

**DOF: 06/01/2021**

**FINAL RESOLUTION of the anti-dumping investigation on imports of metal closures originating in the People's Republic of China, regardless of the country of origin.**

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**In the margin a stamp with the National Shield, which reads: United Mexican States.- Ministry of Economy.**

FINAL RESOLUTION OF THE ANTI-DUMPING INVESTIGATION ON IMPORTS OF METAL SEALS ORIGINATING FROM THE PEOPLE'S REPUBLIC OF CHINA, REGARDLESS OF THE COUNTRY OF ORIGIN

Seen to resolve in the final stage the administrative file 06/19 filed in the International Business Practices Unit of the Ministry of Economy (the "Secretariat"), this Resolution is issued in accordance with the following

**RESULTS**

**A. Application**

1. On April 9, 2019, Cierres y Accesorios BBJ, SA de CV ("Cierres BBJ" or the "Applicant"), requested the initiation of the administrative investigation for unfair international trade practices, in its modality of price discrimination, on imports of metal fasteners originating in the People's Republic of China ("China"), regardless of the country of origin.

**B. Initiation of the investigation**

2. On August 2, 2019, the resolution to initiate the antidumping investigation (the "Initiation Resolution") was published in the Official Gazette of the Federation (DOF). The period under investigation was set from January 1 to December 31, 2018, and the damage analysis period from January 1, 2016 to December 31, 2018.

**C. Product under investigation**

**1. General description**

3. The product under investigation are metal closures, with or without slider. In commercial terms, the product under investigation is referred to as zippers with metal teeth, metal zippers, metal zippers, metal zippers, zippers or metal zippers, among others.

**2. Features**

4. The metal closures are made up of two textile tapes in which metal teeth have been placed that mesh with each other and whose functionality is based on the action of a slider. They can have different lengths, shapes, tooth or textile tape thickness, as well as finishes (color), according to the needs of the users, without altering their fundamental characteristics.

5. The product under investigation has two presentations: cut and roll or strips (uncut). Both presentations have the same characteristics, with the only difference that roll closures are presented in long strips for later cutting and can be presented without sliders and / or stops.

6. The metal clasp can be divided into three main parts: the tape, the teeth and the slider. It contains the following components:

a. end of the tape (upper and lower): is the part of the closure without teeth, that is, the upper and lower ends from the stops on each side;

b. upper stop: it is an element that is fixed in the upper part of the chain (textile tape with metal teeth), to prevent the slider from coming out of the clasp;

c. slide or slider: it is the mobile component that allows the teeth to join and separate;

d. puller or puller: it is a part of the slider that can be designed in various geometric shapes, it is connected to the slider or slider through its intermediate component, for sliding up or down the closure;

e. teeth - are made of metal, which mesh with each other by the action of the slider;

f. tape: made of cotton and synthetic fiber yarn and used to carry teeth and other components, and

g. bottom stop: it is an element that is fixed at the bottom of the chain to prevent the slider to move.

7. The main specifications that allow identifying the product under investigation are:

a. closure size (length in centimeters): 8, 10, 12, 15, 18, 20, 25, 40, 45, 50, 55, 60, 65, 70, 75, 80, 85, 90, 100, among others;

**b.** tooth width: it is identified by the numbers 2, 3, 4, 4.5, 5, 7, 8, 10, among others;

**c.** tooth material: can be brass, aluminum, nickel alloy or any other metal, and

**d.** finishes: they are varied depending on the needs of the user, they can be of different colors, both for the tape and the teeth, or any galvanic finish, electroless or with enamel, resin or metallized film, as well as any other that is adhered to the metal surface or textile tape.

### 3. Tariff treatment

**8.** The product under investigation enters the national market through tariff section 9607.11.01 of the Tariff of the General Import and Export Tax Law (TIGIE), whose description is the following:

Tariff coding	Description
Chapter 96	Miscellaneous manufactures
Game 9607	Zipper (zipper) and parts thereof.
	- Zip closures (zip closures):
Subheading 9607.11	- With base metal teeth.
Fraction: 9607.11. 01	With base metal teeth.

Source: Tariff Information System Via Internet (SIAVI)

**9.** The unit of measurement used in the TIGIE is the kilogram while for commercial operations it is the piece, meters or yards.

**10.** According to the SIAVI, imports of metal closures that enter through tariff section 9607.11.01 of the TIGIE are subject to an ad valorem tariff of 15%, with the exception of Panama, which was exempt from tariff as of 2019, and of imports originating in countries with which Mexico has entered into free trade agreements, however, in accordance with the Comprehensive and Progressive Agreement of Trans-Pacific Partnership, merchandise originating in Australia, Canada, Japan, New Zealand and Singapore they have an ad valorem tariff of 10.5%; while those originating in Vietnam are subject to an ad valorem duty of 12%.

### 4. Production process

**11.** The inputs used for the manufacture of metal closures are the following:

**a.** cotton and / or polyester thread is used to manufacture the textile tape, and

**b.** Copper, zinc (brass), aluminum and nickel are used for the manufacture of the teeth, slider, puller and upper and lower stops .

**12.** The manufacturing process of the product under investigation consists mainly of the following stages:

**a.** manufacture of the textile tape: this stage is divided into two steps: i) weaving the cord, and ii) joining the cord and weaving the textile tape. The first step is carried out by means of a machine known as a cordonera where a cord is woven with the polyester or cotton threads, which will be part of the tape and later will serve to insert the metal teeth into it. The second step consists in that the previously manufactured cord is passed to a machine called a loom or weaver, where the rest of the textile tape will be woven on the cord. Once the tape is manufactured , it is passed to the winding area to wind the textile tape onto metal spools to its subsequent shipment to the dyeing or dry cleaning area, where the color requested by the customer will be applied ;

**b.** bonding of the ribbon and the metal teeth: the dyed ribbon is sent to a machine called a chain machine , in which the round metal wire (brass or aluminum) is sent through a train

of lamination, which gives it a "Y" shape:

**i.** the wire is cut into slices to form a tooth whose width varies depending on the type of closure to be manufactured.

**ii.** the tooth is placed in a slot in a turntable where it is struck into a flattened shape.

**iii.** the turntable rotates 90 degrees and another tooth is inserted into the slot. After another 90 degree turn, the first tooth is clamped on the textile belt.

**iv.** the tape should rise a little more than twice the thickness of the clamped tooth, to make room for the opposite tooth to be placed on the full metal fastener.

v. having the tape attached to the metal teeth, it is attached to another tape with the same characteristics, using a temporary device similar to a slider. Then both tapes are pressed and the wire brushes slide over the sharp edges. The tapes are starched, squeezed and dried.

vi. metal teeth are waxed for smooth operation. As a result of this process, a long ribbon is obtained, joined by continuous metal teeth (called chain) that are wound on spools.

c. inserting the stops, slides and cutting the closure: the slider and the puller are assembled separately, after being stamped or die-cast:

i. For fixed metal clasps (which only open at one end), the bottom stop is first clamped and then the slider is threaded onto the chain. Subsequently, the upper stops are clamped and cut at the midpoint of the gaps along the teeth.

ii. For detachable closures, the midpoint of each space is covered with a reinforcing tape (plasticized tape), and the upper stops are attached. The tape is cut to separate the straps of the chain again. The slider and box slide on one chain and the pin (piece of metal that will go into the box) is inserted into the other chain.

d. final inspection: the finished metal closures are sent to the inspection area, where they are verified that they open and close correctly and that the finish meets quality standards for final sale, and

e. packaging: the metal closures are packed in bags and placed in boxes, for later shipment to the warehouse.

## **5. Standards**

13. The product under investigation must comply with the Official Mexican Standard NOM-050-SCFI-2004. Commercial information-General product labeling.

## **6. Uses and functions**

14. Metal closures are used to join or separate two parts or pieces of a garment, opening and closing shoes, suitcases, backpacks, bags or other leather goods.

## **D. Call and notifications**

15. By means of the Initiation Resolution, the Secretariat summoned the importers and exporters of the product under investigation and any person who considered they had a legal interest in the result of the investigation, to appear to present the arguments and evidence they deem pertinent.

16. The Secretariat notified the initiation of the anti-dumping investigation to the Applicant, the importers and exporters known to it, and the Chinese government. With the notification, they were sent the public version of the request for initiation, the response to prevention and their respective annexes, as well as the official investigation forms, in order to formulate their defense.

## **E. Interested parties appearing**

17. The accredited interested parties, who appeared in due time and form in this proceeding, are the following:

### **1. Applicant**

Cierres y Accesorios BBJ, SA de CV  
Merchants No. 62

Col. San José Insurgentes  
CP 03900, Mexico City

### **2. Adjuvant**

Cierres Automáticos National, SA de CV  
Merchants No. 62  
Col. San José Insurgentes  
CP 03900, Mexico City

### **3. Importers**

Coats México, SA de CV  
Peripheral Ring No. 3325  
Col. San Jerónimo Lídice  
CP 10200, Mexico City

Grupo Parisina, SA de CV  
Av. Vasco de Quiroga No. 2121, 4th floor  
Col. Peña Blanca Santa Fe

CP 01210, Mexico City  
Shoes Solutions, SA de CV  
Av. Las Trojes No. 121  
Col. Centro Bodeguero Las Trojes  
CP 37227, Leon, Guanajuato

#### **4. Exporters**

Ningbo Mh Industry, Co. Ltd.  
Wenzhou Hehe Zipper, Co. Ltd.  
Wenzhou Land Port International Trade, Co. Ltd.  
Wenzhou Muse International Trade, Co. Ltd.  
Zhejiang Sandeli Zipper, Co. Ltd.  
Zhejiang Xinhong Zipper, Co. Ltd.  
South Cypress Forest No. 51  
Col. Bosque de las Lomas  
CP 11700, Mexico City

#### **F. Preliminary Resolution**

18. On February 14, 2020, the Secretariat published in the DOF the preliminary resolution of the antidumping investigation (the " Preliminary Resolution " ), through which it was determined to continue with the investigation procedure and impose a provisional countervailing duty of 96.66%.

19. By means of the publication referred to in the previous point, the Secretariat summoned the accredited interested parties to present the arguments and additional evidence they deem pertinent. Likewise, it notified the Preliminary Resolution to the accredited interested parties.

#### **G. Technical information meetings**

20. BBJ closures and exporting companies Ningbo Mh Industry, Co. Ltd., Wenzhou Hehe Zipper, Co. Ltd., Wenzhou Land Port International Trade, Co. Ltd., Wenzhou Muse International Trade, Co. Ltd., Zhejiang Sandeli Zipper , Co. Ltd. and Zhejiang Xinhong Zipper, Co. Ltd. ( " Ningbo Mh " , " Wenzhou Hehe " , " Wenzhou Land " , " Wenzhou Muse " , " Zhejiang Sandeli " and " Zhejiang Xinhong " , respectively or, together , the "exporting companies " ) requested technical information meetings in order to know the methodology that the Secretariat used to arrive at the determination of the Preliminary Resolution. The meetings were held on February 27 , 2020. The Secretariat raised the reports of each meeting, which are in the administrative file of the case, in accordance with Article 85 of the Regulations of the Foreign Trade Law (RLCE).

#### **H. Arguments and additional evidence**

21. The Secretariat extended the deadline for the appearing parties to present the arguments and complementary evidence, due to the suspension of terms due to force majeure, in accordance with the Agreements published in the DOF on February 24 and March 9, 2020. The term expired on March 31, 2020.

22. On March 30 and 31, 2020 Cierres BBJ, its adjunct Cierres Automáticos National, SA de CV ( " Cierres Automáticos " ), as well as the importing company Grupo Parisina, SA de CV ( " Grupo Parisina " ) and the exporting companies They presented arguments and means of complementary evidence in this investigation, which appear in the administrative file of the case and were considered for the issuance of this Order. The importing company Coats México, SA de CV ( " Coats México " ) did not present additional arguments and evidence.

23. On April 27, 2020, the importing company Shoes Solutions, SA de CV ( " Shoes Solutions " ) presented additional arguments, which were not accepted, due to the provisions of point 39 of this Resolution.

#### **I. Information requirements**

##### **1. Extensions**

24. The Secretariat granted the Paris Group request an extension of ten days to present a response to a request for information. The deadline expired on May 18, 2020.

##### **2. Interested parties**

###### **a. Importer**

25. On April 16, 2020, the Secretariat requested Grupo Parisina to, among other issues, present information related to the cost structure of metal closures in China in the period under investigation, identify the variety or types of inputs (aluminum, copper and zinc), as well as the proportions that are used in the production of metal closures; It will demonstrate, based on the cost structure provided, which types or varieties

should or should not be considered in the estimate of the reconstructed value and will provide the prices of each of them; identify each of the types or varieties of non-ferrous metals (aluminum, copper and zinc) reported by SMM Information & Technology, Co. Ltd. ( " Shanghai Metals Market " ) on the Internet page [www.metal.com](http://www.metal.com), and will explain what each of them refers to, will indicate which adjustments should be applied, as well as to provide the supporting elements for each of their responses. He submitted his response on May 18, 2020.

### **3. No parts**

26. On April 16, 2020, the Secretariat requested the Mexican Association of Automatic Zip Manufacturers , AC (AMFCA) to provide the full name of the producers of metal closures that are its members or affiliates. He submitted his response on April 17, 2020.

27. On April 20, 2020, the Secretariat requested the AMFCA to confirm whether the company Ideal Zipper, SA de CV ( " Ideal Zipper " ) is a member or affiliate of said Association; explain how it obtained the reported figures for the national production volume of metal closures for the period analyzed for the companies Cierres BBJ, Cierres Automáticos, TEK Cierres Tecnología, S. de RL de CV ( " TEK Cierres " ), Cierres Corenstein, SA de CV ( " Cierres Corenstein " ), Ideal Zipper and YKK Mexicana, SA de CV ( " YKK Mexicana " ), and provide the algorithm that you used in your calculations, as well as the worksheet and the evidence to support your answers. He submitted his response on April 24, 2020.

### **J. Essential facts**

28. On June 23, 2020, the Secretariat notified the accredited interested parties of the essential facts of this investigation, which served as the basis for issuing this Resolution, in accordance with Article 6.9 of the Agreement on the Application of Article VI of the General Agreement on Tariffs and Trade 1994 (the " Antidumping Agreement " ). On July 7, 2020, the Applicant and its coadjutant Automatic Closures and the importer Grupo Parisina presented arguments on the essential facts , which appear in the administrative file of the case, which were considered for issue this Resolution. The importing companies Coats México and Shoes Solutions, as well as the exporting companies, did not present arguments on the essential facts.

### **K. Public hearing**

29. On June 30, 2020, the public hearing in this procedure was held. The Applicant participated ; its adjutant Automatic Closures; the importers Coats México, Grupo Parisina and Shoes Solutions, and the exporting companies who had the opportunity to present their arguments and refute those of their counterparts, as recorded in the minutes that were drawn up for that reason, which constitutes a public document of probative effectiveness in accordance with article 46, section I of the Federal Law on

Contentious Administrative Procedure (LFPCA).

30. On July 3, 2020, Grupo Parisina presented the answer to the question that was pending at the public hearing.

### **L. Allegations**

31. On July 7, 2020, the Applicant and its adjutant Automatic Closings; the importer Grupo Parisina, and the exporting companies presented their arguments, which appear in the administrative file of the case, which were considered to issue this Resolution. The importing companies Coats México and Shoes Solutions did not present arguments.

### **M. Extension of the term of the provisional countervailing duty**

32. In accordance with Article 7.4 of the Anti-Dumping Agreement and since the Secretariat determined to evaluate the feasibility of establishing a countervailing duty lower than the margin of price discrimination, in an amount sufficient to eliminate the injury to the domestic production, it was extended to six months the term of validity of the provisional compensatory quota, which expired on August 17, 2020.

### **N. Opinion of the Foreign Trade Commission**

33. Based on articles 58 of the Foreign Trade Law (LCE) and 19 fraction XI of the Internal Regulations of the Ministry of Economy (RISE), the draft of this Resolution was submitted to the opinion of the Foreign Trade Commission , which considered it in its session on December 4, 2020. The project received a favorable opinion by a majority.

## **CONSIDERING**

### **A. Competition**

34. The Secretariat is competent to issue this Resolution in accordance with articles 16 and 34 sections V and XXXIII of the Organic Law of the Federal Public Administration; 1; 2 section A, section II number 7, and 19 sections I and IV of the RISE; 9.1 and 12.2 of the Anti-Dumping Agreement; 5 fraction VII and 59 fraction I of the LCE, and 80 and 83 fraction I of the RLCE.

### **B. Applicable law**

35. For the purposes of this procedure, the Antidumping Agreement, the LCE, the RLCE, the Fiscal Code of the Federation, the LFPCA supplementally applied, in accordance with the Second Transitory Article of the Decree issuing the LFPCA, and the Federal Code of Civil Procedures, these last three of supplementary application.

#### **C. Protection of confidential information**

36. The Secretariat may not publicly reveal the confidential information that the interested parties presented to it, nor the confidential information that it itself provided, in accordance with Articles 6.5 of the Anti-Dumping Agreement, 80 of the LCE and 152 and 158 of the RLCE.

#### **D. Right of defense and due process**

37. The interested parties had ample opportunity to present all kinds of arguments, exceptions and defenses, as well as the evidence to support them, in accordance with the Anti-Dumping Agreement, the LCE and the RLCE. The Secretariat assessed them subject to the essential formalities of the administrative procedure.

#### **E. Extension of the term to issue the final Resolution**

38. In accordance with Article 5.10 of the Anti-Dumping Agreement, the Secretariat issues this Resolution within 18 months from the initiation of this investigation, based on the following considerations: i) the number of interested parties who appeared and the volume of information that each one of them exhibited; ii) the complexity of the analysis of the information presented by the parties; iii) the granting of various extensions during the procedure, and iv) the impossibility of issuing this Resolution due to the ruling issued on February 20, 2020 by the Twenty-First Collegiate Administrative Court of the First Circuit, in the appeal for review RA (I) 574/2019, in which The definitive suspension was granted for the purpose of continuing with the substantiation of this procedure without the final Resolution being issued, until the amparo action 1401/2019 is finally resolved. The judgment of said amparo trial was issued on February 26, 2020 by the 13th District Court in Administrative Matters in Mexico City, in the sense of not protecting or protecting the complainant, however, it caused status until October 23, 2020.

#### **F. Information not accepted**

39. By means of official letter UPCI.416.20.2323 of July 27, 2020, the importing company Shoes Solutions was notified that this authority determined not to admit the complementary arguments referred to in point 23 of this Resolution, by virtue of the fact that they were presented extemporaneously, in accordance with the provisions of article 164 second paragraph of the RLCE, an office that is considered to be reproduced as if it were inserted in this Resolution.

#### **G. Response to certain arguments of the parties**

##### **1. General aspects of the procedure**

##### **a. Powers of representation**

40. Cierres BBJ and its adjuvant Cierres Automáticos argued that the person who goes to the antidumping proceeding on behalf of the exporting companies does not prove that they have legal standing to do so, since the instrument granted before a public notary in China on September 9, 2019, by means of which it claims that the investigating authority considers its powers to be accredited, it is not appreciated that the notary has verified that the principal had powers to represent the exporting companies, a requirement that is required in article 10 of the General Law of Mercantile Societies.

41. They added that from said notarial instrument it is appreciated that whoever appears before the notary does so in his capacity as Secretary General of the China Chamber of International Commerce ( " China Chamber " ), as well as on behalf of the China Chamber itself and its represented, and not the exporting companies, because the mention of their represented is invalid, since a simple isolated mention, made in a general and abstract way, cannot be taken into account.

42. They pointed out that in the unacknowledged case that the principal had power of representation of the exporting companies, neither did he prove to the Chinese notary that he had substitution powers. Therefore, whoever appeared on the alleged behalf of the exporting companies did not prove that they had the powers that they alleged, so the exporting companies should not be accredited as interested parties in this investigation or their information, arguments and evidence should not be considered.

43. In this regard, the Secretariat clarifies that the power of attorney granted by Mr. Yu Jianlong on behalf of the China Chamber on September 9, 2019, before the faith of a notary public in China, is subject to compliance with the formalities of the legislation China, since it was held in that country, therefore, is not subject to compliance with the formalities established in article 10 of the General Law of Commercial Companies, as held by BBJ Closures and its adjunct Automatic Closings. In addition to the foregoing, the aforementioned notarial instrument makes full proof in Mexico since, as it is a foreign public document, it was duly legalized by the competent Mexican consular authorities, in accordance with the provisions of article 546

of the CFPC, of supplementary application. The above is supported by Thesis I.5o.C.41 C of the Fifth Collegiate Court in Civil Matters of the First Circuit, Ninth period, Record 202470 1 of 1, page 671, published in the Judicial Weekly of the Federation and its Gazette, of May in 1996, Volume III.

