

# WORLD TRADE ORGANIZATION

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Committee on Anti-Dumping Practices  
Committee on Subsidies and Countervailing Measures  
Committee on Safeguards

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

DOMINICAN REPUBLIC

### Supplement

The following communication, dated 13 February 2009, is being circulated at the request of the delegation of the Dominican Republic.

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## IMPLEMENTING REGULATIONS FOR LAW NO.1-02 ON UNFAIR TRADE PRACTICES AND SAFEGUARD MEASURES

### PART I GENERAL PROVISIONS

#### CHAPTER I PURPOSE, INSTITUTIONAL FRAMEWORK AND ORGANIZATION

**Article 1.** The purpose of these Regulations is to define the criteria and identify the administrative procedures to be observed by the Commission for the Regulation of Unfair Trade Practices and Safeguard Measures in relation to the imposition of anti-dumping or countervailing duties and the use of safeguard measures by the Dominican Republic.

**Article 2.** The Commission shall have competence throughout the Dominican Republic. It shall be domiciled in Santo Domingo, National District.

**Article 3.** The Commission shall be composed of five (5) members appointed by the Executive for a term of four (4) years in accordance with the criteria laid down in the Law.

**Paragraph.** The Commission shall appoint an Executive Director and the staff for the technical and administrative structure required for the performance of its statutory functions. The post descriptions and the criteria to be met by the candidates shall be determined in the Commission's Operating Regulations.

**Article 4.** The structure of the Commission shall include, *inter alia*, an Investigations Department composed of professionals with recognized capacity, experts in international trade and of irreproachable moral standing.

**First paragraph.** The Investigations Department shall present the findings of its investigations and make proposals and recommendations to the Commission.

**Second paragraph.** After having been empowered by the Commission, the Investigations Department shall be responsible for registration, filing, notifications, procedures at hearings, verification of documentation, keeping the archives and supervising the procedures followed in each case.

**Article 5.** The Commission shall be responsible for deciding on the initiation and conduct of the investigations prescribed in the Law and these Regulations for the purpose of determining the application of provisional and/or definitive anti-dumping or countervailing duties and safeguard measures, as appropriate, as well as for evaluating price undertakings and terminating investigations on the adoption of measures, their modification and the granting of extensions, by means of an investigation undertaken in accordance with the procedures laid down in these Regulations.

**Article 6.** The Commission shall be responsible for determining the existence of dumping, subsidies or increased imports, injury and the causal link, as well as for establishing anti-dumping or countervailing duties and safeguard measures following an investigation undertaken in accordance with the administrative procedure laid down in these Regulations.

**Article 7.** The Commission shall hold regular sessions at least once every two weeks. Regular sessions shall be convened in writing with five (5) days prior notice.

**Paragraph.** The Commission may, however, hold a special session when convened by its president or by one of its members. Special sessions shall be convened in writing with two (2) days prior notice.

**Article 8.** The agenda for the Commission's regular meetings, together with the relevant accompanying documents, shall be given to members at least three (3) days in advance. For special sessions, they shall be given one (1) day in advance.

**Article 9.** Sessions of the Commission shall be valid if four (4) members are present. Decisions shall be final if they are adopted by an absolute majority of the members present. If the votes are equally divided, the vote of the President of the Commission shall be decisive.

**First paragraph.** For the purpose of adopting decisions in the Commission, it shall be considered that three (3) members are an absolute majority.

**Second paragraph.** Members may justify their conclusions individually if they do not agree with the final decision adopted. The grounds for votes against decisions shall be given and noted in the decision.

**Article 10.** Members of the Commission 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 procedure.

**First paragraph.** In any such case, the Commission, in a written resolution addressed to the President of the Supreme Court of Justice, through its Civil and Commercial Chamber, shall request the appointment of the required provisional alternate.

**Second paragraph.** The Civil and Commercial Chamber of the Supreme Court of Justice shall appoint the required provisional alternate, who shall only be entitled to examine details relating to the specific case that has given rise to the conflict of interest. The said provisional alternate shall be an attorney or economist with recognized expertise in the issues within the competence of the Commission.

