all evidence which they considered relevant in respect of the anti-dumping investigations and failed to give all interested parties a full opportunity for the defense of their interests, and Article 6 and Annex II of the AD Agreement by improperly applying the facts available to a US respondent rice exporter that was investigated and found to have no shipments during the period of investigation;

- Article 9 of the AD Agreement, in conjunction with Article 6, because of the manner in which Mexico determined anti-dumping margins for US exporters that were not individually investigated;

- Article 6 and 9 of the AD Agreement and Article VI of GATT 1994, because Mexico, *inter alia*, limited the application of the respondent-specific margins that it calculated in the beef investigation to selected grades of meat imported within 30 days of slaughter (applying "facts available" margins to the respondents' other shipments) and limited the application of a particular US respondent exporter's margin after conducting an "anti-circumvention review" that found the respondent was not engaged in circumvention;

- Articles 9 and 11 of the AD Agreement, because Mexico rejected requests by certain US respondent exporters to conduct reviews of the beef anti-dumping order; and

- Article 12 of the AD Agreement, because Mexico failed in its final determinations in both investigations to set forth in sufficient detail the findings and conclusions reached on all issues of fact and law considered material or to provide all relevant information on the matters of fact and law and reasons which led to the imposition of final measures.

In addition, the following provisions of Mexico's Foreign Trade Act appear to be inconsistent with Mexico's obligations under the provisions of the AD Agreement and the SCM Agreement:

- Article 53, which requires interested parties to present arguments, information, and evidence to the investigating authorities within 28 days of the day after publication of the initiation notice. This provision appear

at least 30 days to respond to questionnaires, and that, as a general rule, the 30 days are to be counted from the date of receipt of the questionnaire;

- Article 64, which codifies the "facts available" approach that Mexico applied in the rice and beef investigations, as described in the fourth bullet above. This provision appears to be inconsistent with Article 9 of the AD Agreement, in conjunction with Article 6; and with Article 6.8 of the AD Agreement and Article 12.7 of the SCM Agreement to the extent that it requires the application of facts available rates to exporters with no shipments during the period of investigation;

- Article 68, which appears to require reviews of respondent exporters that were not assigned a positive margin in an investigation, and appears to require that respondent exporters seeking reviews demonstrate that their volume of exports during the period of review was "representative." This provision appears to be inconsistent with Articles 5.8 and 11.1 of the AD Agreement (as described in the second bullet above), with Article 9 of the AD Agreement, and with Articles 11.9 and 21.1 of the SCM Agreement;

- Article 89D, which appears to require that "new shippers" requesting expedited reviews demonstrate that their volume of exports during the period of review was "representative." This provision appears to be inconsistent with Article 9.5 of the AD Agreement and Article 19.3 of the SCM Agreement, which require authorities to conduct reviews without regard to such a condition; and

- Article 93V, which appears to provide for the application of definitive anti-dumping or countervailing duties on products entered prior to the date of application of provisional measures (1) for longer than allowed under the AD and SCM Agreements, and (2) even if not all AD or SCM Agreement requirements for applying such duties are met. This provision appears to be inconsistent with Articles 7 and 10.6 of the AD Agreement and Articles 17 and 20.6 of the SCM Agreement.

Finally, Article 366 of Mexico's Federal Code of Civil Procedure, in conjunction with Article 68 of the Foreign Trade Act, appears to be inconsistent with Articles 9 and 11 of the AD Agreement and Articles 19 and 21 of the SCM Agreement to the extent that the provisions prevent Mexico from conducting reviews of anti-dumping or countervailing duty orders while a judicial review of the order is ongoing, including a "binational panel" review pursuant to Chapter Nineteen of the *North American Free Trade Agreement.*
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granted to extension requests and that such requests should, upon cause shown, be granted whenever practicable;

(b) Article 64 of the Foreign Trade Act codifies the "facts available" approach that Mexico applied in the rice investigation, as described in subparagraphs (f) and (g) of section (1) above. This provision appears to be inconsistent with Articles 6.1, 6.6, 6.8, 6.10, 9.3, 9.4, and 9.5 of the AD Agreement, and paragraphs 1, 3, 5, 6, and 7 of Annex II of the AD Agreement; and with Articles 6.6, 6.8, 6.10, 9.3, 9.4, and 9.5 of the AD Agreement, paragraphs 1, 3, 5, 6, and 7 of Annex II of the AD Agreement, and Articles 12.5, 12.7, and 19.3 of the SCM Agreement, to the extent that it requires the application of facts available rates to exporters with no shipments during the period of investigation;

(c) Article 68 of the Foreign Trade Act appears to require reviews of respondent exporters that were not assigned a positive margin in an investigation, and appears to require that respondent exporters seeking reviews demonstrate that their volume of exports during the period of review was "representative." This provision appears to be inconsistent with Articles 5.8 and 11.1 of the AD Agreement (as described in subparagraph (b) of section (1) above), with Articles 9.3 and 11.2 of the AD Agreement, and with Articles 11.9, 21.1, and 21.2 of the SCM Agreement;

(d) Article 89D of the Foreign Trade Act appears to require that "new shippers" requesting expedited reviews demonstrate that their exports were subsequent to the period of investigation and that they are not affiliated with exporters

Article 91 of the Foreign Trade Act appears to be inconsistent with .4, and 9.5