**POWERS GRANTED ABROAD, FORMALITIES OF. ARE GENERALLY GOVERNED BY THE LAW OF THE COUNTRY OF THEIR GRANT. The application of articles 2554 and 2555 of the Civil Code for the Federal District and 10 of the General Law of Mercantile Societies regarding the formalities required for the granting of powers is inadmissible**, because **since the power of attorney has been granted in a foreign country**, The rule "locus regit actum" governs the species, which translates into the sense that the place governs the act, and refers to the fact that **the acts are governed, in terms of their form, by the law of the place where they are held**, in accordance with article 13, section IV, of the aforementioned civil order, which provides that: "The determination of the applicable law will be made in accordance with the following rules: ... IV.- The form of legal acts will be governed by the Law of the place in which they are held. However, they may be subject to the forms prescribed in this Code when the act is to have effects in the Federal District or in the Republic in the case of federal matters." Consequently, in accordance with the previous principle of law provided for in current legislation, **the form of legal acts is governed by the law of the place in which they are held, which means in the case that the form of the granting of power is not subject to the rules of the Civil Code or that of commercial law cited first, but that is subject to the law of the foreign country, because power was granted in the same**, without the mandate there any indication or statements that refer to the formalities prescribed in the aforementioned national regulations.

**[Emphasis added]**

44. Likewise, it should be noted that, although in said notarial instrument the representative of the China Chamber also appeared before the Chinese notary on behalf of the companies represented by said Chamber "their represented" without specifically indicating who they are, the 1 and November 7, 2019, the exporting companies Ningbo Mh, Wenzhou Hehe, Wenzhou Land, Wenzhou Muse, Zhejiang Sandeli and Zhejiang Xinhong presented to this Secretariat the powers of attorney contained in documents (2019) ZYTZWZ No. 4546, (2019) WZZ No. 5058, (2019) WZZ No. 5071, (2019) WZZ No. 5074, (2019) ZLLZZi No. 1741 and (2019) ZYZWM Zi No. 3310, duly legalized, in which it is stated that Each of the exporting companies granted the China Chamber the powers to represent them in these proceedings. Similarly, in the aforementioned notarial instruments, the exporting companies certify the powers of their principals to grant powers to the China Chamber, as well as the powers of the latter to grant powers with powers of substitution to Mexican lawyers to represent them in this proceeding. Due to the foregoing, and contrary to what the Applicant and its coadjutant Automatic Closures state, the representation of the exporting companies and their character as accredited parties in this investigation is duly supported, as indicated in point 50 of the Preliminary Resolution.

**b. Illegality of the information provided to the AMFCA**

45. Grupo Parisina argued that the motions obtained from the Tax Administration Service (SAT) by the AMFCA, which were provided by the Applicant with which it calculated the export value (sic), is information that is illegally obtained and not it must be taken into account for the determination of the alleged injury caused to the domestic industry.

46. He indicated that Article 144, section XXVI, of the Customs Law establishes that the Ministry of Finance and Public Credit (SHCP) must disclose the information contained in the motions to the Chambers and Industrial Associations grouped by the Confederation, in terms of the Law of Business Chambers and their Confederations (LCEC), that participate with the SAT in the Customs Control and Inspection Program by Industrial Sector. However, by disclosing this information to them, it is also allowed to be available to its members, which constitutes a commercial advantage individually compared to its foreign competitors, therefore, such information must be classified as public so that any A national competitor, who is not a member of said Chamber, or a foreigner may use it in his favor to prepare an adequate defense, as in this case.

47. He added that the information in question can be considered as mandatory in terms of article 32, section I, of the LCEC, likewise, it can be integrated into the Mexican Business Information System (SIEM) and be granted the character of public information according to the How it was shared in terms of the Customs Law and the mandatory nature granted by the LCEC.

48. It indicated that the last paragraph of Article 32 of the aforementioned legal system establishes that the information that the merchants and industrialists provide to the SIEM will not be evidence before the administrative or fiscal authority, in court or out of it and, by virtue of the fact The procedure is carried out before an administrative authority followed in the form of a lawsuit, the information presented by Cierres BBJ is illegally obtained, therefore, the Preliminary Resolution was issued in contravention of the provisions of Article 3.7 of the Anti-Dumping Agreement.

49. In this regard, the Secretariat clarifies that both the Customs Law and the LCEC are not legal systems applicable to investigation procedures in matters of unfair international trade practices, even, nor in a supplementary manner, since the legal object that they regulate It is different. The purpose of

the Customs Law is to regulate the entry into the national territory and the exit from it of merchandise and the means in which they are transported or driven, customs clearance and the facts or acts that derive from this or from said entry or exit of merchandise . For its part, the LCEC aims to regulate the constitution and operation of the Chambers of Commerce, Services and Tourism and the Chambers of Industry, as well as the Confederations that group them; in addition to regulating the SIEM.

50. Therefore, for the purposes of this procedure, the Secretariat lacks the authority to rule on the arguments of Grupo Parisina regarding the fact that the information on imports of the investigated product presented by the Applicant that it obtained from the AMFCA through the SAT , could be considered as mandatory, be integrated into the SIEM and be granted a public nature, and that the information provided to the SIEM will not be evidence before the administrative or fiscal authority, in accordance with the provisions of the Customs Law and the LCEC; otherwise, it would violate the principles of legality and

legal certainty, since the authority can only do what it is expressly empowered by law to do, otherwise, it would incur an arbitrary act. The foregoing is supported by Thesis IV. 2nd. A./51 K (10a.) Of the Second Collegiate Court in Administrative Matters of the Fourth Circuit, Tenth epoch, Registry 2005755 1 of 1, page 2239, published in the Gaceta del Semanario judicial de la Federación, Book 3, February 2014 , Volume III.

**PRINCIPLE OF LEGALITY. CHARACTERISTICS OF ITS DOUBLE FUNCTIONALITY IN CONNECTION WITH THE ADMINISTRATIVE ACT AND ITS RELATIONSHIP WITH THE VARIOUS INTERDICTION OF ARBITRARINESS AND JURISDICTIONAL CONTROL.** From article 16, first paragraph, of the Political Constitution of the United Mexican States, the requirements of a written order, competent authority and justification and motivation are noted as instrumental guarantees that, in turn, reveal the adoption in the national legal regime of the principle of legality, as a guarantee of the human right to legal certainty, according to which **the authorities can only do what the laws expressly empower them** , with the understanding that these, in turn, constitute the manifestation of the general will. Under this premise, the aforementioned principle has a double functionality, particularly in the case of the administrative act, since, on the one hand, it **imposes a regime of express powers in which any act of authority that does not represent the exercise of a power expressly conferred by law Whoever issues it will be considered arbitrary and, therefore, contrary to the right to legal certainty** , which legitimizes people to question the validity of an act that is out of compliance with the laws, but, on the other hand, under the adoption of the same principle as the basis of the entire order, the presumption is generated that **All actions of the authority derive from the exercise of a power conferred by law, as long as the contrary is not demonstrated** , a presumption of legality widely recognized both in doctrine and in national legislation. Thus, the principle of legality, appreciated in its broadest sense, makes room for the various interdiction of arbitrariness, but also implies that it operates through jurisdictional control, which results in that it is not enough for the governed to consider that certain Act lacks justification and motivation for it to be deemed not mandatory or binding or to indicate it as the source of an incontrovertible right to a sentence that annuls it, but, in any case, it is in charge of resorting to the control bodies to assert the assumed absence or insufficiency of legal basis and motivation within said procedure and, in turn, it will correspond to the authority to demonstrate that the act in question is supported by a power provided by the rule, under penalty of being declared contrary to the right to legal certainty, which reveals that the jurisdictional control procedures constitute the last guarantee of verification of respect for the right to legal certainty, whose rules must be conducive and consistent with that purpose.

**[Emphasis added]**

51. On the other hand, it should be clarified that contrary to what was stated by Grupo Parisina, the Applicant did not present import requests to calculate the export price, but a database of import operations of tariff section 9607.11.01 of the TIGIE, which the SAT provided to the AMFCA in exercise of the powers conferred on it by article 144 section XXVI of the Customs Law, due to the collaboration agreement for the operation of the Customs Control and Inspection Program of the zippers sector , therefore , said information was not illegally obtained, as stated by Grupo Parisina.

52. In addition to the foregoing, the Secretariat verified that the character assigned by the Applicant to said information, met the requirements indicated in the legislation on the matter, since it requested that it be granted confidential treatment, justified why it has such character, presented a detailed public summary of it and expressed its consent that it could be reviewed by the legal representatives of the other interested parties that so request and that they comply with the requirements established in the LCE and the RLCE, therefore, said The information was presented in accordance with the provisions of Articles 6.5 of the Anti-Dumping Agreement and 148, 149, 152, 153 and 158 of the RLCE, consequently, it constitutes a relevant and suitable for the purposes of this procedure. Likewise, it is clarified that Grupo Parisina from the beginning of this investigation had access to said information and ample opportunity to formulate its adequate and timely defense , considering, in addition to the above, that its legal representatives had authorization

to have access to the confidential information of the administrative file of the case, because they fulfilled the requirements established in the LCE and the RLCE for this.

**c. Powers to impose provisional countervailing duties**



53. The exporting companies indicated that the Secretariat was not empowered to impose provisional measures in the investigation, so it must proceed to eliminate them.

54. They indicated that the Secretariat set the period of investigation from January 1 to December 31, 2018 and the period for the analysis of damage to be from January 1, 2016 to December 31, 2018, however, in accordance with The Preliminary Resolution imposed a provisional countervailing duty until February 15, 2020, so that, between the alleged damage observed in 2018 and the imposition of the provisional countervailing duty, 14 months elapsed, so its determination is not in line with the provided by Article 7.1 of the Anti-Dumping Agreement, since this legal provision provides for the application of provisional measures as a preventive and expeditious remedy to avoid causing damage to the course of the investigation and not like that, when the alleged damage belongs to an investigated period so remote, it occurred 14 months ago.

55. They added that, if the measure were so necessary to prevent damage from being caused during the investigation, the Secretariat should hasten to issue a Preliminary Resolution expeditiously and not act with such delay, since this only confirms that it was not urgent to issue said Resolution and less imposing provisional measures.

56. In this regard, the Secretariat considers the argument of the exporting companies to be wrong, because in accordance with the provisions of articles 5 section VII and 57, section I, of the LCE, the Secretariat has the power to determine countervailing duties, derived from the investigations processed before it. Likewise, in this case, the provisions of Article 7.1 of the Anti-Dumping Agreement were complied with, since i) this investigation was initiated in accordance with the provisions of Article 5 of the Anti-Dumping Agreement; ii) a preliminary positive determination of dumping and injury to the domestic industry was reached, and iii) in accordance with the provisions of points 334 and 335 of the Resolution Preliminary, it was appropriate to apply a provisional countervailing duty lower than the price discrimination margin, in an amount sufficient to restore fair conditions of competition and eliminate the injury caused to the domestic industry of the like merchandise.

57. Likewise, it should be noted that Article 7.1 of the Anti-Dumping Agreement does not establish that the authorities must impose provisional measures as a preventive and expeditious remedy to prevent damage from being caused during the investigation, nor that there must be a specific period between the investigated period and the issuance of the Preliminary Resolution that determines provisional countervailing duties as erroneously suggested by the exporting companies.

58. In this case, the Secretariat deemed it necessary to apply the provisional countervailing duty given the vulnerability of the domestic industry to the concurrence of imports of metal closures originating in China under dumping conditions, regardless of the period of investigation established in this present investigation and, in that sense, issued the Preliminary Resolution, which cannot be issued expeditiously, as indicated by the exporting companies, since this procedure is developed in different orderly and consecutive stages within the deadlines established by the LCE.

59. Additionally, in the preliminary stage of the investigation, the Secretariat granted at the request of the parties a total of 24 days of extension, including the exporting companies, so that they had ample opportunity to defend their interests. 12 non-working days, in such a way that the supposed delay in the issuance of the Preliminary Resolution is non-existent, considering that according to article 57 of the LCE, the Secretariat has a period of 90 days to publish the Preliminary Resolution, from the day after the Initiation Resolution, therefore, considering said period, the days of extension, as well as the non-working, said Resolution should have been published on January 29, 2020, consequently, the delay for the issuance of the Preliminary Resolution to which the exporting companies allude is non-existent. Likewise, the fact that the Resolution was not issued strictly within the term referred to in article 57 of the LCE does not prevent the Secretariat from analyzing and, where appropriate, determining provisional compensatory duties.

#### **d. Verification or declaration of the origin of the merchandise**

60. Cierres BBJ and its adjunct Cierres Automáticos argued that due to the modifications of the Agreement establishing the rules for determining the country of origin of imported goods and the provisions for their certification, for non-preferential purposes (previously Agreement by which establishes the rules for determining the country of origin of imported goods and the provisions for their certification, in terms of countervailing duties) published in the DOF on August 30, 1994, for purposes of verifying the origin of the goods. metal closures, importers only need to submit a simple declaration of origin in customs documents, which can facilitate

triangulation of goods that must pay a compensatory fee, as is the case of the product under investigation.

61. They added that in order for the Preliminary Resolution to fulfill its mission, in particular, what is stated in point 341, which clearly indicates the need to verify the origin of the merchandise, importers must provide information such as address, telephone numbers and email addresses of the factories where the metal closures were made, as well as the name of the national importer that is responsible for the information provided, which does not imply an unnecessary burden. They noted that in the T-MEC there are provisions on origin for goods that are introduced under the said treaty, in which there are commitments of 9 minimum elements of information, which go in the line of avoiding deception of national authorities.

62. In this regard, the Secretariat clarifies that in terms of the provisions of article 66 of the LCE, importers of metal closures that must pay the determined compensatory fee will not be obliged to pay it if they verify in accordance with the provisions of the regulations applicable laws in force, that the country of origin is different from China, as indicated in point 341 of the Preliminary Resolution, however, this investigation procedure is not intended to establish the requirements for verifying the origin of the investigated goods, nor does this authority have the power to rule on the matter, since it is not the competent authority to know about the verification of the origin of the merchandise or the requirements that must be met, otherwise, it would violate the principle of legality and legal certainty, when performing functions for which it is not expressly empowered in accordance with the legislation on the matter.

63. Regarding the statement of the Applicant and its coadjutant Automatic Closures that in the T-MEC there are provisions on origin for goods that are introduced under the said treaty, in which there are commitments of 9 minimum elements of information to avoid deception of national authorities, it is pointed out that the provisions of the aforementioned Trade Agreement are applicable only to Member countries, therefore, it is inapplicable for the purposes of this procedure.

#### **and. Compensatory quotas for temporary imports**

64. Cierres BBJ and its adjuvant Cierres Automáticos requested that it be determined to impose a definitive countervailing duty on total imports (temporary and definitive) in the final resolution, in an amount equivalent to the specific dumping margin, the foregoing, since it is so requested from the beginning of this investigation.

65. The Secretariat considers the request for BBJ Closures and its adjuvant Automatic Closures inadmissible, since the request to initiate the investigation and the response to the official form did not specify that the imports that entered under the import regime were included. temporary and, in this sense, the Secretariat accepted and initiated the investigation and the Preliminary Resolution was issued, so that at this stage of the investigation it is no longer possible to extend the request to initiate or modify the litigation of the investigation. Therefore, since temporary imports have not been included in the coverage of the investigation, since the beginning of the investigation, it is not possible to determine the application of quotas. compensatory imports that enter through the temporary import regime.

#### **F. Analysis of the national industry**

66. In the preliminary stage of the investigation, Grupo Parisina stated that in order to analyze whether there is damage or threat of damage, it is important to analyze the country's macroeconomic environment. Therefore, he presented an analysis of the behavior of the Mexican economy during the analyzed period, considering various macroeconomic indicators of Mexico, among which are the Gross Domestic Product (GDP), GDP per capita, GDP of secondary activities, GDP of manufacturing industry, inflation and peso / dollar exchange rate.

67. In addition, in order to know the state of the national metal fastener industry, Grupo Parisina presented an analysis of the behavior of different indicators related to said industry, such as: employed personnel, salaries paid to employed personnel, plant capacity used, installed capacity, production volume in pieces and kilograms and production value. He pointed out that in the cases in which it was not possible to find specific information for the national production of metal closures, he used the best public information available, which corresponds to the code 339992 of the North American Industrial Classification System (SCIAN) of the Institute. National Statistics and Geography (INEGI), which corresponds to the clasp, button and needle manufacturing industry.

68. In this regard, and in accordance with the provisions of points 59 and 68 of the Preliminary Resolution, the Secretariat reiterated that the purpose of this investigation is to evaluate the effects of imports of metal closures originating in China, on which the Applicant presented information on the indicators

economic and financial aspects of the domestic industry of the like product. Under that order of ideas, the Secretariat observed that the information that Grupo Parisina used in the aforementioned analyzes does not correspond to the metal fastener industry in Mexico, so said analyzes do not reflect the specific behavior of the national fastener industry. of metal, but they contemplate a global analysis, related to the manufacturing sector and other industries. Therefore, the Secretariat did not consider the information presented by Grupo Parisina for its determination, since it is not relevant information, since it is not specific to the product under investigation.

69. At this stage of the investigation, Grupo Parisina stated that through the essential facts, the Secretariat informed it that for the purposes of the injury analysis, the information indicated in points 66 and 67 of this Order would not be taken in consideration, by virtue of the fact that said information is allegedly not specific to the product under analysis.

70. It indicated that the Secretariat did not base or motivate its determination with any legal provision. It added that said information aimed at demonstrating the conditions of the national closure industry is the best information available in terms of Article 6.8 of the Anti-Dumping Agreement, and it should have been analyzed by the Secretariat, for the purposes of this investigation.

71. In this regard, the Secretariat specifies that its determination not to consider the information presented by Grupo Parisina was described in point 68 of the Preliminary Resolution and not in the essential facts. In addition, it clarifies that said information was analyzed by the Secretariat and confirms that the information that Grupo Parisina used in its analysis does not correspond to the metal closures industry in Mexico, so said analysis does not reflect the specific behavior of the national industry of metal closures, but includes a global analysis, related to the manufacturing sector and other industries.

72. Due to the foregoing, the Secretariat reiterates what was stated in point 68 of the Preliminary Resolution, in the sense that the information presented by Grupo Parisina was not used for its determination, since it is not pertinent information, since the information provided is not specific to the product under investigation. In addition, it is confirmed that the objective of this investigation is to evaluate the effects of imports of metal closures originating in China, since this is the product under investigation, on which the Applicant presented information on the economic and financial indicators of the branch of domestic production of the domestic like product, as noted in paragraph 59 of Resolution Preliminary, therefore, it is erroneous that the Secretariat did not base or motivate its determination, as the Parisian Group points out .

#### **H. Price discrimination analysis**

73. In the present investigation, the Chinese exporting producing companies appeared: Ningbo Mh, Wenzhou Hehe, Wenzhou Land, Wenzhou Muse, Zhejiang Sandeli and Zhejiang Xinhong, however, they did not provide information on normal value and export price, so the Secretariat It did not have information and evidence that would allow it to determine an individual margin of dumping for these companies.

74. Due to the above, the Secretariat conducted its analysis based on the facts of which it was aware, in terms of the provisions of Articles 6.8 and Annex II of the Anti-Dumping Agreement, 54 and 64 of the LCE. Such facts correspond to the information and evidence presented by the national producer Cierres y Accesorios BBJ, the importing companies Coats México, Grupo Parisina and Shoes Solutions, as well as information from which the Secretariat obtained.

#### **1. Methodological aspects**

##### **to. Rebuilt value**

75. Grupo Parisina reiterated, at this stage of the investigation, that the Secretariat contravened the provisions of Article 5.2 of the Anti-Dumping Agreement, having initiated the investigation based on mere presumptions by allowing the Applicant to use its own cost structure instead to require you to provide the minimum necessary information. It added that the concept of best available information cannot be used to correct or relax the minimum information requirements required by legislation and the Anti-Dumping Agreement in order to initiate an investigation.

76. In this vein, Grupo Parisina stated that the calculation of the constructed value made from the information provided by the Applicant is invalid, as it is not verifiable and because it did not break down the items that make up administrative expenses. It added that the Applicant had information on Chinese companies producing the investigated merchandise, which made it possible to determine a normal value through the comparison of prices in the Chinese domestic market with prices in the domestic market (sic).

77. It reiterated its argument that the calculation of the constructed value made by the Applicant is incorrect and contrary to the provisions of Article 2.2.1.1 of the Anti-Dumping Agreement. It indicated that it is not legally acceptable for it to use its own cost structure, production and administrative expenses, and

a reasonable utility to calculate the constructed value, given that the indicated legal provision indicates that the information used to calculate said value must be that of the producers or exporters of the investigated merchandise . This is in order to make a valid and non-fictitious comparison between the normal value and the export price. It also cited excerpts from the Report of the Appellate Body of the World Trade Organization (WTO) in the case of the European Union-Anti-Dumping Measures on Biodiesel from Argentina (Document WT / DS473 / AB / R) and the Report of the Panel on the WTO of the United States-Anti-Dumping Measures case concerning certain oil drilling pipelines from Korea (Document WT / DS488 / R).

