

# **WORLD TRADE ORGANIZATION**

**G/ADP/N/1/DOM/3**  
**G/SCM/N/1/DOM/2**  
**G/SG/N/1/DOM/2**  
22 May 2002  
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**Committee on Anti-Dumping Practices**  
**Committee on Subsidies and Countervailing Measures**  
**Committee on Safeguards**

Original: Spanish

## **NOTIFICATION OF LAWS AND REGULATIONS UNDER ARTICLES 18.5, 32.6 AND 12.6 OF THE AGREEMENTS**

### **DOMINICAN REPUBLIC**

The following communication, dated 2 May 2002, has been received from the Permanent Mission of the Dominican Republic.

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The Permanent Mission of the Dominican Republic to the United Nations Office and Other International Organizations at Geneva, in accordance with Article 18.5 of the Agreement on Implementation of Article VI of the GATT 1994, Article 32.6 of the Agreement on Subsidies and Countervailing Measures and Article 12.6 of the Agreement on Safeguards, has the honour to enclose the Law on Unfair Trade Practices and Safeguard Measures of the Dominican Republic.

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WHEREAS the Agreement Establishing the World Trade Organization (WTO), ratified by the Congress of the Dominican Republic on 12 January 1995 and promulgated under No. 2-95 of 20 January 1995, includes rules and disciplines relating to the application of anti-dumping duties, the Agreement on Subsidies and Countervailing Measures and the Agreement on Safeguards, so that Members of the Organization may take action in the event of unfair foreign trade practices and adopt precautionary measures against increased imports that cause or threaten to cause serious injury to domestic production;

WHEREAS it is the State's responsibility to establish the basic rules for action by economic agents in order to guarantee free market competition and prevent or avoid distortions caused by unfair trade practices, and to adopt temporary provisions in order to safeguard domestic production against sudden surges in imports;

WHEREAS in order to invoke, within the framework of the Agreement Establishing the World Trade Organization (WTO), the aforementioned Agreements relating to unfair trade practices and the Agreement on Safeguards, it is necessary to have domestic rules on the subject that are consistent with these Agreements;

**HAS ENACTED THE FOLLOWING LAW:**

**LAW ON UNFAIR TRADE PRACTICES AND SAFEGUARD MEASURES**

**TITLE I**

**GENERAL PROVISIONS**

**Article 1.** – Protection against unfair trade practices that threaten to cause or cause injury to national production, artificially distort trade flows or jeopardize the confidence that constitutes the basis of free trade is declared a matter of national interest.

**Article 2.** – The purpose of this Law is to establish rules and procedures to prevent or remedy any injury to a domestic industry that may be caused by unfair foreign trade practices and to provide for appropriate temporary measures in the event of imports in such increased quantities and under such conditions as to cause or threaten to cause serious injury to domestic producers of like products.

**Article 3.** – Unfair foreign trade practices shall be deemed to be the introduction into the country of goods at prices less than their normal value, i.e. at dumped prices, or at subsidized prices in their country of origin or provenance that actually cause or threaten to cause material injury to a domestic industry. Dumped or subsidized imports shall be subject to anti-dumping or countervailing duties, as appropriate, under the conditions and in accordance with the procedures stipulated in this Law and its regulations.

**Article 4.** – Pursuant to this Law, safeguard measures may be established where a given product is being imported in such increased quantities and under such conditions as to cause or threaten to cause serious injury to a domestic industry producing like or directly competitive goods.

**Article 5.** – The provisions of this Law are public policy and of general application, without prejudice to those of international treaties or conventions to which the Dominican Republic is party.

**Article 6.** – Any situation not covered by this Law or its regulations shall be regulated in conformity with the Agreement on Implementation of Article VI (Anti-Dumping or AD Agreement), the Agreement on Subsidies and Countervailing Measures (SCM Agreement) and the Agreement on Safeguards of the World Trade Organization (WTO).

**Paragraph.** – Procedural matters or particular situations that are not clearly and specifically covered by the aforementioned WTO Agreements shall be regulated on a supplementary basis by administrative or other legislation of the Dominican Republic.

**Article 7.** – The Commission for the Regulation of Unfair Trade Practices and Safeguard Measures, covered by Title V of this Law and hereinafter referred to as "the Commission", shall be the competent national authority responsible for investigations required under this Law and its regulations and for determining the application of countervailing or anti-dumping duties or safeguard measures, as appropriate.

**TITLE II**  
**UNFAIR TRADE PRACTICES**  
**CHAPTER I**  
**DUMPING**

**Article 8.** – An import shall be deemed to be at a dumped price where the price of the imported product is less than the normal value of a like product when destined, in the ordinary course of trade, for consumption in the exporting country or the country of origin, as the case may be.

**Article 9.** – For the purposes of this Law:

- (a) "**Normal value**" shall mean the comparable price actually paid or payable for a product similar to that imported, in the ordinary course of trade, into the Dominican Republic for consumption or use in the domestic market of the exporting country or the country of origin, as the case may be. The comparison may be made with the price in the country of origin, where, for example, the products are merely transhipped through the exporting country, or the products are not produced or there is no comparable price for them in the exporting country.
- (b) "**Like product**" shall mean a product which is alike in all respects to the product in question, or in the absence of such a product, to another product which, although not alike in all respects, has characteristics closely resembling those of the product in question.
- (c) "**Export price**" shall mean, without prejudice to Article 12 of this Law, the comparable price actually paid or payable for the product sold for export to the Dominican Republic.