**Third paragraph.** The Civil and Commercial Chamber of the Supreme Court of Justice shall appoint the required provisional alternate within three (3) days of receiving the resolution transmitted by the Commission.

**Fourth paragraph.** If the Civil and Commercial Chamber of the Supreme Court of Justice fails to appoint the required provisional alternate within the period prescribed in the preceding paragraph, nothing shall prevent the Commission from examining the case in question in accordance with the provisions of Article 9 of these Regulations.

**Article 11.** Both general and specific decisions by the Commission relating to investigation procedures that affect third or interested parties shall be issued in the form of a resolution, which shall be dated, numbered consecutively and recorded on a medium available to the public.

**Paragraph.** Resolutions by the Commission shall be duly substantiated in order to inform interested parties of the legal and factual bases underpinning the decision.

**Article 12.** The Commission shall notify interested parties in writing of resolutions issued in connection with the procedures referred to in the Law and in these Regulations. Such notification shall be made no later than five (5) days of the date of the resolution.

**Paragraph.** Notifications require acknowledgment of receipt of the corresponding dispatch. Acknowledgements of receipt, with the certified parts returned, shall be placed in the administrative file, along with any other record of receipt.

**Article 13.** For the purposes of Article 88 of the Law, decisions taken by the Commission relating to anti-dumping or countervailing duties and safeguard measures may be appealed before the Tax and Administrative Litigation Tribunal within thirty (30) days of the date of issue.

**Article 14.** The Commission shall transmit the file containing non-confidential information to the Tax and Administrative Litigation Tribunal within five (5) days of the date on which the Tribunal notified the lodging of an appeal against a decision by the Commission.

**Article 15.** The Tax and Administrative Litigation Tribunal shall promptly ensure that the administrative procedures followed by the Commission when determining anti-dumping or countervailing duties or safeguard measures complied with the provisions of the Law and these Regulations.

**Article 16.** Submission of the appeals provided in this Chapter shall not have any suspensive effect on the anti-dumping or countervailing duties or safeguard measures laid down in the Law and in these Regulations.

**Article 17.** The Commission, through the Permanent Mission of the Dominican Republic to the World Trade Organization (WTO), shall notify the competent WTO Committees of the application of anti-dumping or countervailing duties or safeguard measures, pursuant to the provisions of the

Agreement on Implementation of Article VI of GATT 1994, the Agreement on Subsidies and Countervailing Measures, and the Agreement on Safeguards, respectively.

## **CHAPTER II DEFINITIONS**

**Article 18.** For the purposes of these Regulations, the following definitions shall apply:

- (i) "WTO Agreements": the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, the Agreement on Subsidies and Countervailing Measures and the Agreement on Safeguards of the World Trade Organization (WTO);
- (ii) "Threat of injury": in the case of dumping or subsidies, the clearly foreseen and imminent change in circumstances which would create a situation in which the dumped or subsidized imports would cause material injury to the domestic industry. It shall be based on facts and not merely on allegation, conjecture or remote possibility,
- (iii) "Threat of serious injury": in the case of safeguards, serious injury that is clearly imminent, based on facts and not merely on allegation, conjecture or remote possibility;
- (iv) "Import charges": the customs duties, other levies and taxes not mentioned in this Article and imposed on imports;
- (v) "Commission": the Commission for the Regulation of Unfair Trade Practices and Safeguard Measures established pursuant to Law No. 1-02 of 18 January 2002;
- (vi) "Full amount of the subsidy": the absolute monetary value, in terms of Dominican pesos, of the benefit received by a person eligible for a subsidy or subsidy programme on which countervailing measures may be imposed and which is under investigation;
- (vii) "Injury": in the case of dumping or subsidies, the adverse effects on a domestic industry caused by "dumped" imports or any type of specific subsidy in the terms described in the Law;
- (viii) "Serious injury": in the case of safeguards, a significant overall impairment in the position of a domestic industry;
- (ix) "Anti-dumping duty": the special duty imposed in order to offset or prevent dumping of any product subject to such a practice, but the duty may not exceed the margin of dumping with respect to the product concerned;
- (x) "Countervailing duty": the special duty imposed for the purpose of offsetting any subsidy of a type regulated by the Law or these Regulations granted directly or indirectly for the manufacture, production or export of any merchandise;
- (xi) "Domicile": in the case of natural persons, their main place of business or that of their legal representative. In the case of legal persons, the site of their head office or

that of their representative. For legal persons resident abroad, the site of their head office in their own country or the office known to the Commission or, in its absence, the office specified by the interested party;