78. In relation to the Parisian Group's argument regarding non-compliance with the provisions of Article 5.2 of the Anti-Dumping Agreement, the Secretariat states that such provision indicates that the request will contain the information reasonably available to the Applicant. Likewise, Romanite iii) of said standard requests data on the prices at which the product in question is sold when it is intended for consumption in the country's domestic markets (or, where appropriate, data on the prices at which the product is sold from the country or countries of origin or of export to a third country or third countries, or on the reconstructed value of the product).

79. Such data were provided by the Applicant based on information that was reasonably available to it . The Secretariat stated that Cierres BBJ compared internal prices with production costs and general expenses, thus establishing the presumption that such prices did not cover production costs , as indicated in point 83 of the Preliminary Resolution. Likewise, the Secretariat reiterates that it was the responsibility of China's exporting producing companies to provide evidence in this regard, however, they did not do so. Therefore, it analyzed

the constructed value option for the purposes of calculating normal value, as indicated in point 43 of the Initiation Resolution.

**80.** Since it was information that was reasonably available to it, the Applicant submitted financial data to calculate general expenses, corresponding to a Chinese metal fastener manufacturer company, as indicated in point 115 of the Preliminary Resolution. It is important to note that the financial information of the Chinese company did not contain data regarding prices that would allow the Applicant to calculate a price in the domestic market of China, contrary to what Grupo Parisina asserted. Likewise, the Secretariat considers incorrect the Parisina Group's statement regarding the fact that the Chinese market prices should be compared with the domestic market price. In determining the price discrimination, the comparison is made with the export price from China to Mexico and with the prices in the Chinese domestic market, or, as happened in the present investigation, with the constructed value.

**81.** Regarding the argument that the information presented by the Applicant is not verifiable, the Secretariat considers that the Parisina Group is incorrect. Article 6.6 of the Anti-Dumping Agreement states that except in the circumstances provided for in paragraph 8, the authorities, in the course of the investigation, shall ensure the accuracy of the information submitted by the interested parties on which they base their conclusions. In this regard, the Report of the WTO Panel on the United States-Imposition of Anti-Dumping Duties on Semiconductors for Dynamic Random Access Memory (DRAM) of at least one megabit from Korea (Document WT / DS99), noted that the authority The researcher is not required to verify all the information on which her determinations are based and explained it as follows:

6.78 We understand Korea to argue, in short, that Members can only fulfill their obligation to satisfy themselves "of the accuracy of the information submitted by interested parties on which they base their conclusions" by verifying the accuracy of that information. However, the text of Article 6.6 does not expressly require the authorities to verify all the information on which they rely. In fact, the term "verify" is only used in Article 6.7 of the AD Agreement. Article 6.6 only requires Members to ensure "the accuracy of the information". In our opinion, the Members, without formal verification, information in various ways, for example, based on the credit that the original source of the information deserves. In fact, we consider that anti-dumping investigations would not be feasible if the investigating authorities were required to effectively verify the accuracy of all the information on which they are based.

**82.** Regarding what was stated by the Parisian Group, regarding that the calculation of the constructed value carried out by the Applicant is incorrect and contrary to the provisions of Article 2.2.1.1 of the Anti-Dumping Agreement, the Secretariat reiterates that in the present investigation, no Although the production companies

Chinese exporters appeared as parties and did not provide any information or evidence regarding price discrimination, so they did not have information to determine a normal value based on the accounting records of these companies. For its part, the Applicant provided a production cost structure, based on the information reasonably available to it. In addition, to support the similarity in the production processes, it presented information and evidence from a company that produces metal closures in China, as indicated in point 20, literal HH and in point 44 of the Commencement Resolution. In this sense, the Secretariat made its determination based on the facts of which it had knowledge, in terms of the provisions of Articles 6.8 and Annex II of the Anti-Dumping Agreement, and 54 and 64 of the LCE, as established in points 89 and 91 of the Preliminary Resolution.

**83.** From the WTO precedents that Grupo Parisina cited, the Secretariat observed that, in the first case, the European Union considered that the accounting records of the Argentine producers did not reflect the cost of soy. In the second case, the United States indicated that it did not have the information on sales or another category of more aggregated products, corresponding to the producers (declarants) that would allow it to establish a profit rate. As can be seen in both investigations, the exporting producing companies appeared and provided information and evidence, a situation that did not occur in the present investigation.

**84.** However, in the Report of the WTO Appellate Body in the European Union- Anti - Dumping Measures on Biodiesel from Argentina (Document WT / DS473 / AB / R), it is noted that Article 2.2 of the Anti-Dumping Agreement, does not prohibit an investigating authority from resorting to sources of information other than the costs of producers in the country of origin, nor does it exclude the possibility of seeking such information from sources outside the country of origin. Although it clarifies that the production costs established by the authority must reflect existing conditions in the country of origin and be appropriate for it. In paragraph 6.62. of that Report, the Panel stated the following:

Article 2.2 of the Anti-Dumping Agreement and Article VI: 1 (b) (ii) of the GATT 1994 do not limit the sources of information that can be used in establishing costs of production; however, what they do require is that the authority reconstruct normal value on the basis of the cost of production in the country of origin. Although in our view this would require that the costs of production established by the authority reflect existing conditions in the country of origin, we do not consider that these two provisions prohibit an authority from resorting to sources of information other than the costs of the producers in the country. country of origin.

**85.** In the same vein, the Appellate Body explained the following:

6.70. We note that Article 2.2 of the Anti-Dumping Agreement and Article VI: 1 (b) (ii) of the GATT 1994 do not contain additional words or qualifications that specify the type of evidence to be used or limit the sources of information or evidence. Only to existing sources within the country of origin. Logically, an investigating authority will seek information on the cost of production in the country of origin from sources within the country. At the same time, these provisions do not exclude the possibility that the authority may also need to seek that information from sources outside the country. However, the reference to in the country of origin indicates that, whatever information or evidence is used to determine the cost of production, they must allow a cost of production to be obtained in the country of origin and be appropriate for it. This, in turn, indicates that the out-of-country information or evidence may need to be adapted to ensure that it is adequate for determining a cost of production in the country of origin.

6.74. In light of our discussion above of the terms cost of production in the country of origin in Article 2.2 of the Anti-Dumping Agreement and cost of production ... in the country of origin of Article: 1 (b) (ii) VI of the GATT 1994, we consider that these provisions do not limit the sources of information or evidence that can be used in establishing the costs of production in the country of origin to existing sources within the country of origin ...

#### 6.1.1.2.5 Conclusions

6.82. In summary, we consider that the terms cost of production in the country of origin in Article 2.2 of the Anti-Dumping Agreement and cost of production ... in the country of origin of Article VI: 1 (b) (ii) of the GATT 1994 do not limit the sources of information or evidence that can be used in establishing the cost of

production in the country of origin to sources within the country of origin. When relying on any out-of-country information to determine the cost of production in the country of origin pursuant to Article 2.2 of the AD Agreement, an investigating authority has to ensure that that information is used to arrive at cost. production in the country of origin, and this may require the investigating authority to adapt such information ...

86. Due to the aforementioned, in this case the Secretariat made its determination based on the best information available in accordance with Articles 6.8 and Annex II of the Anti-Dumping Agreement, and 54 and 64 of the LCE.

#### i. Cost structure

87. In the final stage of the investigation, the importing company Grupo Parisina argued that the cost structure presented by the Applicant considers the production of 2 kilograms of the investigated merchandise, instead of one kilogram. He stated that to determine the costs of the slider, it was based on a proportion of 1kg = 100%, and for the calculation of the costs of the metal teeth, another additional proportion of 1kg = 100% was considered, which implies that the Cost structure reflects the cost of materials per 2 kilograms, which is why these costs must be considered at 50% to reflect the costs of one kilogram. He asserted that the cost structure is invalid, causing it to be greater and results in a greater margin of price discrimination.

88. Similarly, Grupo Parisina stated that, from the analysis of the Applicant's cost structure, it did not identify any section that mentioned or detailed the costs or process of the closures without slider elaborated during the investigated period. Therefore, the Applicant had to present information regarding the production process and the costs of the metal closures without slider.

89. In addition to the foregoing, the Secretariat specifies that the Applicant estimated the consumption per kilogram, based on the weight of each of the elements that make up the product under investigation, specifically the teeth, stops, slider and textile belt. Once he estimated the consumption per kilogram for each type of closure, he calculated the cost in dollars per kilogram, based on the prices of the raw materials needed to make the teeth, stops, slider and textile tape. That is, it used the actual weight of each item, which is why it is incorrect to point out that the estimate reflects a cost of 2 kilograms. The above was explained in the Points 75, 105, 106 and 109 of the Preliminary Resolution. Likewise, in point 44 of the Initiation Resolution and in point 109 of the Preliminary Resolution, the Secretariat indicated that the Requester provided a production cost for cut closures and another for rolled metal closures. Therefore, the statement of Grupo Parisina that it did not identify any section that mentioned the costs of metal closures without slider is wrong. Likewise, it should be noted that Grupo Parisina only made demonstrations without providing any evidence to support them.

#### ii. Input prices and adjustments

90. In the final stage of the investigation, the importing company Grupo Parisina argued that it could not corroborate the prices of the main inputs (copper, zinc and aluminum) provided by the Applicant, which were used in the calculation of the constructed value of the metal fasteners in the Chinese market. He stated that, although alleged screen prints with the prices were presented, he did not have access to them on the Shanghai Metals Market website (<http://www.metal.com>), and since he was unable to validate the information, he did not was certain about the accuracy and veracity of it.

91. It also pointed out that the Secretariat did not make the necessary adjustments to reconstruct normal value in terms of Article 77 of the Customs Law and 2.2.1.1 of the Anti-Dumping Agreement. He explained that, when reviewing the Internet page <http://www.metal.com>, he found that there is a great variety of ways in which supplies are sold, and he inserted screenshots of each of the supplies in his writing. He clarified that,

although he could not observe the price, it is possible to presume that the latter may fluctuate depending on the different varieties and / or types in which the inputs are sold, and may be higher or lower, which shows that the adjustments were not made. necessary in the reconstruction of the normal value.

**92.** In this regard, the Secretariat asked the Parisian Group to do the following: a) identify and explain what each of the types or varieties it found on the Internet page <http://www.metal.com> referred to; b) provide a cost structure for a Chinese producer, which establishes the types or varieties of inputs, as well as the proportions and prices used in the manufacture of the investigated merchandise, and c) explains the adjustments that should be applied according to the Article 2.2.1.1, which she herself invoked, and for her to provide the pertinent evidence to support each of her responses, as indicated in point 25 of this Resolution.

**93.** In its response to the request for information, Grupo Parisina indicated that at the time of the queries and respond to point a), the website changed its policies and requested a record to gain access, and stated that until the date of his appearance there was no response from the officials of said system.

**94.** Regarding subparagraph b), Grupo Parisina stated that it provided a table with information on production costs for the metal closures it imported and indicated that the information was provided by its supplier. It compared the production costs with those provided by the Applicant and stated that, on average, the costs presented are lower than those of the Applicant, for which it requested to calculate the reconstructed value with that information. He added that with this information, production costs can be reliably credited and a resolution can be issued with the best information available. He presented a letter signed by the legal representative of the supplier company, issued on May 14, 2020.

**95.** Regarding item c) relative to the adjustments, the Parisian Group limited itself to stating that the Secretariat should make the corresponding adjustments to the costs of the inputs in kilograms through the relief of the requirement in question, and that it was the best information available to perform a proper damage analysis (sic).

**96.** In the final stage of the investigation, Grupo Parisina reiterated that the Applicant did not indicate the variety and quality of the metals. In addition, he pointed out that he carried out an analysis of zinc, copper and aluminum inputs, with respect to international market prices. It added that the Applicant's prices are above average. To do this, it presented information on the prices of said supplies that it obtained from the Markets Insider website (<https://markets.businessinsider.com>) corresponding to January and December 2018.

**97.** For its part, the Applicant indicated that it was not until the publication of the Preliminary Resolution that Grupo Parisina presented, in response to a request for information, an alleged cost structure provided by one of its suppliers requesting a new calculation of the dumping margin. In that sense, Cierres BBJ stated that this information should not be accepted, since the data on the costs of the Chinese exporters should have been offered with the evidentiary elements, from the first period of offering evidence. In addition, said information should have been sent by the exporting company with due accreditation as an interested party.

**98.** The Secretariat considers that, contrary to that indicated by Grupo Parisina, the information on the prices of inputs is duly supported, as indicated in the Initiation Resolution and in the Preliminary Resolution (points 45 and 110, respectively), Because the Applicant provided the prices obtained from the Shanghai Metals Market Internet page, <http://www.metal.com> and that the screen prints show the input and the reported price, as recorded in the administrative file of the case. Thus, the Secretariat had the relevant and sufficient elements and evidence to determine the cost of the inputs used in the constructed value.

**99.** Regarding what Grupo Parisina called input adjustments, the Secretariat points out that they were not duly supported, for the following reasons: i) Grupo Parisina pointed out the existence of different types or varieties of input prices, but in its response to the request, at no time did it identify them nor did it provide prices, and ii) When requesting to identify those types or varieties of inputs, as well as the proportions used in the manufacture of the merchandise under investigation, in any part of the structure of costs did what was required or provided the evidence to support their claims.

**100.** In the case of the prices of the inputs that Grupo Parisina presented in the final stage of the investigation, the Secretariat observed that the prices it reported in a table in its brief only correspond to January 2 and December 31, 2018, so they do not correspond to the entire investigated period. In addition, although they are commodities, the prices provided by the Applicant are relevant as they are the cost of inputs in the Chinese market obtained from the Shanghai Metal Market and correspond to the entire period investigated, so the latter are the best information available.

**101.** The importing company Grupo Parisina requested the application of adjustments in accordance with Article 2.2.1.1 of the Anti-Dumping Agreement, which states that costs will normally be calculated on the basis of the records kept by the exporter or producer under investigation. In the same sense, it points out that the authorities will take into consideration all the available evidence that the allocation of costs has been adequate, including that presented by the exporter or producer in the course of the investigation. The foregoing is relevant in the present investigation, since as indicated above, the exporting producing companies that

appeared as parties to the proceeding did not provide information regarding the margin of price discrimination. Therefore, in the preliminary stage, the Secretariat calculated the constructed value based on the best information available based on Article 6.8 and Annex II of the Anti-Dumping Agreement.

**102.** In order to obtain more evidence and the best information available,

The Secretariat asked Grupo Parisina for evidence that would allow it to establish whether there was an incorrect allocation in the cost of inputs in the reconstructed value and, consequently, modify the calculation of the reconstructed value. However, since there is no evidence to distort such prices, the Secretariat confirms the calculation of the cost of the inputs with the information provided by the Applicant.

**103.** Likewise, it should be clarified that Article 2.2.1.1 of the Anti-Dumping Agreement deals with the calculation of the margin of price discrimination and not with the injury analysis, as the Parisina Group incorrectly stated. For its part, Article 77 of the Customs Law is not applicable either since the reconstructed value method referred to in said legal provision is used when the taxable base of the general import tax cannot be determined according to the transaction value of the goods imported under the terms of article 64 of the same legal system, or not derived from a sale for export to national territory.

**104.** Regarding the information on production costs presented by Grupo Parisina in its response to the requirement indicated in points 25 and 94 of this Resolution, the Secretariat observed that in the supplier's letter, the column called "Price per Kilo (USD)" was obtained by dividing the column "Excluding packaging, taxes and transport" by the column "Weight". For its part, Grupo Parisina, in its response to the request, stated that such information is about a cost structure at the former level. factory (sic), however, according to the information indicated in the reference letter it would be a price and not a cost, because the fact of deducting the concepts of transport, packaging and taxes does not convert a price into cost of production. This is evident when you consider the reconstructed value, which is the sum of production costs, general expenses and a reasonable profit, as in this case. Therefore, the Secretariat considers it incorrect to estimate a cost based on a sale price.

**105.** Although Grupo Parisina affirmed that the veracity of the information was supported by the statement of the Chinese supplier contained in the letter signed by the manager of the supplier company, the Secretariat observed that the disaggregated information was not reported in it, unlike of the information provided by Grupo Parisina in an annex, which is not referred to in said letter nor does it have the letterhead of the supplier company, so there is no certainty of the veracity of the information contained in said annex. In addition to this, this annex presented various information on the types of fasteners it imported, quantities in kilograms, and items of cursor concepts (sic), upper / lower stop, brass teeth and polyester tape. He also presented another table with elements mentioned above, and added waste items, transformation charges, packaging expenses, taxes and freight. It also reported figures in dollars per kilogram, and in other items (processing, packaging and freight expenses) amounts in dollars. However, it did not provide any methodological explanation regarding the way in which it assigned each reported figure for each item, nor did it present the accounting support of the reported amounts. Therefore, the Secretariat did not have relevant evidence or the necessary methodological explanations that would allow replicating the calculation.

**106.** As mentioned in point 101 of this Resolution, the Secretariat used the best information available because the exporting producing companies appearing as parties in this investigation did not provide information to determine the margin of price discrimination. Therefore, it is questionable whether the information on production costs provided by Grupo Parisina corresponds to one of the appearing export-producing companies that did not submit a response to the official form or submit the information required therein (export price, normal value, production, among others), and it was specified to state arguments only for the purposes of the injury analysis.

**107.** It is important to note that exporting producing companies are the primary source of information in investigations and that in the event that an interested party denies access to the information or does not provide it within a reasonable period of time or significantly hinders the investigation, the applicable legislation foresees the use of the best information available. However, in the present investigation, the fact of submitting partial information through an importer and in the final stage of the investigation does not make it the best information available. If the exporting producing company had submitted its response to the official form, the required information should be submitted with a more detail and have the accounting evidence to support the figures provided, since only they are the owners of such information.

**108.** For the reasons stated above, the Secretariat did not consider in the calculation of the constructed value, the information offered by Grupo Parisina, referring to the production costs of its supplier. Based on Articles 6.8 and Annex II of the Anti-Dumping Agreement, the Secretariat made its calculation based on the best information available corresponding to that provided by the Applicant.

## **2. Export price**

**109.** The Applicant provided the SAT import statistics corresponding to tariff section 9607.11.01 of the TIGIE, which it obtained through the AMFCA. Because for said fraction

tariff, products other than the one investigated entered, BBJ closures excluded those that according to the description column did not correspond to metal closures, such as: plastic closures, zippers with plastic teeth, polyester / nylon closures, wires, aluminum for stops, plastic buttons , sliding clasp for closures, metal heads for closures, slides, among others.

**110.** Closures BBJ pointed out that most of the operations reported in the import statistics do not contain information regarding the type and measures of the closures that were imported, which is why it calculated a weighted average export price for the metal closures, taking as a main characteristic, its presentation is either cut or rolled.

**111.** For their part, the importing companies Coats México, Shoes Solutions and Grupo Parisina, provided information on the imports of the investigated merchandise that they carried out during the investigated period, as well as import requests and their attached documentation.

**112.** The Secretariat obtained the import statistics of the tariff section 9607.11.01 of the TIGIE, by which the metal closures entered Mexico, data obtained from the Mexican Commercial Information System (SIC-M) for the period investigated. The operations contained in said database are obtained after validation of the customs requests, which occurs within a framework of information exchange between agents and customs agents, on the one hand, and the customs authority on the other, which are reviewed by the Bank of Mexico. Therefore, it determined to calculate the export price with the data reported by SIC-M.

**113.** Likewise, the Secretariat confirmed that the TIGIE tariff section 9607.11.01 entered products other than the one investigated and identified the presentations in which the metal closures were imported: cut and rolled closures. Therefore, it considered the filtering methodology proposed by the Applicant to be adequate .

**114.** Based on articles 39 and 40 of the RLCE, the Secretariat determined to calculate a weighted average export price in dollars per kilogram, for metal closures considering the cut and roll presentation, originating in China.

#### **a. Export price adjustments**

**115.** The Applicant stated that it did not have information to adjust the export price and considered the commercial value of the goods, by not including the expenses generated in the transfer of the investigated merchandise from China to Mexico, as opposed to the value in customs. For its part, the Secretariat observed that the list of imports from the SIC-M reported amounts for freight, however, in most cases the imported volume was very low and, for its part, the value of the freight very high. Such a situation allowed us to presume that said amount also corresponded to other merchandise, and assigning such a high adjustment would sometimes result in negative prices.

**116.** In the preliminary stage, the Secretariat had specific information on the expenses incurred by importers Coats México, Grupo Parisina and Shoes Solutions in their import operations of metal fasteners that they carried out during the period under investigation. Based on this information, the Secretariat adjusted the export price for terms and conditions of sale, specifically, for the concepts of freight and marine insurance.

#### **i. Sea freight**

**117.** As a result of the review of the information provided by the importers indicated in the previous point of this Resolution, the Secretariat had proof of payment of the sea freight for imports of metal closures made during the investigated period. The expenses corresponded to the transportation of the merchandise investigated from a sea port in China to a sea port in Mexico. He obtained the unit cost in dollars per kilogram.