**Article 10.** – Where there are no sales of the product under consideration in the ordinary course of trade in the domestic market of the exporting country, or where such sales do not permit proper comparison because of the particular market situation or the low volume of the sales in the domestic market of the exporting country, the normal value shall be determined on the basis of either:

- (a) The highest, representative and comparable price of the like product when exported to a third country;
- (b) the cost of production of the like product in the country of origin plus a reasonable amount for administrative and selling costs and for profits; in calculating the profit margin, the Commission shall strictly follow the guidelines set out in the Agreement on Implementation of Article VI of the GATT 1994.

**First paragraph.** – For comparison, the Commission shall use the selling price in third-country markets or a constructed value calculated on the basis of the production cost, provided that the value of sales in the domestic market of the exporting country accounts for five (5) per cent or more of total sales of the product when exported to the Dominican Republic. However, the Commission may apply a lower ratio where there is evidence that the volume of sales in the domestic market is sufficient for proper comparison.

**Second paragraph.** – To establish the constructed price as indicated in the previous paragraph, costs shall normally be calculated on the basis of records kept by the exporter or producer under investigation, provided that such records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the product under investigation.

**Article 11.** – In cases where there is no export price or where the export price appears to be unreliable because there is clear evidence of association or an arrangement between the exporter and the importer, the export price may be constructed on the basis of the price at which the imported products are first sold to a buyer on the local market. If the products are not resold locally to an independent buyer or are not resold in the condition in which they were imported, the price shall be calculated on such reasonable basis as the Commission may determine.

**Article 12.** – The margin of dumping shall be determined by comparing the export price and the normal value of the product at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time. In comparing the export price and the normal value, the Commission shall make allowance for:

- (a) Differences affecting price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics and any other differences that can be demonstrated by the Commission to affect price comparability; as some of the above factors may overlap, the Commission shall ensure that they do not duplicate adjustments that have been already made under this Article;
- (b) costs, including duties and taxes, incurred between importation and resale, and profits accruing; if in these cases price comparability has been affected, the Commission shall establish the normal value at a level of trade equivalent to that of the constructed export price, or shall make due allowance for the factors specified in the previous paragraph.

**Article 13.** – In calculating the normal value, the Commission may exclude sales in the domestic market or export sales to a third country at prices that are lower than the fully allocated production costs plus an amount for administrative and selling costs. It may do so only on condition that:

- (a) Such sales have been made over an extended period of time (normally one year);
- (b) the average selling price in the domestic market is lower than the weighted average per unit cost for the specified period, or the volume of sales at prices lower than the per unit costs exceeds twenty (20) per cent of the total;
- (c) the costs have not been recovered within a reasonable period of time.

**Paragraph.** – If the prices which are below the costs at the time of sale are above the weighted average costs for the period of investigation, such prices shall be considered to provide for recovery of costs within a reasonable period of time.

**Article 14.** – When price comparison requires a conversion of currencies, the conversion shall be made using the rate of exchange on the date of sale, except where a sale of foreign currency on forward markets is directly linked to the export sale involved, in which case the rate of exchange in

the forward sale shall be used. Normally, the date of sale shall be the date of contract, purchase order, order confirmation, or invoice, whichever establishes the material terms of sale.

**Article 15.** – For products imported from countries deemed by the Commission to be non-market economies, the normal value shall be equivalent to the selling price for a like product designed for domestic consumption in a third country with a market economy at a comparable level of development, which may be regarded as a substitute for the country with a centrally planned economy. If for any reason the selling price cannot be established as specified above, the normal value may be regarded as equivalent to the export price from the substitute country to a third country or the constructed selling price for consumption in the substitute country's domestic market.

## CHAPTER II

### SUBSIDIES

#### DETERMINATION OF SUBSIDIES

**Article 16.** – The Commission shall impose countervailing duties equivalent to the margin of subsidy where an investigation into the specific subsidy granted to imported products in the country of origin determines that such imports threaten to cause or cause injury to a domestic industry and there is a causal relationship between the threat of injury or injury and the subsidized imports.

**First paragraph.** – For the purposes of this Law, merchandise shall be deemed to be subsidized where there it is demonstrated that the government of the country of origin or export, or, in the absence thereof, any government agency or private entity appointed by the State, has made a direct or indirect financial contribution of any kind, provided any form or income or price support for the exported merchandise, foregone any revenue that is otherwise due or has provided goods or services under special terms, thereby conferring a benefit on the exporter.

**Second paragraph.** – The following shall be considered subsidies for the purposes of this Law:

- (a) The provision by governments of direct subsidies to a firm or an industry contingent upon export performance;
- (b) mechanisms for the granting of foreign currency or any similar practices which involve a bonus on exports;
- (c) internal transport and freight charges on export shipments, provided or mandated by the authorities, on terms more favourable than for domestic shipments;
- (d) the direct or indirect provision by governments or their agencies of imported or domestic goods or services for use in the production of goods to be exported or sold in the domestic market on terms or conditions more favourable than those for the provision of like goods or services, if such terms or conditions are more favourable than those commercially available on world markets to their exporters;
- (e) the full or partial exemption, remission or deferral, specifically related to exports, of direct taxes or social welfare charges paid or payable by industrial or commercial enterprises;

- (f) the exemption, remission or deferral of cumulative indirect taxes on goods or services used in the production of goods destined for export in excess of the exemption, remission or deferral of like taxes on like goods when sold in the domestic market; however, such exemption, remission or deferral shall not be considered a subsidy when the taxes that are the subject of such measures are applied to goods physically incorporated, making normal allowance, in the goods to be exported;
- (g) the remission or drawback of import charges in excess of those levied on imported goods that are physically incorporated in the good exported, making normal allowance for waste; in particular cases, however, a firm may use a quantity of home market goods equal to, and having the same quality and characteristics as, the imported goods as a substitute for them in order to benefit from this provision if the import and the corresponding export operations both occur within a reasonable period of time, which shall not normally exceed two (2) years;
- (h) the provision by governments or special institutions controlled by governments of export credit guarantee or insurance programmes, of insurance or guarantee programmes against increases in the cost of exported goods or of exchange risk programmes, at premium rates which are manifestly inadequate to cover the long-term operating costs and losses of the programmes;
- (i) the grant by governments or special institutions controlled by and acting under the authority of governments of export credits at rates below those which they actually have to pay for the funds so employed or would have to pay if they borrowed on international capital markets in order to obtain funds of the same maturity, under the same credit terms and denominated in the same currency as the export credits; or the payment by them of all or part of the costs incurred by exporters or financial institutions in obtaining credits, in so far as these are used to secure a material advantage in export credit terms;
- (l) any other benefits, advantages and measures as may be determined by the Commission in conformity with the implementing regulations of this Law.