- (xii) "Dumping": a product is considered as having been dumped when it is introduced into the commerce of the Dominican Republic at less than its normal value, if the export price of the product exported from a country of origin or source to the Dominican Republic is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country;
- (xiii) "GATT 1994": the General Agreement on Tariffs and Trade 1994;
- (xiv) "Confidential information": information whose disclosure would be of significant competitive advantage to a competitor or would have a significantly adverse effect upon a person supplying the information or upon a person from whom the latter acquired the information;
- (xv) "Direct taxes": taxes on wages, profits, interest, income, fees or royalties and any other form of income, as well as real estate tax;
- (xvi) "Indirect taxes": sales, consumption, turnover, value added, franchise, stamp, transfer, inventory and equipment taxes, border taxes and all taxes other than direct taxes and import charges;
- (xvii) "Law": Law No. 1-02 on Unfair Trade Practices and Safeguard Measures of 18 January 2002;
- (xviii) "Margin of dumping": the difference between the export price and the normal value on the basis of a comparison of both pursuant to the provisions of these Regulations;
- (xix) "WTO": the World Trade Organization, whose headquarters are in Geneva, Switzerland;
- (xx) "Interested parties": exporters, foreign producers or importers of a product under investigation, or trade or business associations a majority of the members of which are producers, exporters or importers of such product; the government of the exporting country; industrial users and consumers of the product under investigation and producers of the like product in the importing country or trade or business associations a majority of the members of which produce the like product in the territory of the importing country.
- (xxi) "Unfair trade practices": in terms of international trade, this covers dumping or subsidies which cause or threaten to cause injury to a domestic industry;
- (xxii) "Export price": without prejudice to the provisions of Article 12 of the Law, the comparable price actually paid or payable for the product sold for export to the Dominican Republic;
- (xxiii) "Like product": a product which is identical, i.e. alike in all respects to the product under consideration or, in the absence of such a product, another product which,

although not alike in all respects, has characteristics closely resembling those of the product under consideration;

- (xxiv) "Directly competitive product": a product whose physical characteristics and composition differ from those of the imported product but which fulfils the same functions, meets the same needs and is commercial substitutable;
- (xxv) "Related producers": producers are deemed to be related to producers or importers if:  
(a) one of them directly or indirectly controls the other; or (b) both of them are directly or indirectly controlled by a third person; or (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;
- (xxvi) "Domestic industry in the case of dumping or subsidies": domestic producers as a whole of the like products or those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products;
- (xxvii) "Domestic industry in the case of safeguard measures": producers as a whole of the like or directly competitive products operating within the Dominican Republic, or those whose collective output constitutes a major proportion of the total domestic production of those products;
- (xxviii) "Safeguards": in these Regulations, pursuant to the Law, the word "safeguards" shall have the same meaning as the word "safeguards" in the WTO Agreement on Safeguards;
- (xxix) "Specific subsidies": subsidies limited to certain enterprises located within a designated geographical region within the jurisdiction of the granting authority. Prohibited subsidies shall also be deemed to be specific subsidies. The setting or change of generally applicable tax rates by all levels of government entitled to do so shall not be deemed to be a specific subsidy for the purposes of these Regulations;
- (xxx) "Prohibited subsidies": subsidies contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance and subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods;
- (xxxi) "Amount of the subsidy": in connection with a subsidy or subsidy programme, the *ad valorem* amount of the subsidy on the product under investigation;
- (xxxii) "Normal value": the price for the product concerned in the ordinary course of trade when destined for consumption in the market of the exporting country. Where circumstances do not allow the normal value to be calculated, pursuant to WTO guidelines, these Regulations prescribe other methods for determining the normal value;
- (xxxiii) "Sales not in the ordinary course of trade": sales at prices below per unit (fixed and variable) costs of production plus administrative, selling and general costs over an extended period of time (normally one year but in no case less than six months) in substantial quantities, as well as sales to third parties related to an exporter under

investigation and the sale of an enterprise that is being liquidated to an independent buyer.