#### **ii. Marine insurance**

**118.** The amount of the marine insurance adjustment was obtained from an import invoice provided by one of the importers. The document covers the expense incurred for this concept in the transportation of closures from a Chinese port to a Mexican port corresponding to the investigated period . The Secretariat considered it appropriate to use such information to adjust the export price for marine insurance.

#### **b. Determination**

**119.** Based on Articles 2.4 of the Anti-Dumping Agreement, 36 of LCE 53 and 54 of the RLCE, the Secretariat adjusted the export price for the concepts of maritime freight and maritime insurance with the information provided by importers.

### **3. Normal value**

#### **a. Prices in the domestic market of China**

**120.** In order to establish the normal value of the metal closures in the domestic market of China, the Applicant provided price references in its cut and roll presentations obtained from the website of Alibaba Group Holding, Ltd. ([www.alibaba.com](http://www.alibaba.com)). He stated that this source of information corresponds to a wholesale trade platform of Chinese manufacturers of metal closures. The references contain information on the description of the merchandise, the manufacturing company and data on the main markets of these companies.



**121.** Given the lack of information regarding the types and measures of metal closures in the SAT import base, the Applicant presented the price references of the Chinese domestic market, according to the type and size of metal closures that reported most of their sales during the investigated period. It provided its volume and value figures by type of metal closure for 2018. It also applied inflation to bring prices to the investigated period, with information obtained from the Global-rates.com website (<http://es.gobal-rates.com>).

**122.** Cierres BBJ applied a conversion factor from pieces to kilograms, since the internal prices were reported in pieces, for this, it considered the weight of the elements that make up the product under investigation, specifically the teeth, stops, slider and finally the thread, in this way it obtained the number of closures per kilogram and its respective price. He noted that for references that did not report length, he considered the length of the closure that sold the most during the investigated period. In the same way, he used that measurement for the price references of the metal closures in roll plus 2.5 centimeters for each end of the tape. He applied a factor of yards to meters to the roll closures. Supported the length of the closings with the sales report by measures carried out in 2018.

**123.** Once the price of the closures was obtained in the domestic market of China, Cierres BBJ compared those prices with the cost of production plus an amount for general expenses described in points 125 to 132 of this Resolution. On the basis of this comparison, the Applicant noted that the prices presented to calculate normal value are not given in the ordinary course of trade and calculated normal value through the constructed value option.

**124.** The Secretariat reviewed the information provided by the Applicant and corroborated that, indeed, based on these data, it is established that domestic prices in the Chinese market do not cover the cost of production. In the absence of information and evidence from the exporting producing companies, the Secretariat reiterates its determination to analyze the constructed value option proposed by the Applicant.

#### **b. Rebuilt value**

**125.** The Applicant stated that to determine the production cost structure of the product under investigation, it used its own information, since it was reasonably available to it and since the production processes of metal closures were similar both in Mexico and in Mexico. China. To prove the similarity of the production processes in both countries, it provided information regarding the production process of a company that produces metal fasteners in China, which consisted of photographs and videos that describe said process. For the production process in Mexico, he provided a video and a diagram of his own production process. In estimating production costs, he considered the same types and measures that it contributed in the internal prices of the investigated merchandise, in addition to its presentation, cut and roll.

**126.** As stated by BJJ Closures, the main raw materials used in the manufacture of metal closures are: the brass wire that is used to manufacture the teeth and stops, the zamac alloy that is used for the manufacture of the sliders and the textile belt with their respective dyeing. To establish the costs of the brass wire and the zamac smelting, it provided the monthly prices for the entire investigated period of copper, zinc and aluminum, inputs that are used for the manufacture of these raw materials. He obtained the data from the website of the Shanghai Metals Market <http://www.metal.com>, which is a supplier of prices for ferrous and non-ferrous metals in China.

**127.** Cierres BBJ supported the composition of the brass wire that includes copper and zinc with a technical sheet that specifies the proportions of each raw material. In the case of the zamac smelter that includes copper, aluminum and zinc, he indicated that he obtained the information from the Internet page of the company Faeza, SA de CV (<http://www.faeza.com.mx>), a production company and specialized in the manufacture of that product. To estimate the cost of transforming raw materials to brass wire, the Applicant considered the prices of raw materials and the price of brass wire, which was supported by an invoice for the purchase of said product from a manufacturer and supplier of Closures. BBJ.

**128.** In estimating the costs of the textile tape used in the manufacture of the product under investigation, the Applicant provided invoices for polyester yarn from the company PT. Indo-Rama Synthetics Tbk., Which is the world's largest polyester manufacturer. Provided an article posted on the page of

Textile Excellence Internet (<http://www.textileexcellence.com>). To the estimated price per kilogram of textile tape, he added the cost per dyeing with information from his accounting records.

**129.** In turn, it estimated the consumption per kilogram for the concepts of teeth, stops, slider and textile belt. From the price of raw materials and consumption per kilogram, he estimated the cost of raw materials per kilogram for the investigated period. Likewise, it applied the averages for losses and waste, both of the materials and of the processes observed by the Applicant in the manufacture of the product under investigation.

**130.** To accredit the expenses of transformation of raw materials to finished product, the Applicant provided information on its statement of cost of sales and profits from the sales of metal closures that it made in 2018. Among the concepts referring to transformation expenses, it indicated that they correspond to direct labor, light and water, among others, that are generated in the production process of metal closures, specifically in the union of the tapes with the teeth and the insertion of the slider and the stops.

131. In the preliminary stage, the Applicant provided updated financial information covering the entire investigated period for a metal fastener producer company located in China. The information corresponds to the company Fujian SBS Zipper Science & Technology, Co. Ltd. ( " Fujian SBS " ), obtained from the website of The Wall Street Journal (<http://quotes.wsj.com>). Likewise, based on this information, he updated the calculations for the concepts of general selling and administrative expenses and a reasonable profit for the construction of the reconstructed value.

132. Because the Applicant did not consider general sales and administrative expenses, as well as financial expenses, in its calculation , the Secretariat decided to include these expenses in the calculation of general expenses and prorated them with cost of sales, in accordance with section IV of article 46 of the RLCE. Likewise, the Secretariat calculated the profit applicable to metal closures, and assigned the apportionment with the cost of sales, in accordance with section XI of article 46 of the RLCE.

#### **c. Determination**

133. Based on articles 2.2 of the Anti-Dumping Agreement, 31 section II of the LCE, and 46 of the RLCE, the Secretariat calculated the reconstructed value, which is obtained from the sum of the cost of production, general expenses and a reasonable profit for the cut and roll metal clasps sourced from China.

#### **4. Margin of price discrimination**

134. In accordance with the provisions of Articles 2.1, 6.8 and Annex II of the Anti-Dumping Agreement; 30, 54 and 64 of the LCE, and 38, 39 and 40 of the RLCE, the Secretariat compared the normal value with the export price, and determined that the imports of metal closures originating in China were made with a margin of price discrimination of 8.67 dollars per kilogram.

#### **I. Damage and causation analysis**

135. The Secretariat analyzed the arguments and evidence provided by the appearing parties in order to determine whether imports of metal closures originating in China, carried out under conditions of price discrimination, caused material injury to the domestic industry of the product. Similarly.

136. The analysis includes, among other elements, an examination of: i) the volume of imports under conditions of price discrimination, their price and the effect of these on domestic prices of the like product , and ii) the impact of the volume and the price of these imports in the economic and financial indicators of the domestic industry of the like product.

137. The analysis of the economic and financial indicators of the domestic industry correspond to the information that Cierres BBJ provided, since this company constitutes the domestic industry of the like product, as determined in point 82 of the Resolution of Initiation, in point 175 of the Preliminary Resolution and that is confirmed in point 186 of this Resolution. For this purpose, the Secretariat considered data from 2016, 2017 and 2018, which constitute the period analyzed. Unless otherwise indicated, the behavior of economic and financial indicators in a given year or period is analyzed with respect to the immediately preceding comparable.

#### **1. Product similarity**

138. In accordance with the provisions of Articles 2.6 of the Anti-Dumping Agreement and 37 section II of the RLCE, the Secretariat evaluated the information and evidence in the administrative file of the case, to determine if the metal closures of national manufacture are similar to the product under investigation.

139. Cierres BBJ stated that the product under investigation and that of national manufacture are similar, since they have the same physical characteristics, their production process and inputs are the same, and they are aimed at the same consumers. The only difference is the color of the ribbon and the

shape of the slider, however, the mechanism and the uses of both products are the same.

140. In the preliminary stage of the investigation, Grupo Parisina indicated that the merchandise it imported complies with the characteristics of the product under investigation, however, when comparing them with the closures manufactured by the Applicant, there are differences in the types of finishes and sliders that result in different production processes.

#### **to. features**

141. In accordance with the provisions of points 59 to 64 of the Initiation Resolution, the Secretariat determined that the metal closures of national production and those originating in China have similar characteristics .

142. Among the main elements that the Secretariat considered for its determination, a comparative table with information on the physical characteristics of metal closures stands out, prepared on the basis of catalogs of metal closures produced in China and Mexico, Internet pages of companies Zhejiang Weixing Sandeli and Co. Ltd. (<http://heezipper.en.made-in-china.com>, <http://www.sab-cn.com>, respectively), physical samples of the product under investigation and manufacturing national, Internet pages of Cierres BBJ, as well as of some Chinese producers that appear as exporters to Mexico in the list of import operations of the SIC-M. In this

regard, the Secretariat observed that, in effect, the product investigated and that of national production, in general, share the same characteristics, such as:

- a. components: a pair of textile material belts with metal teeth attached to them, slider, puller and stops (upper and lower);
- b. teeth and slider materials are generally: aluminum, copper, brass and nickel;
- c. They are available in various colors and slider shapes;
- d. the closures are mainly presented in sizes ranging from 3, 4, 5, 8, 9, 10 and 11 centimeters, and
- e. the types of closures available are: open, closed and two-way open.

**143.** In the preliminary stage of the investigation, Grupo Parisina pointed out that the merchandise it imported meets the characteristics of the product under investigation; however, when comparing them with the closures manufactured by Cierres BBJ, there are differences in the types of finishes and sliders that result in different production processes. In this regard, he stated the following:

a. The metal closures produced by BBJ closures have different degrees of specialization, classified as flat bright finish, blued and aged finishes. These finishes are clear differentiators that lead to different production processes and, therefore, higher production costs than common metal closures from China;

b. BBJ closures have a high range of slide types, which suggests that it has investments in various types of molds, which would also be a differentiating factor that would raise the production costs of BBJ closures compared to Chinese- origin metal closures ;

c. Closures BBJ has several registered trademarks, which it uses to differentiate its product from the rest of the closures offered on the market. These marks are recorded on the closure that is offered to the final consumer;

d. It is correct to assume that Cierres BBJ incurs various advertising and propaganda expenses in order to seek to strengthen its brand in the national and international market and that by doing this it assumes additional risks and incurs functions that producers in China do not have and that could affect the economic returns of BBJ Closures, and

e. BBJ closures have a more specific production process at the customer's request, which would lead to higher production costs.

**144.** Grupo Parisina, based on the information described in point 131 of the Preliminary Resolution, concluded that a comparison cannot be made between the metal closures manufactured in China and the domestic ones manufactured by BBJ closures, since those of the object of the present research, do not have greater characteristics of differentiation and added value, like those of BBJ Closures.

**145.** In accordance with the provisions of point 132 of the Preliminary Resolution, the Secretariat reviewed and analyzed the information presented by Grupo Parisina, as well as that indicated in point 142 of this Resolution, and confirmed that, in general, the merchandise investigated and that of national production share the

The same characteristics, so the differences in the types of finishes and sliders between both goods do not prevent the fulfillment of the essential uses and functions of metal closures, described in point 158 of this Resolution.

**146.** At this stage of the investigation, none of the parties presented arguments or evidence that would distort the determination of the Secretariat.

**147.** Based on the information that appears in the administrative file of the case, the Secretariat confirmed what was stated in point 133 of the Preliminary Resolution, in the sense that no significant differences were observed that discredit that the physical characteristics of the closures of Metal of national production and those originating in China are similar, regardless of the fact that they present minor variations in their characteristics, a situation that does not compromise the similarity of the product, since it allows them to fulfill the same uses and functions and be commercially interchangeable, in terms of the provisions of the legislation on the matter. In this sense, the Secretariat concluded that production metal closures national and those originating in China, have similar characteristics.

#### **b. Productive process**

**148.** As described in points 65 to 68 of the Initiation Resolution, the Secretariat determined that the merchandise object of investigation and its similar, in general, have similar production processes, since they consist of the same stages and use inputs similar.

**149.** Among the main elements that the Secretariat considered for its determination, the following stand out: a video of the production process of the metal closures of Cierres BBJ, a video of

the production process in China of the metal closures of the production company Fujian SBS and documents that describe the profile of said company, the structure and the production process of the closures.

**150.** In the preliminary stage of the investigation, Grupo Parisina argued that as a result of the differentiation processes in finishes applied by Cierres BBJ to its products, described in point 143 of this Resolution, higher production costs are incurred and These include different production processes , which are not incurred in the elaboration of the investigated product in China. He added that the products made by Cierres BBJ have a more specific production process at the customer's request, which would lead to higher production costs.

**151.** In accordance with the provisions of point 137 of the Preliminary Resolution, the Secretariat observed that Grupo Parisina did not present documentary evidence that demonstrates that the production processes of the merchandise under investigation and its similar are different.

**152.** Due to the foregoing, the Secretariat did not have elements that would distort its determination, in the sense that the merchandise investigated and that of national manufacture are produced from the same inputs and similar production processes, despite having some differences. in its finishes and types of sliders.

**153.** At this stage of the investigation, none of the parties presented arguments or evidence that would distort the determination of the Secretariat.

**154.** Based on the information in the administrative file, the Secretariat concluded that the product under investigation and the national product, in general, have similar production processes, since they consist of the same stages and use similar inputs.

#### **c. Rules**

**155.** Based on the information that appears in the administrative file of the case, the Secretariat observed that the metal closures of national manufacture and those originating in China comply with the Official Mexican Standard NOM-050-SCFI-2004, Commercial Information-Labeling general products.

**156.** In the preliminary stage of the investigation, Grupo Parisina pointed out that the merchandise under investigation is not subject to compliance with government regulations of an environmental, phytosanitary or zoosanitary nature; However, the merchandise imported by Grupo Parisina must comply with the Official Mexican Standard NOM-050-SCFI-1994 (sic), which imposes general provisions on commercial information, which are complied with in all its operations.

**157.** This confirms that metal closures domestically manufactured and originating in China must comply with Mexican Official Standard NOM-050-SCFI-2004, Commercial Information General Labeling of products.

#### **d. Uses and functions**

**158.** The Secretariat confirms what is stated in point 143 of the Preliminary Resolution, referring to the fact that the

Information available in the administrative file of the case, indicates that the metal closures originating in China and those of national manufacture are used fundamentally to join or separate two parts or pieces of a garment, opening and closing of footwear, suitcases, backpacks, bags or other leather goods. This was corroborated with the Internet pages of Cierres BBJ and of some Chinese producers that appear as exporters to Mexico in the list of import operations of the SIC-M.

#### **and. Consumers and distribution channels**

**159.** As described in points 71 to 75 of the Initiation Resolution, the Secretariat determined that metal closures originating in China and those of national production are distributed through the same distribution channels, they serve the same markets and consumers, allowing them to be commercially interchangeable.

**160.** Among the main elements that the Secretariat considered for its determination, the following stand out : the information on sales to main customers of Cierres BBJ and the list of import operations of the SIC-M referring to the tariff section 9607.11.01 of the TIGIE , as well as, information on the geographic markets served by the product under investigation and that of national manufacture.

**161.** In relation to what is stated in point 146 of the Preliminary Resolution, the Secretariat confirms that, during the period analyzed, six clients of the domestic industry also acquired metal closures originating in China. The foregoing indicates that the product under investigation and that of national production are destined for the same markets and consumers, which allows them to be commercially interchangeable.

**162.** In the final stage of the investigation, none of the parties presented arguments or evidence that would distort the determination of the Secretariat.

**163.** Based on the arguments and evidence described above, the Secretariat concluded that the metal closures originating in China and those produced domestically have the same consumers, go to the same markets and serve the same distribution channels.

#### **F. Determination**

**164.** Based on what is indicated in the previous points of this Resolution, the Secretariat concluded that the metal closures of national manufacture are similar to the product under investigation, in terms of the provisions of Articles 2.6 of the Anti-Dumping Agreement and 37 fraction II of the RLCE, by virtue of their having similar characteristics, they are manufactured with the same inputs and through similar production processes that do not show substantial differences, and they serve the same markets and consumers, which allows them to fulfill the same functions and be commercially interchangeable, so they can be considered similar.

## **2. Branch of national production and representativeness**

**165.** In accordance with the provisions of Articles 4.1 and 5.4 of the Anti-Dumping Agreement; 40 and 50 of the LCE, and 60, 61 and 62 of the RLCE, the Secretariat identified the domestic industry of the like product as an important proportion of the total domestic production of metal closures, taking into account whether the manufacturing companies are importers of the product under investigation or if there are elements that indicate that they are related to importers or exporters of the same.

**166.** In the preliminary stage of the investigation, Grupo Parisina argued that Cierres BBJ did not reliably prove its legal standing to request the initiation of this investigation, since it only indicated as a source the information obtained from the AMFCA, without presenting the methodology for the collection, integration or processing of information. He added that the Secretariat had to consult and collate the information presented by Cierres BBJ and the AMFCA with some organizations, for example, SIEM and the monthly survey of the manufacturing industry by INEGI, to ensure the accuracy of the information that has been showed.

**167.** For their part, the exporting companies indicated that the Commencement Resolution does not explain at any time the methodology carried out by the AMFCA in order to be able to point out that BBJ closures represented 57% of the national production of metal closures in 2018. They also indicated that the Secretariat did not ensure the legal existence of the AMFCA or the participation of the other companies that produce metal closures. They indicated that the Secretariat should have consulted the National Chamber of the Transformation Industry (CANACINTRA) regarding the possible existence of other manufacturers of said merchandise.

**168.** They added that the figures corresponding to the national production oriented to the domestic market would not allow reaching the reported national sales volume, which leads them to presume that there are other players in the market not considered by the Secretariat.

**169.** On the other hand, the exporting companies argued that in the administrative file of the case

There is no evidence of the alleged support of the production companies for the request to initiate this investigation, which Cierres BBJ indicated it obtained by verbal manifestation received in alleged meetings of the AMFCA. Furthermore, that BBJ Closures only submitted one Automatic Closures letter; that is to say, of 5 companies it only obtained documentary support from one of them.

**170.** Pursuant to what is described in points 167 and 168 of the Preliminary Resolution, the Secretariat observed that the companies appearing did not present evidence that would distort the initial determination of the Secretariat in relation to the legitimacy and representativeness of the Applicant. However, it clarifies that it did not calculate the national production of metal closures based on the letter from the AMFCA that Cierres BBJ presented. In order to have information on the total national production of metal closures, the Secretariat proceeded as follows:

**a.** required the companies Cierres Automáticos, Tek Cierres, Ideal Zipper, Cierres Corenstein and YKK Mexicana, to present their volume of production and sales to the internal and external market of metal closures, for 2016, 2017 and 2018. Only Automatic Closure and YKK Mexicana submitted a response, and stated their position regarding the initiation of this investigation, and

**b.** requested the AMFCA to present the volume of production of each of the metal closure manufacturing companies of which it was aware, whether or not they were members, for 2016, 2017 and 2018. In this regard, the AMFCA presented production figures of the companies mentioned in the previous paragraph, as well as BBJ Closures.

**171.** Based on the information described in the previous point, regarding the volume of production of BBJ Closures, Automatic Closures, Tek Closures, Corenstein Closures, Ideal Zipper and YKK Mexicana, the Secretariat estimated the total national production of metal closures.

**172.** In relation to the argument of Grupo Parisina and the exporting companies, regarding the lack of methodology to calculate the national production of metal closures, the Secretariat reiterated that it used the production figures from the producing companies BBJ closures, Automatic closures and YKK Mexicana, and for the companies Tek Cierres, Ideal Zipper, Cierres Corenstein used the information from the AMFCA; that is, it had direct information from the companies that represented 95% of the national production, which are the primary source of information. Likewise, the information presented by the 3 production companies was consistent with that presented by the AMFCA, which constitutes the best information available and corresponds specifically to the product under investigation.

**173.** In addition to the foregoing and in accordance with the provisions of points 171 to 174 of the Preliminary Resolution, the Secretariat determined the following:

**a.** The Secretariat is not obliged to request any information from another organization such as SIEM, INEGI or CANACINTRA;

**b.** The Secretariat has no elements to doubt or question the legal existence of the AMFCA, nor the information it provided;

**c.** The Secretariat only considered Cierres Automáticos and YKK Mexicana who explicitly expressed their support at the beginning of the investigation, which, in effect, are not considered as applicants or as part of the domestic industry, and

**d.** Regarding the argument that the figures for domestic production oriented to the domestic market would not allow the reported domestic sales volume to be reached, the Secretariat clarifies that these figures were not disclosed in the Initiation Resolution. In addition, that the national production oriented to the domestic market was calculated as the national production, minus exports, so it is not possible to reach the conclusions alleged by the exporting companies.