**Third paragraph.** – A measure shall be deemed to confer a benefit where it provides conditions more favourable than those normally available on the market. The use of multiple exchange rates in the country of origin or export shall be considered a subsidy where it confers a benefit on the exporter.

**Article 17.** – The amount of the subsidy shall be calculated in monetary units or *ad valorem* percentages per unit of the subsidized product imported.

### CHAPTER III

#### DUMPING, SUBSIDIES AND SAFEGUARDS

##### DETERMINATION OF INJURY AND THREAT OF INJURY

**Article 18.** – For the purposes of this Law, "material injury" shall mean the adverse impact on a domestic industry of dumped imports or imports covered by any kind of specific subsidy within the meaning of the Law and its regulations.

**Article 19.** – For the purposes of this Law, "threat of injury" shall mean a clearly foreseen and imminent risk of material injury to a domestic industry.

**Article 20.** – Determination of the existence or threat of material injury through the effects of dumping or subsidization shall be based on positive evidence and involve an objective examination of:

- (a) The volume of the dumped or subsidized imports;
- (b) the effect of such imports on prices of like products in the Dominican Republic;
- (c) the impact of dumped or subsidized imports on the domestic industry.

**Article 21.** – Anti-dumping and countervailing duties may be imposed where the Commission's investigation has found that:

- (a) There has been a significant increase in imports at dumped or subsidized prices, either in absolute terms or relative to domestic production or consumption;
- (b) imports are entering at a price below that of the like domestic product and such imports have in some way depressed or prevented an increase in the price of the like domestic product;
- (c) this causes injury to the domestic industry or threatens to cause injury to a domestic industry.

**Paragraph.** – One or several of these factors cannot necessarily give decisive guidance.

**Article 22.** – To determine the impact of dumped or subsidized imports on the domestic industry producing like goods, the Commission shall examine all relevant economic factors and indices, including:

- (a) Actual and potential decline in production, sales, market share, profits, productivity, return on investments, utilization of installed capacity, inventories and employment;
- (b) factors affecting prices on the domestic market; and possibly
- (c) actual or potential negative effects on cash flow and ability to raise the capital needed for adjustment.

**Paragraph.** – The above list of factors and indices is not exhaustive, nor can one or several of these factors or indices necessarily give decisive guidance.

**Article 23.** – In making a determination regarding the existence of a threat of material injury, the Commission shall consider factors such as:

- (a) The nature and likely trade effect(s) of the subsidy or subsidies under investigation;
- (b) a rate of increase of dumped or subsidized imports indicating the likelihood of substantially increased imports in the very near future;

- (c) freely disposable, or an imminent substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped or subsidized exports to the Dominican market, taking into account the availability of other export markets to absorb the possible increase in exports;
- (d) whether imports are entering at prices that may have a significant depressing or suppressing effect on domestic prices and would be likely to increase demand for further imports;
- (e) inventories of the investigated product.

**Paragraph.** – No one of the above factors will by itself necessarily be sufficient to make a final determination.

**Article 24.** – For the purposes of applying safeguard measures, the Commission shall understand "serious injury" to mean a significant overall impairment in the position of a domestic industry. "Threat of serious injury" shall be understood to mean serious injury that is clearly imminent and based on facts and not merely on allegation, conjecture or remote possibility.

**Article 25.** – In relation to anti-dumping investigations and the determination of subsidies, "domestic industry" shall mean all domestic producers of like products; or a proportion of those domestic producers whose collective output accounts for at least fifty (50) per cent of the total domestic production of such products.

**Paragraph.** – For the purposes of applying safeguard measures, "domestic industry" shall mean all domestic producers of like or directly competitive goods; or a proportion of those domestic producers whose collective output of like or directly competitive products accounts for at least fifty (50) per cent of the total domestic production of processed goods.

**Article 26.** – Where producers in the domestic market are related to the exporters or importers or it is established that they themselves are importers of the product under investigation or of a like product from other countries, the term "domestic industry" may exclude such producers and shall be interpreted as referring to the rest of the producers.

**First paragraph.** – Domestic producers and exporters may be deemed to be related where:

- (a) One of them directly or indirectly controls the other;
- (b) both of them are directly or indirectly controlled by a third person;
- (c) together they directly or indirectly control a third person, provided that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers.

**Second paragraph.** – For the purposes of this Article, one person shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

**Article 27.** – The Commission may deem injury to exist even where fifty (50) per cent or more of the domestic industry is not injured, in cases where the latter can be divided into two or more



competitive markets and the producers within each market may be regarded as a separate industry. For the purposes of such a finding, the Commission shall establish the following:

- (a) The producers in such a market sell all or almost all of their production of the product in question in that market;
- (b) the demand in that market is not to any substantial degree supplied by producers of the product in question which are located elsewhere in the territory;
- (c) there is a large concentration of dumped or subsidized imports in such an isolated market;
- (d) the dumped or subsidized imports are causing injury to the producers of all or more than fifty (50) per cent of all of the production in that market.

#### CHAPTER IV

#### CAUSAL LINK

**Article 28.** – Once the existence or threat of serious injury to the domestic industry has been found, it is necessary to establish a causal link. The investigation shall demonstrate, on the basis of objective evidence, that the injury or threat of injury is a direct consequence of the dumped or subsidized imports.

**Paragraph.** – When other factors are causing injury to the domestic industry at the same time, such injury may not be attributed to the imports under investigation. In this respect, the Commission shall consider factors such as:

- (a) The volume and prices of imports not under investigation in connection with the subject product;
- (b) contraction in demand or changes in the patterns of consumption;
- (c) trade restrictive practices of and competition between foreign and domestic producers;
- (d) developments in technology and export performance;
- (e) productivity of the domestic industry.

**Article 29.** – The effect of the dumped or subsidized imports shall be assessed in relation to domestic production of the like product when available data permit the separate identification of that production on the basis of such criteria as the production process, producers' sales performance and profits.

**Paragraph.** – If domestic production of the like product cannot be identified separately on the basis of such criteria, the assessment shall be made by examining the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided.

**Article 30.** – Anti-dumping or countervailing duties may be applied without a determination of injury or threat of injury to the domestic industry when the goods come from a country with which

the Dominican Republic has not concluded a specific bilateral treaty or a multilateral treaty on the subject.

**Article 31.** – Where imports of a product from more than one country are the subject of simultaneous anti-dumping or subsidy investigations, the Commission, barring exceptional circumstances, shall cumulatively assess the effects of such imports in the light of their role and importance in competition between imported products and like domestic products. In so doing, the authorities shall proceed in strict accordance with Article 3.3 of the Anti-Dumping Agreement and Article 15.3 of the Agreement on Subsidies and Countervailing Measures of the WTO.

### TITLE III

#### PROCEDURES

**Article 32.** – Save in exceptional circumstances, an investigation to determine the existence, degree and effects of alleged dumping or subsidization shall be initiated upon a formal application by or on behalf of the affected domestic industry. A written application to initiate an investigation shall be lodged with the Commission, setting forth evidence of:

- (a) Dumping or subsidization;
- (b) injury;
- (c) a causal relationship between the dumped or subsidized imports and the alleged injury.

**Paragraph.** – The Commission shall reject the application if it fails to meet the requirements of this Article.

**Article 33.** – The application to initiate an investigation shall include the following information:

- (1) The identity of the applicant and a detailed description of the volume and value of domestic production of the like product, including a list of the domestic producers involved and the volume and value of production of the like product accounted for by such producers;
- (2) the estimated total volume and value of domestic production of the like product;
- (3) a complete description of the allegedly dumped or subsidized product, its tariff classification, the name(s) of the country or countries of origin or export in question, the identity of each known exporter or foreign producer and a list of known persons importing the product in question;
- (4) a full description of the product produced by the domestic industry;
- (5) information on the existence, including the amount and nature, of the subsidy in question or on representative prices at which the product in question is sold when destined for consumption in the domestic market(s) of the country or countries of origin or export, or, where appropriate, information on the prices at which the product

is sold from the country or countries of origin or export to a third country or third countries, or on the constructed value of the product;

- (6) data on export prices or, where appropriate, on the prices at which the product is first resold to an independent buyer in the Dominican Republic;
- (7) information on the evolution of the volume of the allegedly dumped or subsidized imports, the effect of these imports on prices of the like product in the domestic market and the consequent impact of the imports on the domestic industry.

**Paragraph.** – Relevant factors having a bearing on the state of the domestic industry shall be consistent with several of those listed in paragraphs 2 and 4 of Article 3 of the WTO Anti-Dumping Agreement and Articles 15.2 and 15.4 of the WTO Agreement on Subsidies and Countervailing Measures.

**Article 34.** – An investigation shall not be initiated unless the Commission has determined, on the basis of an examination of the degree of support for, or opposition to, the application expressed by domestic producers of the like product, that the application for investigation has indeed been made by or on behalf of the domestic industry allegedly or actually affected.

The Commission shall consider the application to have actually been made by or on behalf of the domestic industry if it is supported by those domestic producers whose collective output constitutes more than fifty (50) per cent of total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application.

**Paragraph.** – No investigation shall be initiated by the Commission if domestic producers expressly supporting the application account for less than twenty-five (25) per cent of total production of the like product produced by the domestic industry.

**Article 35.** – In exceptional or special circumstances, in particular where there is clear evidence of fragmentation of domestic production, the Commission may initiate an investigation *ex officio*, without having received a written application by or on behalf of the domestic industry, provided that there is sufficient evidence of dumping or subsidization and of the existence or threat of material injury, and a causal link between dumping or subsidization and the injury or threat thereof.

**Paragraph.** – Where the domestic industry is so fragmented as to involve a particularly high number of producers, the Commission may use universally recognized statistical sampling techniques to determine the degree of support or opposition.

**Article 36.** – Where the Commission has not yet decided to initiate an investigation, it shall avoid any publicizing of the application. Where it decides to initiate the investigation, it shall notify, via the Ministry of Foreign Affairs, the government of the exporter concerned and any other foreign parties involved and give public notice of its decision in a national newspaper. Where the number of exporters involved is particularly high, only the association of the exporting member or the relevant trade association, as appropriate, shall be notified.

**First paragraph.** – Public notice shall be given of any preliminary or final resolution, whether affirmative or negative, of any decision to accept an undertaking, of the termination of such an undertaking, and of the termination of a definitive anti-dumping or countervailing duty.

**Second paragraph.** – Investigations into unfair trade practices shall be concluded within a period of six (6) months, which may, in exceptional and duly justified cases, be extended to eighteen (18) months.