**174.** As described in point 175 of the Preliminary Resolution, the Secretariat determined that Cierres BBJ constitutes the domestic production branch, since in the period under investigation it produced 57% of the national production of metal closures. It is also supported by the national production companies Cierres Automáticos and YKK Mexicana, therefore, as a whole, the application has the support of 95% of the total national production.

**175.** At this stage of the investigation, Grupo Parisina reiterated that the representativeness of Cierres BBJ is questionable, since the information it provided to estimate national production, during the period investigated, does not include a source and it is unknown whether it is reliable information. He added that the information provided by Grupo Parisina in the previous stage constitutes reliable and timely information, since it was obtained from INEGI and corresponds to public, verified and generally accessible information. Therefore, it is the best information available for the Secretariat to make its determinations.

**176.** For their part, the exporting companies reiterated that the representativeness of Cierres BBJ is questionable, for the following reasons:

**a.** the Secretariat did not make sure of the legal existence of the AMFCA, as well as the existence of other Chambers or Associations. It should have ascertained the possible existence of manufacturers affiliated with CANACINTRA;

**b.** The information from the AMFCA is of doubtful reliability, since production, sales and installed capacity indicators do not coincide with information sources such as INEGI;

**c.** Of the five companies requested by the Secretariat (point 168 of the Preliminary Resolution) only two responded, so the information on the volume of production and sales to the domestic and foreign markets is incomplete and insufficient to determine the behavior of the economic indicators and Financiers of the domestic industry;

**d.** It is difficult to understand why three companies did not answer the request of the Secretariat, but did provide the information indirectly, through the AMFCA. The Secretariat did not ensure that the information provided by the AMFCA corresponds to those companies, and

**e.** Neither the Applicant nor the AMFCA presented the methodology used to calculate the total national production, nor their sources of information, therefore the relevance and accuracy of the figures is questioned.

**177.** They added that the Secretariat has the obligation to ensure the accuracy of the information presented by the interested parties on which they base their conclusions in terms of Article 6.8 of the Anti-Dumping Agreement. To support its argument, it presented the ruling of the WTO Panel in the United States-Anti-Dumping Measures case on certain hot-rolled steel products from Japan (Document WT / DS184 / R), at point 7.55. Finally, the exporting companies indicated that the Secretariat must pursue the objective that its decision, positive or negative, is objective and based on facts.

**178.** In relation to the arguments presented by Grupo Parisina and the exporting companies, the Secretariat reiterates what is described in point 173 of this Resolution, in the sense that it is not obliged to request any information from another organization such as SIEM, INEGI or CANACINTRA, in addition to having no elements to doubt or question the legal existence of the AMFCA, or the information it provided.

**179.** In relation to the argument of Grupo Parisina, that the information it presented in the previous stage of the investigation constitutes reliable and timely information, since it was obtained from INEGI and that it corresponds to public information, verified and from general access; The Secretariat reiterates what is described in points 67 and 68 of the Preliminary Resolution, in the sense that the information that

Grupo Parisina presented does not correspond to the metal closure industry in Mexico, and therefore does not reflect the specific behavior of the industry. national metal fasteners, but contemplate a global analysis , related to the manufacturing sector and other industries. Consequently, the Secretariat does not considered the information presented by Grupo Parisina for its determination, since it is not relevant information, since it is not specific to the product under investigation.

**180.** Regarding the argument of the exporting companies, regarding the Report of the WTO Panel in the United States - Anti-Dumping Measures on Certain Hot-Rolled Steel Products from Japan (Document WT / DS184 / R), the The Secretariat analyzed this document and observed the following:

**a.** the Panel report refers to the reasonable period of time within which the information must be submitted by the parties, so that it can be verified and considered in the determinations of the investigating authority;

**b.** One of the Panel's observations is that it is clear from the AD Agreement as a whole that one of the main elements governing anti-dumping investigations is the objective of ensuring that decision-making is objective and factual;

**c.** Article 6.8 of the Anti-Dumping Agreement provides that the investigating authority, in cases where an interested party denies access to the necessary information or fails to provide it within a reasonable period of time or significantly hinders the investigation, preliminary determinations may be made or definitive, positive or negative, based on the facts available, and

**d.** the report makes no mention of the obligation of the investigating authority to seek other sources of information in the event that the parties do not provide it.

**181. Based** on the foregoing, the Secretariat considers that the Panel report refers to a dispute other than that of this investigation, since it refers to the deadlines in which the parties must present their information to give the investigating authority an opportunity to being able to assess it and formulate its determinations based on facts that are known, but it does not indicate the obligation of the investigating authority to verify the information presented by the companies or associations that are not part of the investigation.

**182. Based** on the foregoing, the Secretariat confirms that the importing and exporting companies appearing did not present evidence that disproves the Secretariat's preliminary determination regarding the legitimacy and representativeness of the Applicant.

**183.** Notwithstanding the foregoing, the Secretariat asked the AMFCA to explain how it obtained the reported figures of the national production volume of metal closures, and to present the algorithm that it applied in its calculations (variables, parameters, equations, among others), as indicated in point 27 of this Resolution. In this regard, the AMFCA indicated that it obtained the information on the production of metal closures directly from each of the producing companies (whether or not they were members of the group) and presented the methodology it used to calculate the national production of metal closures. In this sense, the Secretariat confirmed that the information presented by the AMFCA at this stage of the investigation is consistent and does not It presents differences with the one described in point 168 of the Preliminary Resolution.

**184.** Due to the foregoing, the Secretariat reiterates what is described in point 170 of the Preliminary Resolution, in the sense that to obtain the total national production it used the production figures from the companies producing Cierres BBJ, Cierres Automáticos and YKK Mexicana, and for the companies Tek Cierres, Ideal Zipper, Cierres Corenstein used the information from the AMFCA; that is, it had direct information from the companies that represented 95% of the national production, which are the primary source of information. Likewise, the information presented by the 3 production companies was consistent with that presented by the AMFCA, which constitutes the best information available and corresponds accordingly. specific to the product under analysis. Therefore, contrary to what the exporting companies and the Parisina Group state, in the administrative file of the case there are the evidence of the production companies that supported the investigation request, whose documentary support is reliable because it comes from the direct source and not only corresponds to one company.

**185.** The foregoing confirms that the information that the Secretariat used to calculate the national production of metal closures is complete and sufficient, contrary to what the exporting companies erroneously indicated .

**186.** Based on the results described in the previous points of this Resolution, the Secretariat concluded that Cierres BBJ constitutes the domestic industry, as it represents a significant proportion of the national production of metal closures, since in the period investigated produced 57% of the total national production of said product, in accordance with the provisions of Articles 4.1 and 5.4 of the Anti-Dumping Agreement; 40 and 50 of the LCE, and 60, 61 and 62 of the RLCE, is also supported by the national production companies Cierres Automáticos and YKK Mexicana, so that, as a whole, the application has the support of 95% of the total national production . Additionally, the Secretariat did not have elements that indicate that Cierres BBJ is linked to exporters or importers of the merchandise under investigation or that their imports are the cause of the

distortion of domestic prices or the alleged injury, since it only imported the merchandise under investigation in 2017, but in negligible volumes that represented less than 0.1% of imports originating in China, according to the results described in point 152 of the Preliminary Resolution.

### **3. International market**

**187.** In accordance with point 176 of the Preliminary Resolution, Cierres BBJ stated that it did not have at its disposal information on the main producers and consumers of metal closures, for which it presented information from UN Comtrade on world exports and imports of said metal merchandise, corresponding to subheading 9607.11 for 2015, 2016 and 2017, since the complete data for the investigated period were not yet available.

**188.** In the preliminary stage of the investigation, Coats Mexico presented figures of the trade flows, in dollars, of the main importing and exporting countries of the product under investigation, obtained from UN Comtrade, corresponding to subheading 9607.11, for the period analyzed. From the above, it stands out that the main importing countries were Vietnam, China and Hong Kong, and the main exporters were the United States, China and Taiwan, during 2018.

**189.** In the final stage of the investigation, the exporting companies indicated that the Secretariat recognizes in point 180 of the Preliminary Resolution, that imports registered an average annual growth of 9%, going from 30.4 to 35.8 thousand tons in 2016 to 2018. It should be noted that in 2017 the

World imports decreased 0.3%, while in 2018 they increased 18%, indicating that Mexico participated with 3.8% and 3.5% of the total imports of 2017 and 2018, respectively, a situation that shows that, despite the increase in world imports of zippers, Mexico decreased its share of world imports by 3 percentage points.

**190.** In this regard, the Secretariat specifies that the exporting companies made a wrong reading of what was described in point 180 of the Preliminary Resolution, since at that point it was pointed out that China and Mexico participated with 3.8% and 3.5% of imports total, respectively, and not as indicated by the exporting companies.

**191.** For the analysis of the international market, the Secretariat used the figures obtained from UN Comtrade statistics on world exports and imports corresponding to subheading 9607.11, for the period analyzed, given that it considered that they correspond to the range of more restricted product that contains metal fasteners.

**192.** Therefore, the Secretariat confirms what is described in points 179 and 180 of the Preliminary Resolution, in the sense that world exports registered an average annual increase of 17%, going from 25.9 to 35.3 thousand tons in 2016 to 2018. In this regard, the Secretariat observed that in 2018 China was the main world exporter, in that period it accounted for 62% of the total, followed by Hong Kong (14%), Indonesia (2.4%), Japan (2%) and Peru (2%).

**193.** In turn, imports registered an average annual growth of 9%, going from 30.4 to 35.8 thousand tons from 2016 to 2018. It should be noted that in 2017 world imports decreased 0.3%, while in 2018 they increased 18%. In 2018, the main importers were Myanmar 23%, Hong Kong 12%, India 9%, Kyrgyzstan 5.3% and Indonesia 4.5%, whose imports accounted for 53.8% of the total. China and Mexico participated with 3.8% and 3.5% of total imports, respectively.

### **4. National market**

**194.** The information that appears in the administrative file of the case, confirms that Cierres BBJ, Cierres Automáticos, Tek Cierres, Ideal Zipper, Cierres Corenstein and YKK Mexicana are the national producers of metal closures; while the consumers are mainly the clothing, shoemaker and leather goods industry.

**195.** Cierres BBJ stated that the only market segment that has gained a share in the Apparent National Consumption (CNA) is the one that corresponds to unfair imports from China, going from 38% share in 2016 to 40% in 2018.

**196.** In the preliminary stage of the investigation, Grupo Parisina indicated that according to the information it has, the main producers of metal closures are those mentioned in point 194 of this Resolution.

**197.** The Secretariat proceeded to calculate the national market for metal closures, measured through the CNA, with the information available in the administrative file of the case. That is to say, it used the production figures referred to in point 171 of this Resolution, and the import and export figures of the SIC- M, obtained as indicated in point 226 of this Resolution, based on said information, the Secretariat noted the following:

**a.** the national market for metal closures, measured through the CNA (calculated as national production plus imports minus exports), showed a decreasing trend during the period analyzed. Indeed, it decreased 19% in the analyzed period, 30% in 2017 and grew 17% in the investigated period;

**b.** total imports decreased 27% in 2017 and grew 9% in the investigated period, which meant an accumulated decrease of 20% in the analyzed period;



c. During the period analyzed, metal closures were imported from 29 countries, in particular, in the period investigated the main suppliers were China and the United States, which represented 64% and 33% of the total imported volume, respectively;

d. national production decreased 12% in the analyzed period; derived from a decrease of 11% in 2017 and remained practically unchanged in the investigated period, as it only registered a decrease of 0.2%, and

e. total exports accumulated a 9% growth in the analyzed period, increasing 90% in 2017 and decreasing 43% in the investigated period; highlights that the participation of

Exports in the national production increased 5 percentage points, going from a participation of 20% in 2016 to 25% in the investigated period.

198. For its part, national production oriented to the domestic market (calculated as national production , minus exports), decreased 37% in 2017 and increased 32% in the investigated period, for which cumulatively it registered a decrease of 17 % in the period analyzed.

## **5. Analysis of imports**

199. In accordance with the provisions of Articles 3.1 and 3.2 of the Anti-Dumping Agreement; 41 fraction I of the LCE, and 64 fraction I of the RLCE, the Secretariat evaluated the behavior and trend of imports of the product under investigation, during the analyzed period, both in absolute terms and in relation to national production or consumption .

200. Cierres BBJ noted that imports of metal closures originating in China have gained share and currently dominate the Mexican market, causing some producing companies to cancel their production in the domestic market or to become importers directly from China. This problem has intensified, to a greater extent, during the analyzed period, as there is an increase in the volume of imports of the merchandise under investigation. Consequently, China increased its share in total imports made by Mexico and in the CNA.

201. In the preliminary stage of the investigation, Grupo Parisina pointed out that the volume of imports of the product under investigation showed behaviors and trends similar to those of imports from the rest of the world, in addition, that they have shown a decreasing trend, so its The increase in the participation of the CNA is due to the contraction of national consumption and not to an increase in import volumes.

202. To support his assertions, he presented an analysis of the behavior of imports that enter Mexico through tariff section 9607.11.01 of the TIGIE, based on data from the SIAVI. Likewise, it calculated the CNA with data on imports and exports from SIAVI and with national production figures obtained from the code 339992 of the SCIAN of INEGI, which corresponds to the manufacture of closures, buttons and needles, as described in points 64 of Preliminary Resolution and 67 of this Resolution.

203. In accordance with the provisions of point 191 of the Preliminary Resolution, the Secretariat confirmed that the information presented by Grupo Parisina includes production figures for other types of merchandise in addition to the product under investigation, for which it considered that said analysis did not reflect the actual behavior of the national metal fastener industry, as described in point 72 of this Resolution.

204. For their part, the exporting companies stated that the 8% increase in the imports investigated in 2018 is explained by the logical recomposition of the market after the breakdown it suffered in 2017, and not by an unfair trade practice, since that in this last year the national market for metal closures did not operate in a normal trading situation.

205. The exporting companies carried out an analysis of the imports of metal closures based on the statistical information of the SIAVI and concluded that what happened in the analyzed period was that there was a growth of the national market, which was reflected in a greater participation of imports originating in China and of the national production itself, coupled with a fall in national exports. The foregoing, in the context of a special market situation observed during 2017, caused by the Applicant itself and the AMFCA. Consequently, imports of metal fasteners originating in China are not the cause of the alleged injury.

206. As described in points 198 to 200 of the Preliminary Resolution, the Secretariat analyzed the arguments of Grupo Parisina and the exporting companies regarding the behavior of the investigated imports throughout the period analyzed, and determined that the increase The share of the investigated imports in the CNA was to the detriment of the domestic industry, as well as imports from other origins, which is translated into a market displacement by imports originating in China.

207. Closures BBJ pointed out that the AMFCA has a collaboration agreement with the SAT for the operation of the Customs Control and Inspection Program for the zippers sector. Said agreement established an import price monitoring mechanism, in which a raw material price was determined, which has served as a reference price to compare the average price of each of the import operations and determine the presumed existence of unfair practices, including undervaluation.

208. As a result of the above, in 2017 the SAT imposed sanctions on various companies, causing a temporary reduction effect in the volume and value of imports of Chinese origin. However, from the

investigated period, imports of metal closures originating in China registered an increase of 8%, representing 59% of the total volume of metal closures imports.

**209.** Exporting companies pointed out that in addition to an increase in imports of metal closures originating in China in 2018, they only recovered the market share that they shared with the national product, after falling 20% in 2017, due to an atypical situation in the market. In this regard, they added the following:

**a.** The Applicant itself, in coordination with the AMFCA, initiated proceedings before the SAT since 2016, to prevent imports of metal closures originating in China in 2017, canceling the import registry of dozens of companies importing metal closures from China and, in their case, denying them automatic import permits, instead of activating the countervailing duty regime ;

**b.** transitory and temporary results were obtained, since the actions of the SAT cannot be permanent. So, in 2018 Closings BBJ and AMFCA created a fictitious scenario of unfair trade practices, supported in 2017 atypical situation created by them themselves;

**c.** If it is considered that the import market for metal closures was fractured in 2017 due to the actions of the SAT, it is logical to conclude an atypical behavior during 2018, particularly, in imports originating from China, since the country was mainly involved in the procedures for suspending importers' registers of the SAT, and

**d.** the behavior of imports of metal closures originating in China and their impact on the economic and financial indicators of the national industry during 2018 cannot be analyzed under the context of a normal market situation and, therefore, do not qualify as factors that prove the unfair practice of international trade.

**210.** In this regard, the Secretariat considered that the Customs Control and Inspection Program for the zipper sector , which was operated by the SAT in 2017, is a procedure unrelated to the litigation of this investigation and said measure did not directly or exclusively impact on imports originating in China, but also imports from other origins decreased, by a higher proportion than the investigated imports .

**211.** Furthermore, it observed that the behavior of total imports registered the same trend as world imports, since the latter also decreased in 2017 and increased in 2018. In this sense, the Secretariat preliminarily determined that the behavior of the investigated imports It was not as a result of the creation of a fictitious scenario, but was influenced by the global behavior of imports of metal closures and that the only element benefited from the behavior of the CNA were imports originating in China, which were carried out under conditions of price discrimination and with significant undervaluation margins.

**212.** On the other hand, the exporting companies argued that the imposition of a countervailing duty in the present investigation would result in overprotection of the national industry and would have anti-competitive effects, since it would limit the supply of the merchandise under investigation, since the high tariff of 15%, coupled with the eventual imposition of a compensatory quota, would constitute a barrier to entry into the market and, in addition, grant special and differentiated protection to the manufacturing sector of said merchandise.

**213.** In accordance with the provisions of point 214 of the Preliminary Resolution, the Secretariat clarified that the establishment of countervailing duties does not impede the entry of imports or seek to restrict the supply of merchandise, since the purpose of countervailing duties is to correct the harmful effects of imports and re-establish fair conditions of fair competition in the domestic market. For its part, the tariff imposed on imports that enter through tariff section 9607.11.01 of the TIGIE has not limited the entry of the investigated imports, since they have maintained an important share in the total imports registered in the market Mexican, during the period analyzed.

**214.** On the other hand, the exporting companies indicated that the knowledge of the import volumes involved in an investigation is a fundamental element of defense of the counterparts,

because the positive determination of damage depends on these. They requested the Secretariat to provide them with information on the volume and value of the imports investigated and from other origins, for each of the periods that make up the analysis and the purification carried out of the imports.

**215.** In accordance with the provisions of point 218 of the Preliminary Resolution, the Secretariat considered that disclosing these figures would allow the appearing parties to know confidential figures of the domestic industry. In addition, the Secretariat specifies that, contrary to what the exporting companies maintain, it did present the methodology of identification and quantification of the investigated imports, which was provided by Cierres BBJ and was indicated in points 100 to 102 of the Initiation Resolution , a situation that is confirmed by points 221 to 226 of the Preliminary Resolution, therefore, the argument of the exporting companies is wrong that they were unjustifiably limited access to said information, since they had the necessary elements to formulate their defense from the publication of the Initiation Resolution, as well as the public version of the investigation request and the response to the prevention that the Secretariat formulated to the Applicant.

**216.** On the other hand, Coats México stated that it imported the merchandise classified in tariff section 9607.11.01 of the TIGIE sporadically at the request of its client. He clarified that, during

the analyzed period, the imports made are a business model in which his client requested the metal closures, however, considering the high import prices, he made the decision not to acquire the closures through Coats México metálico.

**217.** In accordance with the provisions of point 220 of the Preliminary Resolution, the Secretariat observed that, in effect, Coats México imported merchandise under investigation throughout the period analyzed in insignificant volumes. However, the Secretariat clarified that in accordance with the provisions of Article 3.1 of the Anti-Dumping Agreement, the determination of the existence of injury includes an examination of the total volume of investigated imports subject to price discrimination and their impact on the domestic industry. Based on this, it is inappropriate in the present investigation to examine imports made by individual companies.

**218.** At this stage of the investigation, Grupo Parisina pointed out that the injury alleged by Cierres BBJ is not the result of imports originating in China, but originates from the entry into the country of imports under undervalued conditions. In both the Initiation Resolution and the Preliminary Resolution, the Secretariat recognized that in 2016 imports of the merchandise under investigation were made under undervalued conditions. This practice is in no way related to importing merchandise below normal value.

**219.** In this regard, the Secretariat reiterates what is stated in point 235 of the Preliminary Resolution and 235 of this Resolution, in the sense that the Secretariat determined that the investigated imports registered an increasing trend in absolute terms and in relation to production national production during the investigated period, as well as in relation to the CNA in the analyzed period, while the national production limited its market share in the analyzed period, which is attributable to the increase in imports of metal closures originating in China. In addition, during the period analyzed, imports of the product under investigation were made with significant levels of undervaluation. with respect to the national price and other sources of supply, which are associated with the practice of price discrimination in which they incurred, as established in points 118 of the Preliminary Resolution and 134 of this Resolution.