**Article 37.** – To ensure maximum transparency once the application to initiate an investigation has been accepted, the Commission shall ensure that the aforementioned public notice contains the following information:

- (a) The name(s) of the exporting country or countries and the product involved and the date of initiation of the investigation;
- (b) the grounds for the allegation of injury stated in the application and a summary of the factors on which the allegation is based;
- (c) the address and domicile of the Commission and the time-limits allowed to members and interested parties for making their views known.

**Paragraph.** – Once the investigation has been opened, the Commission shall make the full text of the written application available, on request, to interested parties. Likewise, interested parties shall be given access throughout the proceedings to all relevant information that is not confidential, so that they can use such information to prepare their submissions. They shall be furnished with summaries of information provided on a confidential basis by any of the parties.

**Article 38.** – For the purposes of the investigation, the term "interested parties" shall mean local producers and importers and foreign exporters of the product under investigation, foreign legal persons with a demonstrated interest in the matter, and trade or business associations a majority of the members of which produce the like product in the Dominican Republic.

**Article 39.** – Exporters or foreign producers shall be given at least thirty (30) days following the issue of the notice of initiation of the investigation to complete and return the investigation form and present their evidence or arguments. The time-limit shall be extended for a further thirty (30) days on request by any of the parties.

**Article 40.** – During the investigation, the Commission shall request the cooperation of the General Customs Directorate and any other government body in obtaining and clarifying information about the case, including in seeking information from other countries, via the Ministry of Foreign Affairs.

**Paragraph.** – Where appropriate, the Commission shall request associations of domestic producers connected with the investigation to supply information relevant for the determination of injury.

**Article 41.** – The Commission shall terminate the investigation if:

- (a) The dumping margin is determined to be *de minimis*, that is, if the margin is less than two (2) per cent, expressed as a percentage of the export price;
- (b) the volume of dumped imports is found to account for less than three (3) per cent of imports of the like product into the Dominican Republic.

**Paragraph.** – Article 41(b) shall not apply where countries whose individual shares represent less than three (3) per cent of imports of the like product into the Dominican market collectively account for more than seven (7) per cent of those imports.

**Article 42.** – As regards subsidized imports, the Commission shall terminate the investigation if:

- (a) In the case of a product from a developing country, the amount of the subsidy is *de minimis*, that is, if the amount of the subsidy represents less than one (1) per cent, or the volume of subsidized imports or the injury may be considered insignificant;
- (b) in the case of a product from a developing country, the amount of the subsidy granted for the product does not exceed two (2) per cent of its value calculated on a per unit basis, or the subsidized imports represent less than four (4) per cent of the total imports of the like product in the Dominican Republic.

**Paragraph.** – Article 42(b) shall not apply where the imports from other developing countries whose individual shares represent less than four (4) per cent collectively account for more than nine (9) per cent of total imports of the like product in the Dominican Republic.

**Article 43.** – The Commission may deem an investigation with a view to imposing anti-dumping and countervailing duties to be terminated upon official receipt of a voluntary undertaking from the exporter to revise its prices or to cease exports to the Dominican Republic at dumped or subsidized prices, so that the Commission is satisfied that the injury or threat of injury to national production is eliminated. If the undertaking is accepted, the investigation shall nevertheless proceed until its completion if the exporter so desires or the Commission so decides.

**First paragraph.** – If, notwithstanding such an undertaking, it is decided to proceed with the investigation and this leads to a negative determination of injury, the undertaking shall automatically lapse except in instances where the determination is due in large part to the existence of a price undertaking. The Commission may then require that the undertaking be maintained for a reasonable period of time consistent the provisions of this Law.

In the event of an affirmative determination of injury, the undertaking shall continue, under the terms on which it was made and pursuant to the provisions of this Law.

**Second paragraph.** – Price increases under an undertaking shall not be higher than necessary to eliminate the margin of dumping or the amount of the subsidy.

**Article 44.** – The existence of an anti-dumping or subsidy investigation shall not hinder customs clearance of the goods investigated.

**Article 45.** – The Commission may adopt provisional measures, at the request of the interested party or on its own initiative, provided that an investigation has been initiated pursuant to the provisions of this Law and an affirmative preliminary determination of injury to a domestic industry has been made, and the Commission deems such measures necessary to prevent injury from being caused during the investigation process.

**First paragraph.** – Provisional measures shall not be applied sooner than sixty (60) days following the date of publication of the resolution initiating the investigation. To determine the need for provisional measures, the Commission shall consider whether the exporter or the product in

question has been the subject of a remedial measure in any country and or of any other investigation(s) in the Dominican Republic.

**Second paragraph.** – The measures specified in this Article may take the form of a provisional anti-dumping or countervailing duty or a security – by cash deposit or bond – equivalent to the provisionally estimated amount of dumping or subsidization, which may not exceed the provisionally estimated margin of dumping or the provisionally calculated amount of the subsidy.

**Article 46.** – The application of provisional measures shall be limited to as short a period as possible, not exceeding four (4) months or, by decision of the Commission, on request by exporters representing a significant percentage of the trade involved, to a period not exceeding six (6) months. When the authorities, in the course of an investigation, examine whether a provisional duty lower than the margin of dumping or subsidization would be sufficient, these periods may be six (6) and nine (9) months, respectively.

**Article 47.** – Once the Commission has made a final determination – whether affirmative or negative – it shall issue a final resolution, which shall be published in a national newspaper.

**Paragraph.** – Final resolutions by the Commission shall be enforceable, regardless of any appeal.

**Article 48.** – If the final resolution confirms the amount of the provisional measures adopted, the amount paid shall be set against that of the definitive measures. Where a bond has been posted, it shall be cashed if payment has not been made within a reasonable period of time. If the amount of the definitive measure exceeds that of the provisional measure, the difference shall not be collected; if it is lower, the difference shall be reimbursed.

**Article 49.** – Where a final determination of injury (but not of a threat thereof or of a material retardation) is made, definitive measures may be applied only for the period for which provisional measures have been applied. In the case of a final determination of a threat of injury, however, where the effect of the dumped imports would, in the absence of the provisional measures, have led to a determination of injury, anti-dumping or countervailing duties may be levied retroactively for the period for which provisional measures have been applied.

**Article 50.** – Where the Commission decides not to apply definitive measures, the amount of any provisional duties paid shall be refunded or, where appropriate, the bonds shall be released.

**Paragraph.** – In this case, the interested party shall apply for a refund of the amount paid or recognition of such amount as credit towards future tariffs and, where appropriate, for its security to be released.

**Article 51.** – Once a preliminary or a final resolution imposing provisional or, as the case may be, definitive duties has been published, the Commission shall make a recommendation to the General Customs Directorate, via the Ministry of Finance, within no more than five (5) working days counted from the date of the resolution, for the application of anti-dumping or countervailing duties.

**Article 52.** – Definitive anti-dumping or countervailing duties may be levied on products which were entered for consumption not more than ninety (90) days prior to the date of application of provisional measures, where the authorities determine for the dumped or subsidized product in question that the injury is caused by massive imports of the product over a relatively short period of time.

**First paragraph.** – For the purposes of this Article, the Commission shall have determined that the massive imports in question are likely to seriously undermine the remedial effect of the definitive anti-dumping duties to be applied, subject to the importers concerned having been given an opportunity to comment.

**Second paragraph.** – In the event of dumping, the Commission shall also determine that there is a history of dumping and that the domestic importer was, or the importers were, or should have been, aware that the exporter practised dumping. No anti-dumping or countervailing duty shall be levied retroactively on products imported prior to the date of initiation of the investigation.

**Article 53.** – The Commission shall notify the application of provisional or definitive anti-dumping or countervailing duties to the relevant Committee of the World Trade Organization, pursuant to the Agreement on Implementation of Article VI and the Agreement on Subsidies and Countervailing Measures.

**Article 54.** – The amount of definitive anti-dumping duties and countervailing measures shall be equivalent to the margin of dumping or subsidization determined. Anti-dumping and countervailing duties shall remain in force for a period of five (5) years counted from the date on which they were imposed, or from the date of the most recent review, if that review has covered both dumping and injury, or that of the most recent review conducted pursuant to Article 11.3 of the Anti-Dumping Agreement and Article 11.3 of the Agreement on Subsidies and Countervailing Measures of the World Trade Organization (WTO).

**Paragraph.** – Article 47 notwithstanding, the Commission may undertake a review before the five years have elapsed, on its own initiative or on a duly reasoned request by or on behalf of the domestic industry affected, within a reasonable period of time prior to that time-limit, where it determines that the expiry of the duty would lead to continuation or recurrence of injury to domestic production. In this case, the duty may remain in force pending the outcome of such a review.

**Article 55.** – The Commission may authorize a refund to exporters subject to an anti-dumping duty where it can be established that the margin of dumped imports made following the conclusion of the proceedings is lower than the margin of dumped imports that were under investigation over the year that preceded the proceedings.

**Paragraph.** – A refund of any such duty paid in excess of the actual margin of dumping shall normally take place within twelve (12) months, and in no case more than eighteen (18) months, following the date on which a request for a refund, duly supported by evidence, has been made by an importer of the product subject to the anti-dumping duty. The refund authorized shall normally be made within ninety (90) days of the aforementioned decision.

**Article 56.** – Once a definitive anti-dumping or countervailing duty has been applied, the Commission may consider the possibility of the revenue generated by the measure being used to finance specific programmes for the development and modernization of the sector in question, according to specific rules and procedures and having due regard for the level of technological development of the enterprises directly affected by unfair foreign trade practices.

## TITLE IV

### SAFEGUARD MEASURES

**Article 57.** – Safeguard measures are designed to regulate imports on a temporary basis, and their objective is to prevent or remedy serious injury to the domestic industry and to facilitate adjustment for domestic producers.

**Article 58.** – Safeguard measures shall be applied when a product, irrespective of its origin, is being imported in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause injury to a domestic industry that produces like or directly competitive products. Safeguard measures shall be applied to an imported product irrespective of its source.

**Article 59.** – An investigation to determine the existence of conditions as set forth above and requiring the imposition of a safeguard measure shall be initiated upon a written application lodged with the Commission by an enterprise or group of enterprises representing at least twenty-five (25) per cent of domestic production of the like or directly competitive product.

**Article 60.** – The Commission may initiate an investigation *ex officio*, subject to the requirement of evidence that the domestic industry is materially unable to submit the necessary application.

**Article 61.** – An application for the imposition of a safeguard measure shall include:

- (a) A description of the imported product, its tariff classification, the customs duty in force and a description of the like or directly competitive product;
- (b) the names and addresses of the enterprises or entities represented in the application, indicating the percentage level of domestic production of the product represented by those enterprises;
- (c) import data for the product over the previous three years or another representative period showing the increase in imports;
- (d) data on the volume and value of domestic production for the previous three years or another period that is representative for the industry;
- (e) quantitative data showing serious injury or the threat of injury for the period of investigation, including but not confined to the following: the degree of utilization of installed capacity, closure of plants, unemployment, changes in price levels, production, productivity, sales, and profitability of the relevant portion of domestic production;
- (f) a description of the causes of the serious injury or of the grounds indicating a threat of serious injury, and the extent to which such injury or threat of injury is attributable to the imports under investigation;
- (g) a statement giving specific reasons for seeking application of a safeguard measure and the estimated level of the measure needed to ensure the achievement of the objectives pursued.