**220.** For their part, at this stage of the investigation, the exporting companies indicated that the Secretariat did not correctly analyze their argument that the unfair trade practices alleged by Cierres BBJ are actually due to the sanctions on the import and withdrawal of Automatic import permits by the SAT, which in alliance with the AMFCA were issued in 2017, a situation that disappeared and found its proper balance in 2018. They added that in 2017 the closure of various manufacturing factories of clothing was presented, a fact that paid to that the market behaved in an atypical way in that year.

**221.** Exporting companies consider that the Customs Control and Inspection Program that the SAT operated in 2017 is not a procedure unrelated to the investigation litigation. Rather, it is an element directly linked to the analysis of imports and the absence of causality between the investigated imports and the injury to the domestic industry. The distortion in the import market was created by the AMFCA itself since 2016 with effect in 2017, so it is incorrect to assume an unfair trade practice in 2018.

**222.** In this regard, the Secretariat reiterates what is described in point 207 of the Preliminary Resolution and in the

Points 135 and 136 of this Resolution, in the sense that the Customs Control and Inspection Program for the zippers sector is a procedure outside the dispute in this investigation, since the purpose of this procedure is to determine whether imports of metal closures originating in China, made under conditions of price discrimination, caused material injury to the domestic industry of the like product.

**223.** Notwithstanding the foregoing, and in accordance with what is described in points 208 to 210 of the Preliminary Resolution, the Secretariat, when analyzing the arguments of the exporting companies in the context of the behavior of imports of metal closures, during the period analyzed, confirmed the following:

**a.** Imports from other origins registered the same behavior as the investigated imports: they decreased 36% in 2017 and grew 12% in the investigated period, accumulating a decrease of 28% in the analyzed period, therefore, imports from other origins also decreased in 2017 to increase in the investigated period;

**b.** In absolute terms, the decrease in imports from other origins was 18% greater than the decrease in investigated imports in 2017, that is, imports from origins other than China decreased to a greater extent than investigated imports, and

**c.** Worldwide imports of metal closures also decreased in 2017 and registered growth in 2018, as described in point 193 of this Resolution.

**224.** The foregoing indicates that, considering the behavior of total imports of metal closures, the Secretariat observed that, although the SAT applied the measure corresponding to the Customs Control and Inspection Program of the zippers sector in 2017, said measure did not directly or exclusively impacted imports originating in China, but also imports from other origins decreased, in a higher proportion than the investigated imports. In addition, the information in the administrative file indicates that the behavior of total imports registered the same trend as world imports, since the latter also decreased in 2017 and increased in 2018.

**225.** In this sense, the Secretariat confirms that the behavior of the investigated imports was not created by the AMFCA itself, as argued by the exporting companies, but was influenced by the global behavior of imports of metal closures. Due to the above, the domestic market for metal closures registered a contraction in demand in 2017, to recover in 2018, and it should be noted that the only element that benefited from the behavior of the CNA was imports from China, which were carried out under conditions of price discrimination and with an undervaluation margin of 42% in relation to the national price and 74% in relation to the price of other origins, in the investigated period.

**226.** In the preliminary stage of the investigation, as described in points 221 to 226 of the Preliminary Resolution, the Secretariat assessed the reasonableness of the application of the methodology and the criteria proposed by Cierres BBJ for the purification of imports and replicated the calculation using the list of import operations of the SIC-M, corresponding to the tariff section 9607.11.01 of the TIGIE, compared these figures with those provided by Cierres BBJ and observed that they were consistent, for which it concluded that the criteria applied in the methodology to identify the value and volume of imports of metal closures are adequate.

**227.** At the final stage of the investigation, the appearing parties did not provide additional or contrary elements on the methodology applied by the Secretariat for the quantification of the imports under investigation and from other countries. Consequently, the Secretariat confirmed its calculations of the volumes and values of the investigated product and of other countries, as well as the results of its observed behavior and trends.

**228.** According to the import statistics indicated in point 226 of this Resolution, the Secretariat confirmed that total imports decreased 20% during the analyzed period; 27% in 2017 and in the period investigated they increased 9%. This behavior is largely explained by the performance of the investigated imports.

**229.** Indeed, imports originating in China decreased 15% in the period analyzed; to the register a 20% decrease in 2017 and an increase of 7% in the investigated period. Likewise, the investigated imports contributed 60%, 65% and 64% of the total imports in 2016, 2017 and the investigated period, respectively, which meant a cumulative increase of 4 percentage points in the analyzed period.

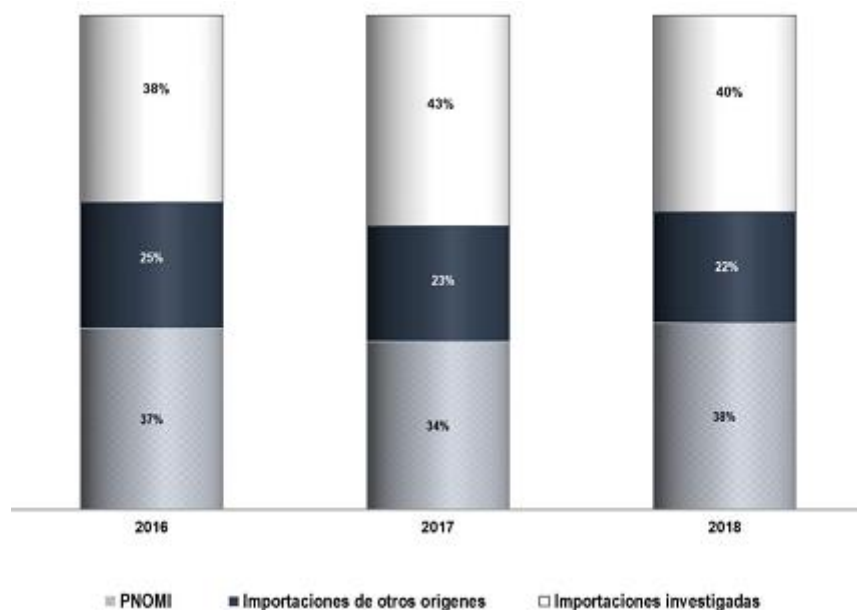
**230.** For their part, imports from other origins accumulated a decrease of 28% in the period analyzed; they decreased 36% in 2017 and increased 12% in the investigated period. In effect, the above can be seen in its participation in total imports throughout the analyzed period, which represented 40%, 35% and 36% in 2016, 2017 and the investigated period, respectively; decreasing 4 percentage points in the analyzed period.

**231.** In terms of the domestic market, the Secretariat observed that total imports increased their participation in the CNA by 4 percentage points in 2017 and decreased by 5 percentage points in the investigated period, going from 63% to 62% (67% in 2017 ). The performance of total imports in the CNA is mainly explained by the participation of imports originating in China.

**232.** Indeed, the investigated imports represented 38% of the CNA in 2016, 43% in 2017 and 40% in the investigated period, so that they increased their participation in the domestic market by 2 percentage points in the analyzed period (5 and -3 percentage points in the 2017 periods and the investigated period , respectively). In relation to the total volume of national production, the investigated imports represented 82%, 74% and 79%, respectively, in the same periods, which meant, cumulatively, a decrease of 3 percentage points in the period analyzed, and an increase of 5 percentage points in the investigated period.

**233.** Regarding imports from other origins, these decreased their participation in the CNA by 3 percentage points in the analyzed period, going from 25% in 2016 to 22% in the investigated period (23% in 2017). In relation to the total volume of national production, imports from other origins represented 55%, 40% and 45%, respectively, in the same periods, which meant a cumulative decrease of 10 percentage points in the period analyzed.

#### **Percentage structure of the CNA**



Source: Information provided by Cierres BBJ and SIC-M

**234.** Consequently, the participation of national production oriented to the domestic market in the CNA increased by one percentage point in the analyzed period, going from 37% in 2016 to 38% in the investigated period, derived from registering a loss of 3 points in 2017, when it had a 34% participation, but increased its participation by 4 points in the investigated period. The market loss of domestic production oriented to the domestic market in 2017 is attributable to the increase in investigated imports under conditions of price discrimination, since those from other origins registered a loss of participation of 2 percentage points. On the other hand, the production oriented to the domestic market of the National production decreased its market share by 8 percentage points in the investigated period, going from a contribution of 31% to 23% of the CNA, and it remained unchanged in the period analyzed.

**235.** The above results allow the Secretariat to conclude that the investigated imports registered an increasing trend in absolute terms and in relation to domestic production during the investigated period, as well as in relation to the CNA in the analyzed period, while the national production limited its participation in the market, growing by only one percentage point in the period analyzed.

The foregoing is attributable to the increase in imports of metal closures originating in China that were carried out under conditions of price discrimination, in the investigated period. In this sense, the behavior of the domestic market did not translate into a benefit for the domestic industry, given the growth that the market registered in the investigated period, because its performance was limited by losing participation in the CNA, due to the low prices registered by the investigated imports under conditions of price discrimination throughout the period analyzed.

## 6. Effects on prices

**236.** In accordance with the provisions of Articles 3.1 and 3.2 of the Anti-Dumping Agreement; 41 section II of the LCE, and 64 section II of the RLCE, the Secretariat analyzed whether the investigated imports entered the Mexican market at prices considerably lower than those of the like product, or whether the effect of these imports was to depress domestic prices or prevent the increase that, otherwise, would have occurred; and if the price level of imports was decisive to explain its behavior in the domestic market.

**237.** Cierres BBJ stated that China increased its participation in the total imports of metal closures made by Mexico and in the CNA, because the prices of these imports are extremely lower compared to the national prices of similar merchandise, as well as import prices from the rest of the world.

**238.** In the preliminary stage of the investigation, Grupo Parisina argued that in the period analyzed there was a generalized and sustained rise in the costs of all the inputs used in the manufacture of the metal closures. He pointed out that zinc, nickel, copper and aluminum, being commodities, are purchased in dollars, which generates a greater effect on their costs, as a result of the exchange rate fluctuation of the peso against the dollar. In addition, the prices of electricity, LP gas and water also registered increases.

**239.** Grupo Parisina stated that it is evident that the cost of production of metal closures increased considerably, forcing the national producer to pass these costs on to the consumer via the sale price, affecting the demand for the product. In this sense, if there is damage or threat of damage to the national production,

this should be attributed to the increase in the cost of the inputs used in the production process and not as a consequence of the import of the investigated product originating in China. .

**240.** For their part, the exporting companies indicated that the Applicant's selling price to the domestic market increased 3% and 11% in the investigated period and in the analyzed period, respectively; the price of imports from the rest of the world increased 9% in the investigated period, and the price of investigated imports registered an increase of 6% in the analyzed period. In other words, there was a general increase in the price of metal closures.

**241.** The foregoing is due to the increase in the price of raw materials used for the manufacture of metal, copper and zinc closures. However, this increase was reflected both in the national price and in the price of the investigated imports and the rest of the world. They added that there is no causation, because in a context of an increase in the domestic and imported prices, due to the increase in the price of their inputs, the injury alleged by Cierres BBJ, in any case, is due to factors other than imports of closures of metal originating from China.

**242.** In accordance with what is described in points 244 and 245 of the Preliminary Resolution, in relation to the arguments of Grupo Parisina and the exporting companies, the Secretariat determined the following:

**a.** Despite the general increase in the costs and prices of metal closures in the analyzed period, the price of the investigated imports was the only one that decreased in the investigated period, a situation that is supported by the analysis described in points 247 and 248 of the Preliminary Resolution and 249 and 250 of this Resolution;

**b.** imports of metal closures originating in China were registered with significant levels of undervaluation with respect to the national price throughout the analyzed period, as indicated in points 251 of the Preliminary Resolution and 253 of this Resolution, and

**c.** the price of the investigated imports contained the increase in the domestic price to the domestic market of the domestic industry that would otherwise have occurred, in the face of a scenario of growth in demand in the market for metal closures, in the period investigated, thus supports the analysis described in points 285 of the Preliminary Resolution and 294 and 295 of this Resolution.

**243. Based** on the foregoing, the Secretariat determined that, contrary to what was argued by the Parisian Group and the

Exporting companies, the increase in the prices of the raw materials used in the manufacture of the product under investigation was not the cause of the negative performance of the economic and financial indicators of the domestic industry. In accordance with what is described in points 253 of the Preliminary Resolution and 254 of this Resolution, the impact on the domestic industry is linked to the low price level of the investigated imports with respect to the domestic price, as well as to the containment of the growth of the national sale price to the domestic market.

**244.** For its part, Coats México pointed out that the prices at which it acquires the product for sale in the national territory are not competitive, so its client made the decision not to acquire metal closures from Coats México. In this regard, the Secretariat reiterates what is described in point 217 of this Resolution, in the sense that in accordance with the provisions of Article 3.1 of the Anti-Dumping Agreement, the determination of the existence of injury includes an examination of the total volume of imports investigated subject to price discrimination and its impact on the domestic industry. Based on this, in the present investigation it is inappropriate to examine the imports made by the company in a individual.

**245.** At this stage of the investigation, Grupo Parisina reiterated that the injury alleged by Cierres BBJ was due to the increase, during the investigated period, of the costs of the main inputs with which the metal closures were manufactured and not to imports originating in China, as concluded in the Preliminary Resolution.

**246.** For their part, the exporting companies reiterated that the Applicant's domestic market sales price registered a positive behavior, increasing 3% in the investigated period and 11% in the analyzed period.

**247.** In relation to the arguments of Grupo Parisina and the exporting companies, the Secretariat reiterates what is described in points 242 and 243 of this Resolution, in the sense that despite the general increase in the costs and prices of closings of metal, in the analyzed period, the price of the investigated imports was the only one that decreased in the investigated period. In addition, imports of metal closures originating in China were registered with significant levels of undervaluation with respect to the national price throughout the period analyzed.

**248.** Due to the above, the Secretariat confirms that the increase in the prices of the metal closures of Cierres BBJ and in the costs of the raw materials used in their manufacture, were not the cause of the negative performance of the economic and financial indicators of the domestic industry.

**249.** To evaluate the effect of the prices of the investigated imports on national prices, the Secretariat calculated the average implicit prices of the imports under investigation and of the rest of the countries, based on the values and volumes obtained as described in point 226 of this Resolution, and observed that the

average price of imports from other origins increased 25% and 9% in 2017 and the investigated period, respectively, accumulating a growth of 36% in the period analyzed. For its part, the average price of the investigated imports increased 27% in 2017 and decreased 16% in the investigated period, so that it accumulated an increase of 6% in the analyzed period .

**250.** Regarding the average price of sales to the domestic market of the domestic industry, measured in dollars, the Secretariat observed that it registered an increasing trend during the analyzed period: it increased 8% in 2017 and 3% in the investigated period, which meant an accumulated growth of 11% in the analyzed period.

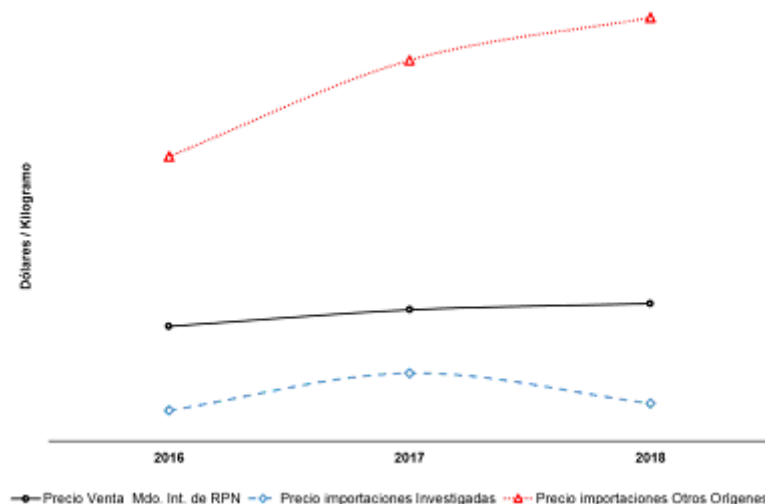
**251.** The behavior of the national price in the investigated and analyzed period contrasts with the performance observed in the same periods by the unit operating costs of BBJ Closures, indicated in points 285 of the Preliminary Resolution and 294 and 295 of this Resolution, This situation confirms the argument of Cierres BBJ in the sense that it has been forced to raise its prices due to the increase in the price of the main raw materials: copper and zinc, which, according to information from the London Metal Exchange, registered a increase of 32% and 36%, respectively, during the analyzed period, said increase was higher than that registered by the prices to the domestic market of the branch of national production (11%), in the same period.

**252.** To assess the existence of undercutting, the Secretariat compared the FOB plant price of sales to the domestic market of the domestic industry with the price of the investigated imports; For this, this last price was adjusted with the customs broker expenses, the customs processing fees and the corresponding tariff.

**253.** Although it is true that the prices of the domestic industry grew in the investigated period , the Secretariat observed that there was a containment of them as their growth decreased by 5 percentage points in the same period, a situation that is explained by the prices of investigated imports that decreased 16% in the same period. Likewise, it observed that the average price of

Imports investigated, carried out under conditions of price discrimination, were below the national price by 39% in 2016, 27% in 2017 and 42% in the investigated period.

**Prices of imports and the national product**



Source: Information provided by Cierres BBJ and SIC-M

**254.** In relation to the average price of imports from other origins, the price of metal closures originating in China was considerably lower in 2016, 2017 and the investigated period, in percentages of 66%, 65% and 74%, respectively.

**255.** In accordance with the results described in the previous points, the Secretariat concluded that, during the period analyzed, imports of the product under investigation were made with significant levels of undervaluation with respect to the national price and other sources of supply, which They are associated with the practice of price discrimination they incurred, the elements of which were established in point 134 of this Resolution. Furthermore, the low price level of the investigated imports with respect to the domestic price and from other sources of supply is linked to their increasing volumes in the investigated period, as well as to the containment of price growth. domestic sales to the domestic market and with negative performance in the profits and operating margin of the domestic industry, as explained in the following section of this Resolution.

## 7. Effects on the domestic industry

**256.** Based on the provisions of Articles 3.1 and 3.4 of the Anti-Dumping Agreement, 41 section III of the LCE and 64 section III of the RLCE, the Secretariat evaluated the effects of imports of metal

closures originating in China, on the economic indicators and financials of the domestic industry of the like product.

**257.** Cierres BBJ pointed out that, throughout the analyzed period and, in particular, in the investigated period, the domestic industry has registered negative effects caused by the entry of imports of metal closures originating in China at prices under conditions. price discrimination, in the following indicators: volume of production and sales to the domestic market, employment, use of installed capacity, market share and growth in the level of inventories.

**258.** In the preliminary stage of the investigation, the exporting companies indicated that the analysis of injury to the domestic industry carried out by the Secretariat is incorrect, since it only considers the economic and financial indicators of Cierres BBJ and not of the domestic industry. In this regard, the Secretariat reiterates what is described in point 121 of the Preliminary Resolution, in the sense that the analysis of the economic and financial indicators was carried out on the domestic industry, which corresponds to the information that Cierres BBJ provided as this company constitutes the domestic industry of the like product.

**259.** The exporting companies indicated that the economic and financial indicators of the domestic industry showed, in general, favorable results, therefore there are no elements that prove the existence of injury to the domestic industry.

**260.** They added that, despite the decrease in supply in 2017, sales in the domestic market

On the other hand, export sales increased in that same year, to decrease significantly in 2018. That is, total sales (to the domestic and foreign market) of the domestic industry registered a 12% decrease in the period analyzed: they increased 7% in 2017 and decreased 17% in the investigated period. However, according to SIAVI data, it is observed that national exports fell 42% in the investigated period.

**261.** They indicated that the drop in total sales is explained by the drop in export sales; Furthermore, if it is considered that exports represented an average of 18% of production, during the period analyzed, the drop in exports constitutes a sufficient indication to assume that said behavior contributed significantly to the damage alleged by the Applicant.

**262.** Cierres BBJ pointed out that the exporting companies only included isolated paragraphs in their analysis on some economic indicators of Cierres BBJ. It added that, for exporting companies, there would only be damage to the domestic industry if it was dead or in frank agony, which could happen in a matter of months, if the Secretariat does not urgently remedy this unfair practice.

**263.** In this regard, the Secretariat considered that the examination of the impact of imports under conditions of price discrimination, on the domestic industry of the like product, should jointly assess the performance of the economic and financial indicators, in the understood that the analysis of damage does not require affectations in each and every one of them, but a joint examination of them to reach a determination.

**264. Based** on the foregoing, the Secretariat determined that, although the installed capacity of the domestic industry remained constant during the period analyzed, and employment and wages registered an increase in the same period, it does not mean an absence of injury. .

**265.** At this stage of the investigation, the exporting companies reiterated that the analysis of damage to the domestic industry carried out by the Secretariat was incorrect, since it only considered the economic and financial indicators of the company Cierres BBJ and not, of the branch of National Production.

**266.** In this regard, the Secretariat reiterates what is described in points 257 of the Preliminary Resolution and 258 of this Resolution, in the sense that the analysis of the economic and financial indicators was carried out on the domestic industry, which It corresponds to the information that Cierres BBJ provided, since this company constitutes the domestic industry of the like product, as described in point 186 of this Resolution. Therefore, contrary to what was expressed by the exporting companies, the analysis carried out by the Secretariat is correct, since it refers to the information from BBJ Closures; that is, to the domestic industry.

**267.** The exporting companies reiterated that neither the Secretariat nor Cierres BBJ proved the existence of damage to the domestic industry, since the following behaviors of the economic indicators of the domestic industry have not yet been duly weighed :

**a.** the drop in total sales is explained by the drop in export sales;

**b.** Factors such as the reduction in national demand and the increase in the production of plastic closure , led to variations in the sales of the Applicant company;

**c.** the installed capacity of the domestic industry remained unchanged in the analyzed period , so there is no damage to the domestic industry;

**d.** While the rest of the industries in Mexico showed negative employment data, the metal fasteners industry shows atypical growth of 5%; which confirms the non-existence of damage to the national industry, and



e. the salary associated with the production of metal closures registered an accumulated increase of 28% in the period analyzed.

**268.** In this regard, the Secretariat reiterates what is stated in points 262 of the Preliminary Resolution and 263 of this Resolution, in the sense that, as established in Article 3.4 of the Anti-Dumping Agreement, the examination of the impact of imports in conditions of price discrimination, on the domestic industry of the like product, it must jointly evaluate the performance of the economic and financial indicators, with the understanding that the injury analysis does not require affectations in each and every one of them, but a joint examination of them to arrive at a determination. The foregoing, considering that the factors indicated in said article are not exhaustive and none of them, alone will suffice necessarily for decisive guidance, but will include an assessment of all relevant economic factors and indices influencing the domestic industry.

**269.** Due to the foregoing, and in accordance with the provisions of points 263 of the Preliminary Resolution and 264 of this Resolution, the Secretariat concluded that, contrary to what was stated by the exporting companies, the fact that the installed capacity of the domestic industry has remained constant during the period analyzed, and the fact that employment and wages have registered an increase in the same period does not mean an absence of injury. However, in accordance with point 306 of this Resolution, given the growth registered by the investigated imports, under conditions of price discrimination, in the investigated period, effects were observed in the following indicators of the branch of domestic production: market share, production, production oriented to the domestic market, sales to the domestic market, productivity, utilization of installed capacity, income from sales to the domestic market, operating profit, operating margin, cash flow and a deterioration in the Yield on Investment in Assets (ROA, for the acronym in English of Return of the Investment in Assets) of the domestic industry, as well as a considerable increase in inventories and a growth in the level of indebtedness.

**270.** The Secretariat evaluated the effects of imports originating in China on the domestic industry, based on the economic and financial indicators of the company Cierres BBJ, as said company represents the domestic industry of the like product. Except for those factors that for accounting reasons it is not feasible to identify with the same level of specificity (cash flow, ability to raise capital and return on investment), their audited financial statements corresponding to fiscal years 2016, 2017 and 2018. Likewise, their statements of costs, sales and profits resulting from the sales of similar merchandise destined for the market were analyzed. Internal for the period analyzed. In order for the financial figures to be comparable to each other, the Secretariat updated the financial information that Cierres BBJ presented at December 2018 prices, through the National Consumer Price Index published by INEGI.

**271.** The information described in the previous point indicates that the production of metal closures of the domestic industry registered a decreasing trend during the analyzed period: it decreased 3% in 2017 and 11% in the investigated period, which meant a cumulative reduction of 13% in the period analyzed.

**272.** Production oriented to the domestic market of the domestic industry showed a behavior similar to that of production, decreasing 6% in 2017 and 13% in the investigated period, accumulating a decrease of 18% in the analyzed period.

**273.** Likewise, the Secretariat observed that the behavior recorded by the market, during the period analyzed, benefited the investigated imports to a greater extent, as they gained market share, to the detriment of the domestic industry. The production oriented to the domestic market of the domestic industry grew 8 percentage points in 2017 and decreased 8 percentage points in the investigated period, and remained unchanged in the analyzed period. On the other hand, the investigated imports gained 2 percentage points of participation in the analyzed period; 5 percentage points in 2017 and decreased 4 percentage points in the investigated period, while imports from other origins lost 3 percentage points in the analyzed period, decreasing 2 and 1 percentage points in 2017 and in the investigated period, respectively.

**274.** The behavior of total sales (to the domestic and foreign markets) of the domestic industry registered a decrease of 12% in the period analyzed: they increased 7% in 2017 and decreased 17% in the investigated period. In this regard, the Secretariat observed that the performance recorded by the total sales of Cierres BBJ is mainly explained by the behavior of their sales to the domestic market:

a. sales to the domestic market of the domestic industry decreased 17% in the period analyzed; they increased 5% in 2017, to later decrease 21% in the investigated period; in the same period, export sales increased 14% (they grew 16% in 2017 and fell 2% in the investigated period);

b. However, Cierres BBJ's exports represented an average of 18% of its production during the period analyzed, which reflects that the domestic industry is more oriented towards the domestic market, where it competes with imports under conditions of discrimination of prices, and

c. the performance of the total sales of Cierres BBJ is explained, to a great extent, by the behavior of its sales to the domestic market. It also highlights that in absolute terms the fall in the volume of total sales of the industry

national during the investigated period, it is explained in 98% by the decrease in domestic sales and only 2% by export sales.

**275. Based** on the foregoing, the Secretariat concluded that the decrease shown by the domestic sales of the domestic industry in the investigated period is explained by the price level at which the investigated imports entered the Mexican market during the analyzed period, due to They had prices lower than those of the similar product, since according to the results described in point 253 of this Resolution, they registered significant undervaluation margins of 39% in 2016, 27% in 2017 and 42% in the investigated period.

**276.** As regards the installed capacity of the domestic industry to produce metal closures , it remained unchanged in the period analyzed.

**277.** As a result of the performance of installed capacity and production, the use of the first of these indicators decreased 10 percentage points during the analyzed period; derived from a decrease of 2 percentage points in 2017, going from 75% to 73%, and a fall of 8 percentage points in the investigated period, reaching a utilization of 65%.

**278.** Cierres BBJ argued that the negative performance of the use of installed capacity is a consequence of the drop in the volume of production of the domestic industry of 13% in the period analyzed. The Secretariat confirmed this argument, taking into account the percentages of use registered by the domestic industry, described in the previous point of this Resolution, and the decrease registered by the market during the period analyzed (19%), which benefited investigated imports , to the detriment of the domestic industry, by limiting the growth of its domestic sales, production and use of installed capacity both in the period investigated and in the period analyzed.

**279.** Inventories of the domestic industry increased 21% in the period analyzed; with a reduction of 4% in 2017 and an increase of 27% in the investigated period. This fact is the result of imports, at significantly low prices, covering domestic demand to the detriment of the domestic industry, causing their inventories to increase in the proportions described, as analyzed in the section on price effects. .

**280.** The Secretariat observed that the average employment of the domestic industry increased 4% and 1% in 2017 and the investigated period, respectively, which meant a cumulative growth of 5% in the analyzed period.

**281.** The performance of production and employment resulted in a decrease in the productivity of the domestic industry (measured as the ratio of these indicators) of 5% in 2017 and 11% in the period investigated, which implied a accumulated decrease of 15% in the analyzed period. In the same periods, the salary related to the production of metal closures increased 7% and 19%, respectively, registering an accumulated increase of 28% in the period analyzed.

**282.** The Secretariat performed the profit analysis based on the Applicant's statement of costs, sales and profits resulting from direct sales to the domestic market, as mentioned in point 270 of this Resolution.

**283.** In this regard, the Secretariat confirmed that the behavior of volumes and prices was reflected in an accumulated decrease in income from sales to the domestic market (measured in pesos) of 19% in the period analyzed: in 2017 they increased by 6% and decreased 21% in the investigated period.

**284.** In relation to operating costs resulting from sales to the domestic market, these accumulated a 4% decrease during the analyzed period: they increased 9% in 2017 and decreased 12% in the investigated period.

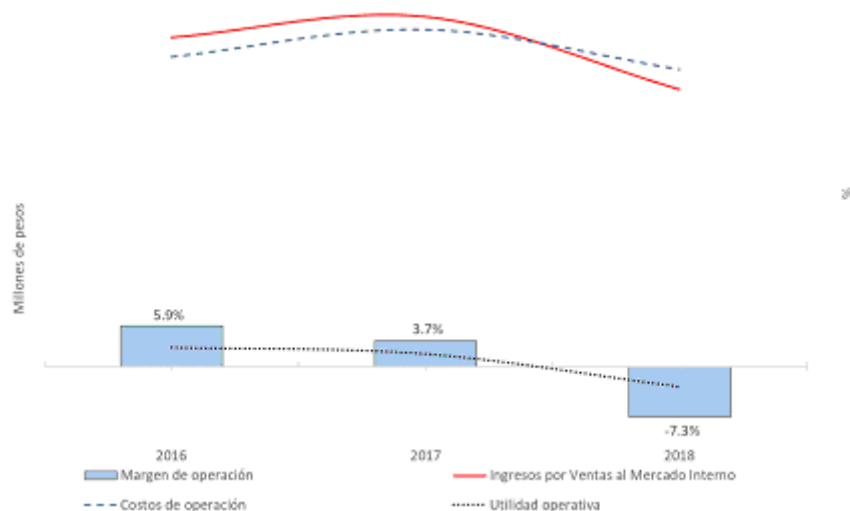
**285.** The performance of income and operating costs translated into a negative performance of operating results that accumulated a decline of more than twice the profits it had at the beginning of the period under review. In 2017 they decreased 0.33 times, and in the investigated period they decreased 2.57 times.

**286.** Regarding the behavior of the operating margin, this indicator went from 5.9% to -7.3% throughout the analyzed period, accumulating a decrease of 13.2 percentage points during the analyzed period : it decreased by 2.2 percentage points in 2017 to go from 5.9% to 3.7%, and decreased 11 percentage points during the investigated period to end at -7.3%.

**287.** The Secretariat observed, both in the investigated period and in the analyzed period, a negative performance of the following financial variables associated with sales to the domestic market: sales income decreased 21% in the investigated period and 19% in the period analyzed; operating results

they decreased 2.57 times in the investigated period and 2.05 times in the analyzed period and the operating margin deteriorated by 11 percentage points in the investigated period and 13.2 percentage points during the analyzed period.

**Statement of cost of sales and profits of the domestic industry - sales to the domestic market of metal closures**



Source: Information provided by the Applicant

**288.** During the development of the investigation procedure, Cierres BBJ pointed out that in order for it to have the possibility of competing with the investigated imports, it was necessary to try to maintain prices, as occurred in the investigated period, or even to adjust them downwards to be at the same level. competition, which would aggravate the damage to its indicators.

**289.** At this stage of the investigation, Grupo Parisina insisted that the damage that the national production may be suffering must be attributed to the increase in the cost of the inputs used in the manufacture of metal closures, and not as a consequence of the importation of the investigated product. In the same sense, he insisted that the increase in the costs of metal closures was due to the increase in the value of the inputs used, as well as in general expenses such as electricity, water and gas.

**290.** In this regard, the Secretariat reiterates that as indicated in point 292 of the Preliminary Resolution, it observed that the manufacturing costs per kilogram of metal closures, which include raw material costs, labor and indirect expenses manufacturing, recorded an increase of 64% in the investigated period and 86% during the analyzed period.

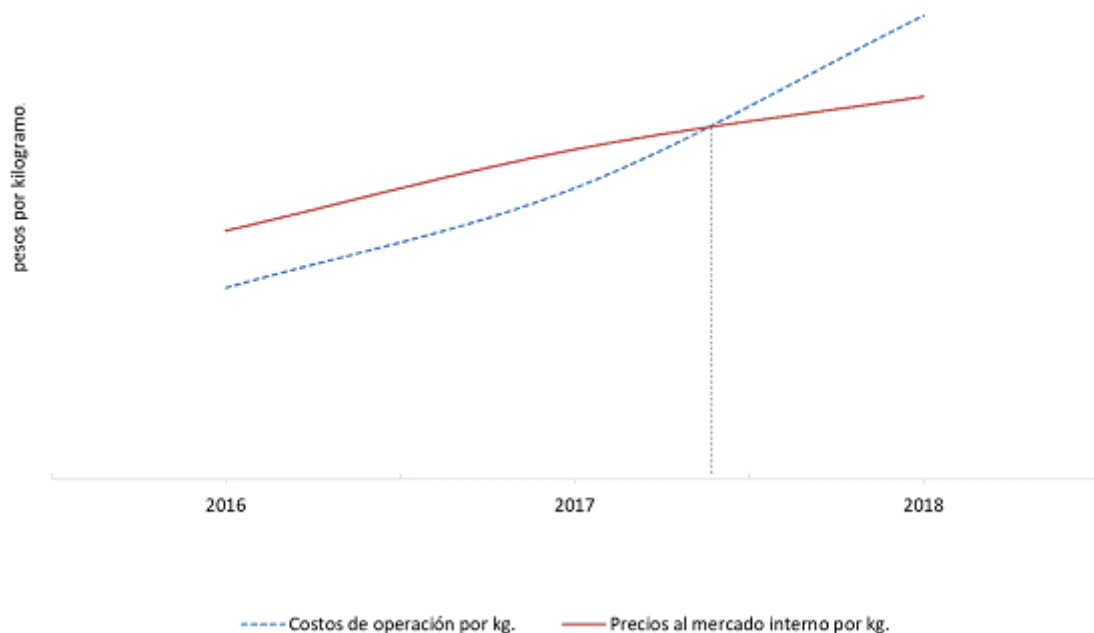
**291.** Likewise, when performing the analysis by component of the unit manufacturing costs, the Secretariat observed that, during the investigated period, the cost of raw material increased 8%, the cost of labor increased 32% and the expenses Indirect manufacturing increased 25%. While, during the analyzed period, increases in raw materials, labor and indirect manufacturing expenses were 28%, 24% and 35%, respectively.

**292.** In this sense, as indicated in point 283 of the Preliminary Resolution, Cierres BBJ argued that as of 2017 it began to observe that the domestic market prices of similar merchandise grew at a lower rate than the observed cost operating units, and that this situation worsened during the period investigated.

**293.** In this regard, Cierres BBJ presented information on the unit operating costs of similar merchandise sold in the domestic market, which it faced during the analyzed period. The Secretariat made a comparison of the unit operating costs with the domestic market prices recorded during the analyzed period.

**294.** When comparing the behavior of unit operating costs against the behavior of sales prices to the domestic market of similar merchandise, expressed in current pesos, the Secretariat observed that during the investigated period unit operating costs increased 17% while that the prices per kilogram to the national market, although they had growth, this was 5%. During the analyzed period, unit operating costs increased 30%, while the prices of similar merchandise in the domestic market grew 14%.

#### Comparison between unit operating costs and prices to the domestic market of the domestic industry of metal closures



Source: Information provided by the Applicant

**295.** As indicated in point 285 of the Preliminary Resolution, and in accordance with the provisions of the previous point, the Secretariat confirmed that Cierres BBJ was forced to contain the growth of its prices during the period analyzed to face the conditions of competition of the investigated imports, in a context in which, as the Parisina Group pointed out, unit operating costs grew, so there are sufficient elements that support that the domestic industry faces a situation of vulnerability to the deterioration of its main financial indicators associated with the sales of the similar product in the domestic market.

**296.** On the other hand, Grupo Parisina referred to the information presented by the Applicant regarding its unit operating costs, and indicated that the growth experienced by the administrative expenses item, during the period analyzed, is higher than that considered necessary for the type of companies that carry out similar activities and, therefore, the damage to the domestic industry is due to mismanagement of their business.

**297.** To support his point, he presented a table that he called "Administrative expenses" of four companies, with the argument that said companies carry out activities similar to the Applicant, given that they are engaged in the manufacture of intermediate products and, like BBJ closures, its inputs involve the purchase of metals that are considered commodities such as copper, aluminum and zinc. Regarding said information, it indicated that the growth of the administration expenses of these companies was, on average, less than half the increase in the expenses incurred by the Applicant.

**298.** In this regard, the Secretariat considers that Grupo Parisina's argument lacks support, since it did not provide elements of conviction to this analysis, for the following reasons:

**a.** the information he presented lacks the source that supports it; the information tables presented do not specify in what unit of measurement they are expressed (pesos, dollars, euros, etc.); it did not indicate whether the information refers to a particular product or to the full range of products of the companies, while the Applicant's information corresponds to a specific product. It also did not present the calculation methodology, nor the worksheet in which it performed its calculations, so the Secretariat did not have enough elements to replicate and validate the information, and

**b.** In addition to what is described in the previous paragraph, the following was observed:

**i.** Grupo Parisina's allegation is related more to the structure of manufacturing costs and not to the structure of administrative expenses, even when considering the type of products manufactured and the scale of companies. Furthermore, none of the companies

With which it made the comparison, it is dedicated to the production of similar merchandise, nor does it belong to the textile sector, according to the review of the information on the Internet pages of the companies indicated by Grupo Parisina (<https://www.amphenol.com>, <https://www.tmttech.com>, <https://rfindustries.com> and <https://www.jabil.com>);

**ii.** Given that the economic context of operation of the companies (national or international) is unknown, there is no certainty whether or not they face conditions similar to those of the Applicant, and

iii. the behavior of the administration expenses of the companies to which he referred, do not keep any pattern that allows us to notice any similar behavior between them, despite the fact that this is the main argument.

**299.** In accordance with articles 3.6 of the Anti-Dumping Agreement and 66 of the RLCE, the indicators ROA, contribution of the product similar to ROA, cash flow and ability to raise capital, were evaluated considering the information of the production of the group or range of products more restricted to include similar merchandise.

**300.** The ROA performance of the domestic industry (calculated at the operational level), and the contribution of the like product to ROA was as follows:

#### Return on investments

Concept	2016	2017	2018
Return on investment	15.4%	16.4%	9.8%
Product-like contribution to Return on investment	3.41%	2.11%	-3.16%
Contribution of other products to Return on investment	12.03%	14.25%	12.98%

Source: BBJ Closures and Accessories financial statements

**301.** From the information presented in the table above, it was observed that the ROA of the domestic industry, calculated at the operational level, decreased 5.6 percentage points during the period analyzed. In relation to the contribution to the ROA of the like product, it decreased 6.57 percentage points, while the contribution to the ROA of other products manufactured by Cierres BBJ increased 0.95 percentage points during the same period.

**302.** The Secretariat observed that the cash flow from operating activities had a negative behavior during the analyzed period, which meant that it accumulated a decrease of 36% from 2016 to 2018.

**303.** The Secretariat measured the capacity of the domestic industry to obtain the financial resources necessary to carry out the productive activity by means of solvency, leverage and debt ratios. In this regard, the following behavior was observed:

#### Solvency ratios

Indices	2016	2017	2018
Current ratio	1.98	2.02	1.73
Acid test	1.02	1.19	0.81

Source: Information based on the financial statements of Cierres BBJ

**304.** Regarding the information described in the table above, in general, a relationship between current assets and short-term liabilities is considered adequate if it is 1 to 1 or higher. Therefore, it is observed that the liquidity levels of the company that is part of the domestic industry had adequate levels in the analyzed period, since the ratio between current assets and short-term liabilities was greater than 1 throughout the analyzed period. However, when performing a stricter analysis (acid test), and discounting the inventories of the domestic industry, a deterioration was observed at the end of the period in its ability to meet its short-term obligations.

**305.** Regarding the level of leverage, a ratio of total liabilities to stockholders' equity of less than 100% is considered manageable. In this case, it was observed that the domestic industry registered levels of leverage higher than what is considered adequate throughout the period analyzed, as well as increasing. Regarding the relationship between total liabilities and total assets, although it kept levels below 100% during the analyzed period, the debt ratio observed equally increasing but acceptable levels, as can be seen in the following table. For the exposed

previously, it is concluded that the leverage of Cierres BBJ was at high levels during the period analyzed.

#### Leverage and debt ratios

Indices	2016	2017	2018
Total Liabilities to Stockholders' Equity	131%	142%	168%
Total Liabilities to Total Assets	57%	59%	63%

Source: Information based on the financial statements of Cierres BBJ

**306.** Based on the results described in the previous points of this Resolution, the Secretariat concluded that the increase registered by the investigated imports both in absolute terms and in relation to domestic production in the investigated period, under conditions of price discrimination and the low price levels at which there were significant undervaluation margins during the analyzed period, caused an impact on relevant economic and financial indicators of the domestic industry, in particular, in the investigated period there was a decrease in the following indicators: market share, production, production oriented to the domestic market, sales to the domestic market, productivity, utilization of installed capacity, income from sales to the domestic market, operating profit, operating margin, cash flow and a deterioration in the ROA of the domestic industry, as well as a considerable increase in inventories and a growth in the level of indebtedness, a situation that is attributed to the fact that the domestic industry was forced to contain the growth of its sales prices to the domestic market, which influenced the behavior of the aforementioned indicators.