**Article 62.** – If critical circumstances are alleged, that is, in situations in which any delay in taking action would cause damage difficult to repair, the application shall set forth the grounds which serve to demonstrate that the increased imports are causing or threatening to cause injury to the domestic industry.

**Article 63.** – Within thirty (30) days of receiving the application to initiate an investigation, the Commission shall:

- (a) Accept the application, having deemed that there are conditions warranting such a decision; the existence of due grounds shall be established by ascertaining that the application is being filed on behalf of a representative portion of the domestic industry and that there is sufficient evidence of increased imports, injury or the threat of serious injury, and of the causal link between them;
- (b) request the applicant to provide further evidence or information, with a view to determining, as objectively as possible, whether there are due grounds for initiating an investigation;
- (c) reject the application where it finds that there is insufficient evidence to warrant the opening of an investigation.

**Paragraph.** – In cases (a) and (b), the Commission shall give public notice of the decision agreeing or declining to initiate the investigation in a national newspaper.

**Article 64.** – Once the Commission has initiated an investigation process, it shall immediately notify, via the Ministry of Foreign Affairs, governments whose exports might be affected by the application of a safeguard measure. It shall likewise notify the Committee on Safeguards of the World Trade Organization (WTO).

**Article 65.** – The Commission shall give the interested parties thirty (30) days following the date of publication of the notice of initiation of the investigation to provide their initial responses to the form setting out the details of the investigation and to present any evidence or arguments they consider relevant in defence of their interests in the investigation. This period may be extended, once only, by the Commission, where it has reasonable and valid grounds to do so.

**Article 66.** – An investigation to determine whether increased imports and the conditions under which the products are being imported have caused or threaten to cause serious injury to the domestic industry shall consider all factors of an objective and quantifiable nature having a bearing on the position of the affected portion of the industry. The determination of the existence or threat of serious injury shall be based on objective evidence showing a causal link between the increased imports of the investigated product and the existence or threat of serious injury.

**Article 67.** – Upon termination of the investigation, the Commission shall publish a report setting forth its findings and reasoned conclusions on all issues of fact and law.

**Article 68.** – The Commission shall conclude its investigations within a period of six (6) months, which may, in exceptional and duly justified cases, be extended to eighteen (18) months.

**Article 69.** – Within thirty (30) days following the date of publication of the notice of initiation of the investigation, the applicant shall present the Commission with a plan for adjusting the

domestic industry, which shall be duly justified and in accordance with the objectives pursued through the application of the requested measure.

**Article 70.** – Once the Commission has reached its final decision, it may determine that all or part of the amount collected as a safeguard measure shall be allocated to support the plan for adjusting the domestic industry. In this case, the Commission shall request the Ministry of Finance to set up a specific fund with the revenue generated and shall specify the procedures for the distribution and use of the collected funds, the eligible producers and how the enterprises concerned may expend those funds.

**Article 71.** – Provisional and definitive safeguard measures shall apply only to the extent and for such period of time as may be necessary to prevent a threat of injury or remedy serious injury and to facilitate adjustment.

**Article 72.** – Safeguard measures shall not be applied to a product originating in a developing country Member of the World Trade Organization (WTO) as long as its share of total imports of the investigated product does not exceed three (3) per cent, provided that WTO developing country Members whose individual shares of imports into the Dominican Republic account for less than three (3) per cent collectively represent not more than nine (9) per cent of total imports of the product concerned.

**Article 73.** – Safeguard measures may take the form of tariff increases, tariff quotas or import ceilings. If the measure takes the form of a quantitative restriction, however, it shall not reduce the quantity of imports below the average of annual imports over the past three (3) calendar years, unless clear cause is shown of the need to set a different level in order to prevent or remedy serious injury.

**Article 74.** – Where the applicant for a safeguard measure alleges critical circumstances, the Commission may decide to apply a provisional measure. Within a maximum period of sixty (60) days, the Commission shall prepare a preliminary report detailing all pertinent factors of an objective nature needed to assess the relevance of applying the measure and its possible impact on the domestic market. The report shall demonstrate, on the basis of objective evidence, that the increased imports have caused or threaten to cause injury and that any delay would cause damage to the domestic industry that is difficult to repair.

**Paragraph.** – Prior to the adoption of any of the aforementioned provisional safeguard measures, the Commission shall notify the Committee on Safeguards of the World Trade Organization (WTO). Consultations shall begin as soon as the measure has been adopted. Any other matter pertaining to a provisional safeguard measure shall be resolved in accordance with the relevant provisions of the WTO Agreement on Safeguards.

**Article 75.** – A provisional safeguard measure shall be applied for no more than two hundred (200) days and only in the form of an increase in tariffs calculated *ad valorem*. The amount of a provisional safeguard measure shall be paid or guaranteed by the furnishing of a bond by the importer.

**Article 76.** – Where the Commission determines that the amount of a definitive safeguard measure is higher than that of a provisional safeguard measure that has been paid or guaranteed, the excess shall not be payable. Conversely, provisional duties collected in an amount higher than that fixed for a definitive measure shall be refunded.

**Article 77.** – If upon the conclusion of the investigation the Commission makes a affirmative determination regarding the application of a safeguard measure, it shall publish its report according to

the terms specified in Article 59. The Government of the Dominican Republic shall notify the WTO Committee on Safeguards and the interested parties of the decision.

**Article 78.** – A safeguard measure shall initially be applied for a period of not more than four (4) years, which may be extended to eight (8) years, including the period of application of any provisional measure, the period of initial application and any extension thereof.

**Article 79.** – A definitive safeguard measure whose period of application exceeds one (1) year shall be progressively liberalized at regular intervals during the period of application.