#### **8. Other damage factors**

**307.** In accordance with the provisions of Articles 3.5 of the Anti-Dumping Agreement; 39 last paragraph of the LCE, and 69 of the RLCE, the Secretariat examined the concurrence of factors other than imports originating in China under conditions of price discrimination, which at the same time could be the cause of material injury to the domestic industry of metal clasps.

**308.** As indicated in point 155 of the Initiation Resolution, Cierres BBJ stated that there are no factors other than the investigated imports that have caused injury to the domestic industry.

**309.** In the preliminary stage of the investigation, Grupo Parisina stated that according to the website of Cierres BBJ, this company exports to different countries, among which Colombia, Ecuador, Dominican Republic, Peru, Uruguay and Costa Rica stand out. . In this regard, he noted the following:

- a.** identified that Colombia is the main destination for Mexican exports of metal closures ;
- b.** during 2017 there was a considerable increase in the export volumes of metal closures at a price lower than that at which the investigated merchandise was imported, in the period analyzed, and
- c.** It can be concluded that BBJ closures, being the national producer with the highest percentage of metal closure production in Mexico, can produce the metal closure at prices that compete with the import price of the product originating in China.

**310.** For their part, the exporting companies reiterated that the 43% drop in exports in the investigated period had an influence on the behavior of the CNA. This situation reflects the problems faced by national industry exports, in a global context in which they are increasingly less competitive and, therefore, participate less in world supply.

**311.** As described in point 310 of the Preliminary Resolution, the Secretariat warned that although there is a drop in exports, in the investigated period, the foreign market is not the determining factor in the performance of the industry. domestic, due to the fact that it depends, to a large extent, on domestic sales, in the sense that the exports of the domestic industry represented an average of 18% of the production, during the period analyzed, which reflects that the industry of domestic production depends mainly on the domestic market, where it competes with imports under conditions of price discrimination, so that they did not contribute fundamentally to the performance of the economic and financial indicators of the domestic industry; especially when, in absolute terms, exports only contributed to explain the 2% drop in total sales of the domestic industry in the period under investigation.

**312.** On the other hand, exporting companies reiterated that the increase in the share of imports of metal closures from the United States in total imports, contrasts with the loss of

share of Chinese imports in the investigated period. In this regard, they indicated the following:

- a.** imports from China participated in 54% in 2018, while imports from the United States did so in 43%, so that both countries accounted for 97% of total imports in the investigated period;
- b.** While Chinese imports lost 3 percentage points of share in total imports in 2018, imports from the United States gained 2 percentage points in the same period, and
- c.** The foregoing indicates that United States imports are those that show sustained growth in total imports in the investigated period.

**313.** In accordance with the provisions of points 313 and 314 of the Preliminary Resolution, the Secretariat confirms that it is not required to carry out an analysis of the imports of metal closures by country of origin. However, it did carry out the analysis of imports from countries other than China, as a whole, as described in point 318 of the Preliminary Resolution. In addition, it observed that although imports of metal closures originating in the United States increased their participation in total imports in the investigated period, going from 32% to 33%, the price level at which they were made was higher compared to the domestic product and the product originating in China in 2.1 and 3.6 times, respectively, which confirms that imports from other origins could not be the cause of injury to the domestic industry.

**314.** At this stage of the investigation, the exporting companies stated that the Secretariat did not evaluate other factors that are known to them, such as the reduction in national demand and the increase in the production of plastic closures, which led to variations in the sales of the Applicant. In this regard, they indicated the following:

**a.** The Secretariat did not consider that the domestic demand for closures showed a behavior similar to that of the closure industry, reducing its production by 4% during the injury analysis period, and

**b.** The Secretariat dismissed the increase in the production of plastic closures that came to displace metal ones, by determining that the increase in the share of imports investigated in the CNA was to the detriment of the domestic industry, as well as imports from other origins; However, the domestic market for plastic closures decreased mainly due to two factors: the contraction in demand from the clothing industry and the increase in the production volume of plastic closures, which implied the replacement of metal closures.

**315.** They added that while the manufacture of blue jeans requires metal zippers, plastic zippers have displaced the use of metal prong zippers in other clothing items. However, the manufacture of trousers only represented 6 and 7% of the production volume of the clothing industry, during 2017 and 2018, respectively, and of these percentages a minimal part corresponds to the manufacture of trousers that use metal closures, situation that reflects the need to include plastic closures as substitute goods for zip fasteners and analyze their effects on the market of metal closures. To support their assertions, they presented information from the clothing industry of the SCIAN codes 315223 for the concept of workwear pants and 315229, which correspond to the manufacture of pants in street clothing for men, women and children, of INEGI.

**316.** Regarding the argument of the exporting companies, regarding the fact that the Secretariat did not consider the national demand for closures, the Secretariat clarifies that it did analyze the behavior of the CNA and reiterates what is described in points 316 and 317 of the Preliminary Resolution and 322 and 323 of this Resolution, in the sense that the contraction of the market, measured through the CNA, did not affect all its components equally, in such a way that the investigated imports gained participation, while said contraction was to the detriment mainly from imports from other countries and did not have a negative impact on the domestic industry. The foregoing allows the Secretariat to determine that the effect on the economic and financial indicators of the domestic industry was not a consequence of the contraction in the market for metal closures.

**317.** In relation to the argument that the production of plastic closures displaced metal ones, the Secretariat reiterates what is stated in point 59 of the Preliminary Resolution, in the sense that, by virtue of the fact that the object of the present investigation is to evaluate the effects of imports of metal closures originating in China, on the economic and financial indicators of the domestic industry of

similar merchandise, plastic closures are not part of the coverage of the product under investigation, since they are not similar products and although it is not ruled out that they could be substitute goods, in any case, their presence in the market should affect both closures of domestic metal as well as imported, which was not observed in the investigated period, since while sales to the domestic market of the domestic industry decreased 21%, imports originating in China grew 7% and those originating in other countries increased 12%. The foregoing confirms that the impact on sales to the domestic market of the domestic industry is related to the presence of the imports investigated in conditions of price discrimination, since with these they compete directly in the national market.

**318.** Additionally, the Secretariat reiterates what is described in point 186 of this Resolution, in the sense that the domestic industry under analysis is made up of BBJ closures, which represented 57% of the total domestic production of metal closures. It is also supported by the national production companies Cierres Automáticos and YKK Mexicana, for which, together, they represent 95% of the total national production of metal closures. Likewise, it states that the industries of plastic closures and that of the manufacture of pants are different industries from that of metal closures, therefore, they register different behaviors. Therefore, the Secretariat determined that it is not appropriate to analyze the possibility to set an offset between different industries and branches of domestic production among themselves.

**319.** On the other hand, the exporting companies indicated that imports of zip fasteners originating in China actually compete with those originating in the United States, and do not displace domestic production. The imports of metal fasteners originating in China made during the investigation period are not the cause of the injury alleged by the Applicant.

**320.** In this regard, the Secretariat reiterates what is described in point 313 of this Resolution, in the sense that imports of metal closures originating in the United States increased their participation in total imports in the investigated period, going from 32 % to 33%, the price level at which they were made was higher compared to the domestic product and the product originating in China by 2.1 and 3.6 times, respectively, so it determined that imports from other origins could not be the cause of the damage to the domestic industry.

**321.** At this stage of the investigation, the Secretariat analyzed the possible effects of the volumes and prices of imports from other origins, the export performance of the domestic industry and the behavior of

the domestic market during the period analyzed, as well as other factors that could be relevant to explain the performance of the domestic industry.

**322.** According to the information in the administrative file of the case, the Secretariat analyzed the behavior of the demand for the product under investigation, in terms of the CNA and observed the following:

**a.** Although the CNA registered a cumulative decrease of 19% in the analyzed period, in the investigated period it registered a recovery by growing 17%, and

**b.** During the period analyzed, the only market component that benefited the most from gaining participation in the CNA were the investigated imports, since their participation in the CNA increased 2 percentage points, while imports from other origins lost 3 points percentage and the domestic production oriented to the domestic market of the domestic industry remained constant. The foregoing is explained by the low prices with which the investigated imports were made, since they reached an undervaluation in percentages that ranged between 27% and 42% with respect to the nationally manufactured product during the analyzed period, so that the behavior of the market did not it can be considered as a cause of injury to the domestic industry.

**323.** The foregoing confirms that the contraction of the market in the analyzed period, measured through the CNA, did not affect all its components equally, in such a way that the investigated imports gained participation, while said contraction was mainly to the detriment of imports from other countries and did not have a negative impact on the domestic industry, due to the containment of the increase in their prices.

**324.** In this context, the Secretariat had no elements to indicate that imports from other origins could be a cause of injury to the domestic industry, since:

**a.** decreased 36% in 2017 and increased 12% in the investigated period, thus accumulating a 28% drop in the analyzed period, which was reflected in a loss of their participation in the CNA of 3 percentage points, by decreasing 2 points in 2017 and 1 point in 2018, and

**b.** During the analyzed period, the average price of imports from other origins was above the price of domestic sales to the domestic market, going from 1.8 times in 2016 to 2.2 times in the investigated period. In relation to the price of the investigated imports, in the same periods it was higher by 2.9 and 3.8 times, respectively.

**325.** With regard to the export performance of the domestic industry, exports grew 14% in the period analyzed (they increased 16% in 2017 and fell 2% in the period investigated). In addition, they represented on average 18% of production during the period analyzed, which reflects that the domestic industry is more oriented towards the domestic market, where it competes with imports under conditions of price discrimination, so that it does not They made a fundamental contribution to the performance of the economic and financial indicators of the domestic industry.

**326.** On the other hand, the Secretariat concluded that the behavior of productivity could not cause damage to the domestic industry, since this indicator accumulated a decrease of 15% during the period analyzed (it decreased 5% in 2017 and 11% in the period investigated), and this is explained due to the performance of production and employment, as a result of the increase in the investigated imports.

**327.** Likewise, the information in the administrative record of the case does not indicate that technological innovations or changes in the consumption structure had occurred, or restrictive commercial practices that could affect the performance of the domestic industry.

**328.** In accordance with the results described above, the Secretariat concluded that the information contained in the administrative record of the case does not indicate the concurrence of factors other than the imports originating in China, carried out under conditions of price discrimination, which at the same time, they could be the cause of pecuniary damage to the domestic industry.

## **9. Additional elements**

**329.** Closures BBJ presented statistical data of production, total sales and sales to the domestic market of the Chinese metal fastener industry, obtained from the Report on the state of the global market and China of zippers and forecast by types of players and applications 2018- 2025 (Section 1.4), carried out by the consulting firm QYResearch, specialized in international trade in zippers. He noted that it was not possible to obtain information on the installed capacity of metal closures from Chinese producers.

**330.** Additionally, it presented information on total exports from China for 2016 and 2017, obtained from UN Comtrade, and for 2018 that it obtained from the Internet page <http://www.trademap.org>, since UN Comtrade does not yet have statistical information for that year; It also presented exports from China to Mexico, obtained from the SAT import base, for the different periods that make up the analyzed period.



**331.** In the preliminary stage of the investigation, Grupo Parisina stated that China has a solid and constantly growing economy, showing an appreciation against the dollar, low inflation and considerable growth in GDP, which allows it to be more competitive in the international market.

**332.** He added that production costs for producers in China are not affected in the same proportion as production costs for producers in Mexico, since, having a not so volatile currency with respect to the dollar, the costs of inputs, mainly commodities, do not have such a noticeable exchange rate effect. Likewise, the low levels of inflation in China do not increase the cost of goods and services, this being another reason why the production costs of producers in China can be kept more constant with respect to production costs in Mexico, which had important increases. In order to support its arguments, Grupo Parisina presented an analysis of the China's macroeconomic situation, with information obtained from the World Bank.

**333.** As described in point 327 of the Preliminary Resolution, the Secretariat confirms that the aforementioned analysis does not correspond to the metal fastener industry in China, for which it determined not to use it for its determination, as it was not relevant.

**334.** At this stage of the investigation, exporting companies indicated that the Secretariat highlighted the average annual growth of 17% from 2016 to 2018 in world exports of zippers,

observing China as the world's leading exporter. However, it is important to analyze that China's exports showed a recovery of its exports starting in 2016, after a downward trend registered since 2014.

**335.** In this regard, the Secretariat reiterates what is described in point 197 of the Preliminary Resolution, in the sense that for the analysis of this investigation only data from 2016, 2017 and 2018 were considered, which constitute the period analyzed and include the period investigated. Therefore, the analysis of years prior to the period analyzed carried out by the exporting companies is unfounded, and therefore it was not considered for the purposes of the analysis of this proceeding.

**336.** However, the Secretariat reiterates what is described in points 329 of the Preliminary Resolution and 338 of this Resolution, in the sense that China's exports to the world increased 96% from 2016 to 2018.

**337.** The Secretariat analyzed the information described in point 329 of this Resolution, and observed that the production of metal closures in China grew 16% in 2017 and 4% in the investigated period, so that it increased 21% in the period analyzed, going from 148.8 to 180.5 thousand tons; while its sales to the domestic market grew 9%, 6% and 15% in the same periods, respectively, going from 137.7 thousand tons in 2016 to 158.8 thousand tons in 2018.

**338.** With regard to China's export potential and as described in point 191 of this Resolution, the Secretariat obtained statistics obtained from UN Comtrade on world exports, carried out through subheading 9607.11 and confirmed that China was the main exporter in the investigated period, with a share of 62% of total exports worldwide. Said exports increased 96%, going from 11.1 to 21.7 thousand tons from 2016 to 2018. This last volume is equivalent to more than 10 times the size of the national market and more than 20 times the national production in the investigated period.

**339.** At this stage of the investigation, the appearing parties did not provide elements that distort the information on export potential that Cierres BBJ provided.

**340.** Based on the results described in the previous points of this Resolution, the Secretariat concluded that China has a considerable export potential of metal closures in relation to the size of the Mexican market and national production, which together with the growth that the investigated imports registered to the domestic market in absolute and relative terms in relation to the domestic production in the investigated period, and their low price levels, during the analyzed period, constitute sufficient elements that support that there is a well-founded probability that they will continue to increase in the immediate future and aggravate the pecuniary damage to the domestic industry.

## **J. Conclusions**

**341.** Based on the results of the comprehensive analysis of the arguments and evidence described in this Resolution, the Secretariat concluded that there are sufficient elements to support that, during the period under investigation, imports of metal closures originating in China were made under conditions of price discrimination and caused material injury to the domestic industry of the like product. Among the main elements evaluated in a comprehensive manner, which support this conclusion, without these being considered exhaustive or limiting of aspects that were indicated throughout this Resolution, the following stand out:

**a.** Imports of metal closures originating in China were made with a price discrimination margin of \$ 8.67 per kilogram. In the period analyzed, these imports increased their participation in total imports by 4 percentage points, going from a contribution of 60% in 2016 to 64% in the investigated period.

**b.** Imports of metal fasteners originating in China registered a growth of 7% in the investigated period. Likewise, during this same period, their participation in the volume of national production increased by 5 percentage points. In relation to the CNA, they registered a growth of 2 percentage points in the analyzed period.

c. During the period analyzed, the average price of imports of metal closures originating in China was below the selling price to the domestic market of the domestic industry (in percentages that ranged between 27% and 42%) and the average price of imports from other origins (in percentages between 65% and 74%).

d. The low price at which the investigated imports attended throughout the analyzed period constitutes a determining factor that encouraged their increase and participation in the domestic market, to the detriment of the domestic industry.

e. Cierres BBJ was forced to contain the growth of its prices during the analyzed period to face the conditions of competition of the investigated imports; in a context where unit costs grew, so there are elements that support that the domestic industry faces a deteriorating situation.

F. In the investigated period, the concurrence of the investigated imports had a negative impact on some relevant economic indicators of the domestic industry, among them, market share, production, production oriented to the domestic market, sales to the domestic market, productivity, use of the installed capacity and an increase in inventories.

g. A negative performance of the domestic industry was observed in the following financial variables associated with sales to the domestic market: sales revenue decreased 21% in the investigated period and 19% in the analyzed period; Operating results decreased 2.57 times in the investigated period and more than twice in the analyzed period, and the operating margin deteriorated 11 percentage points in the investigated period and 13.2 percentage points during the analyzed period, as well as in the comprehensive results of Closings BBJ, which were reflected in a decrease in cash flow, an increase in the level of indebtedness and a decrease in ROA of 5.6 percentage points, going from 15.4% in 2016 to 9.8% in 2018.

h. No injury factors other than imports originating in China were identified.

i. The available information indicates that China has an export potential that is equivalent to more than 10 times the size of the national market and more than 20 times the national production in the investigated period.

#### **K. Compensatory fee**

342. In the preliminary stage of the investigation, the Secretariat determined it appropriate to apply a countervailing duty lower than the price discrimination margin of 96.66%, due to the fact that it reached a preliminary affirmative determination on the existence of price discrimination and injury caused to the domestic industry of metal closures, and considered it necessary to prevent it from continuing to cause injury to the domestic industry during the investigation, in accordance with the provisions of Article 7.1 and 9.1 of the Anti-Dumping Agreement and 62 second paragraph of the LCE.

343. For its part, Cierres BBJ pointed out that the provisional ad valorem countervailing duty of 96.66% determined in the Preliminary Resolution for the product under investigation would not have the desired purposes, since they are merchandise for which extremely low prices are declared. For this reason, it requested the application of a specific countervailing duty.

344. A respect, the Ministry determined that requested by closures BBJ is appropriate, since the article 87 of the LCE, provides that the compensatory quotas can be defined by specific amount or ad valorem.

345. Due to the affirmative determination on the existence of price discrimination and injury to the domestic industry of metal closures, and taking into account the vulnerability of the domestic industry to the concurrence of imports under conditions of price discrimination, The Secretariat determined the imposition of a definitive countervailing duty to prevent further injury to the domestic industry, in accordance with the provisions of Articles 9.1 of the Anti-Dumping Agreement and 62 second paragraph of the LCE.

346. Based on the information in the administrative record of the case, the Secretariat considered it appropriate to apply a compensatory fee lower than the margin of price discrimination, in an amount sufficient to restore fair conditions of competition and eliminate the damage caused to the branch of domestic production of the like. For this purpose, the Secretariat considered the average normal value proposed by Cierres BBJ validated at this stage of the investigation to calculate the price discrimination margin as a non-injurious price, and compared it with the average price at which the investigated imports were made, during the period analyzed, to calculate the amount of the compensatory fee.

347. Therefore, in accordance with the provisions of Articles 9.1 of the Anti-Dumping Agreement and 62 second paragraph of the LCE, the Secretariat determined that a specific countervailing duty of \$ 7.07 dollars per kilogram would allow the prices of the investigated imports to be brought to the level of the non-injurious price for the domestic industry, which would be sufficient to correct the price distortion caused by the investigated imports and eliminate the injury caused to the domestic industry of the merchandise

Similary.

**348.** Due to the above and based on articles 9.1 of the Anti-Dumping Agreement and 59 section I and 62 second paragraph of the LCE, it is appropriate to issue the following

#### **RESOLUTION**

**349.** The investigation procedure in matters of unfair international trade practices , in its modality of price discrimination, is declared closed and a definitive compensatory quota of \$ 7.07 dollars per kilogram is imposed on imports of metal closures originating in China, regardless of the country of origin, entered through tariff section 9607.11.01 of the TIGIE, or any other.

**350.** The SHCP is responsible for applying the compensatory fee referred to in the previous point of this Resolution throughout the national territory.

**351.** In accordance with the provisions of article 66 of the LCE, importers who, according to this Resolution, must pay the final compensatory fee, will not be obliged to pay it if they verify that the country of origin of the merchandise is different from China. The verification of the origin of the merchandise will be carried out in accordance with the provisions of the Agreement that establishes the rules for determining the country of origin of imported merchandise and the provisions for its certification, for non-preferential purposes (previously Agreement by the that establish the rules for determining the country of origin of imported goods and the provisions for their certification, in terms of quotas compensatory) published in the DOF on August 30, 1994, and its modifications published in the same broadcasting agency on November 11, 1996, October 12, 1998, July 30, 1999, June 30, 2000, 1 and March 23, 2001, June 29, 2001, September 6, 2002, May 30, 2003, July 14 , 2004, May 19, 2005, July 17, 2008, and October 16, 2008.

**352.** Notify this Resolution to the interested parties of which it is known.

**353.** Communicate this Resolution to the SAT for the corresponding legal effects.

**354.** This Resolution will enter into force the day after its publication in the DOF.

Mexico City, on 16 December 2020.- The Ministry of Economy , **Graciela Marquez Colín** .- Signature.

[http://dof.gob.mx/nota\\_detalle.php?codigo=5609506&fecha=06/01/2021](http://dof.gob.mx/nota_detalle.php?codigo=5609506&fecha=06/01/2021)