**Paragraph.** – When extended, a measure shall not be more restrictive than at the end of the period of initial application. During the extension period, the measure shall continue to be progressively liberalized.

**Article 80.** – No safeguard measure shall be applied again to a product subject to such a measure for a period of time equal to one half of that during which such measure had previously been applied. The period of non-application shall be at least two (2) years.

**Article 81.** – Before applying a provisional or definitive safeguard measure, the Government of the Dominican Republic shall provide adequate opportunity to hold consultations with Members of the World Trade Organization (WTO) that have a substantial interest as exporters of the product in question. Such consultations shall be held in accordance with the provisions of the WTO Agreement on Safeguards.

## TITLE V

### NATIONAL COMMISSION FOR THE REGULATION OF UNFAIR TRADE PRACTICES AND SAFEGUARD MEASURES

**Article 82.** – In pursuance of this Law a Commission for the Regulation of Unfair Trade Practices and Safeguard Measures is hereby established as a decentralized public body endowed with functional, judicial and financial autonomy, its own assets, and legal personality. It shall have legal capacity to acquire rights and contract obligations. It shall perform the tasks and exercise the functions specified in this Law and its regulations.

**Article 83.** – The Commission shall be domiciled in the capital of the Republic. It shall have national jurisdiction in matters governed by this Law and shall lie under the authority of the Office of the Comptroller General of the Republic.

**Article 84.** – The duties of the Commission shall be:

- (a) To conduct, at the request of an interested party or *ex officio*, any investigation required for the purposes of this Law and its regulations in order to determine, where appropriate, the application of anti-dumping and countervailing duties and safeguard measures;
- (b) to issue duly reasoned decisions, in accordance with the rules laid down in this Law and its regulations;

- (c) to request the implementation of its resolutions by the Ministry of Finance, via the General Customs Directorate, and such other government authorities as may be involved in procedures and remedies specified under this Law;
- (d) to appoint the Executive Director of the Commission and technical and administrative staff required for the performance of its statutory functions;
- (e) to coordinate with other public institutions representation of the interests of the Dominican State in international agencies and other countries in matters falling within its sphere of competence;
- (f) to adopt its own rules of procedure and to draw up and present its budget of income and expenditures;
- (g) to set the fees payable for the reception and processing of applications for investigation.

**Article 85.** – The Commission shall be made up of five (5) members or commissioners appointed for a period of four (4) years by the Executive. Prior to being sworn in, they shall be confirmed by the National Congress. The commissioners may be appointed and confirmed for a second term of office and may be removed only for serious misconduct or misbehaviour, by decision of the Executive.

**First paragraph.** – Before confirming the candidates proposed, the National Congress shall hold public consultations to determine their competence or aptitude.

**Second paragraph.** – The commissioners may appeal before the Supreme Court of Justice of an enforceable decision revoking their mandate, which shall be heard and judged by the Court sitting in full session.

**Article 86.** – The members of the Commission shall:

- (a) Be Dominican citizens having the full exercise of their civil rights and be over thirty (30) years of age;
- (b) be practising lawyers or economists and have a reputation of moral integrity; and
- (c) have demonstrated expertise in the areas of international trade, control of anti-competitive practices, arbitration, administrative or judicial procedures for the settlement of disputes and/or business economics.

**First paragraph.** – The Chairman of the Commission may not discharge any other public or private functions, except those of an honorary or academic nature.

**Second paragraph.** – Persons that have been sentenced to afflictive or infamous punishment may not be appointed as members of the Commission.

**Third paragraph.** – From the date of promulgation of this Law, persons who are blood relations to the fourth degree or relations by affinity to the second degree of any of the parties involved or who have maintained professional or commercial relations with, or have worked under the authority of, any such party over the previous five (5) years shall not be permitted to participate in any

part of the proceedings. In any such case, the Civil and Commercial Chamber of the Supreme Court of Justice shall appoint the required alternate(s).

**Article 87.** – For the Commission's deliberations to be valid, at least four (4) of its members shall attend and decisions shall be taken by an absolute majority of votes.

**Article 88.** – The Commission's decisions may be appealed before the Supreme Administrative Court within thirty (30) days from the date of issue. The implementing regulations of this Law shall determine where the appeal of a decision shall have a suspensive effect.

**Article 89.** – An item shall be included annually in the Income Budget and Law on Public Expenditure to cover the Commission's operating costs and the total or partial costs of actions and procedures initiated within the ambit of this Law by groups of producers or industries, especially in the agricultural sector and small- and medium-sized enterprises, that cannot afford to pay for them.

**Article 90 (Transitory provision).** – Until such time as the Commission has been constituted, the Executive shall determine which Ministry or official body shall have the responsibility of implementing this Law.

DONE in the Hall of the Chamber of Deputies, Palace of the National Congress, at Santo Domingo de Guzmán, National District, capital of the Dominican Republic, on the tenth day of October of the year two thousand and one, 158<sup>th</sup> year of Independence and 139<sup>th</sup> year of Restoration, (signed by) **Máximo Castro Silverio**, serving Vice-President; **Hermes Juan José Ortiz Acevedo**, Ad-Hoc Secretary; and **Rafael Ángel Franjul Troncoso**, Secretary.

DONE in the Hall of the Senate, Palace of the National Congress, at Santo Domingo de Guzmán, National District, capital of the Dominican Republic, on the eleventh day of December of the year two thousand and one, 158<sup>th</sup> year of Independence and 139<sup>th</sup> year of Restoration.

**ANDRES BAUTISTA GARCIA**

President

**DARIO GOMEZ MARTINEZ**  
Secretary

**RAMIRO ESPINO FERMIN**  
Secretary

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