## **PART II DUMPING**

### **CHAPTER I DETERMINATION OF DUMPING**

**Article 19.** Subject to the provisions of Article 12 of the Law governing fair comparison, the existence of margins of dumping during the investigation phase shall normally be established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions or by a comparison of the normal value and export prices on a transaction to transaction basis.

**Article 20.** A normal value established on a weighted average basis may be compared to prices of individual export transactions if the authorities find a pattern of export prices which differ significantly among different purchasers, regions or time periods, and if an explanation is provided as to why such differences cannot be taken into account appropriately by the use of a weighted average to weighted average or transaction to transaction comparison.

### **CHAPTER II DETERMINATION OF THE NORMAL VALUE**

**Article 21.** Subject to the provisions of Article 9 of the Law on determination of the normal value, the Commission may determine the normal value on the basis of the comparable price paid or payable, in the ordinary course of trade, for the like product when destined for consumption in the country of origin when, for example, the products are simply in transit through the country of export or are not produced or there is no comparable price for them in the country of export. If the Commission applies this Article in order to determine the normal value on the basis of the country of origin, it shall be considered that the references to the exporting country in Articles 9, 10 and 13 of the Law mean the country of origin.

**Article 22.** Subject to the provisions of Article 2.2 of the Anti-Dumping Agreement, 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 consideration.

**Article 23.** For the purposes of Articles 10 and 13 of the Law, the amounts for administrative, selling and general costs and for profits shall be based on actual data pertaining to production and sales of the like product in the ordinary course of trade by the exporter or producer under investigation. When such amounts cannot be determined on this basis, they may be determined on the basis of:

- (i) The actual amounts incurred and realized by the exporter or producer in question in respect of production and sales in the domestic market of the country of origin of the same general category of products;
- (ii) the weighted average of the actual amounts incurred and realized by other exporters or producers subject to investigation in respect of production and sales of the like product in the domestic market of the country of origin; or

- (iii) any other reasonable method, provided that the amount for profit so established shall not exceed the profit normally realized by other exporters or producers on sales of products of the same general category in the domestic market of the country of origin of the like product.

**First paragraph.** The Commission shall consider all available evidence on the proper allocation of costs, including that which is made available by the exporter or producer in the course of the investigation provided that such allocations have been historically utilized by the exporter or producer, in particular in relation to establishing appropriate amortization and depreciation periods and allowances for capital expenditures and other development costs.

**Second paragraph.** Unless already reflected in the cost allocations under this Article, the Commission shall adjust costs appropriately for those non-recurring items of cost which benefit future and/or current production or for circumstances in which costs during the period of investigation are affected by start-up operations. The adjustment made for start-up operations shall reflect the costs at the end of the start-up period or, if that period extends beyond the period of investigation, the most recent costs which can reasonably be taken into account by the Commission during the investigation.

**Article 24.** The normal value or comparable price referred to in Articles 9 to 15 of the Law shall be determined in accordance with the provisions in those Articles. For products imported from countries deemed by the Commission to be non-market economies, the normal value shall be determined in accordance with Article 15 of the Law.

**First paragraph.** Substitute country shall mean a third country with a market economy similar to the exporting country. The similarity between the substitute country and the exporting country shall be defined fairly in such a way that the normal value in the exporting country can be compared on the basis of the domestic price in the substitute country. For the purposes of selecting the substitute country, in particular, economic criteria such as the cost of factors used intensively in producing the good investigated shall be taken into account.

**Second paragraph.** The product used to determine the normal value must originate in the substitute country. If the normal value is determined according to the export price in a substitute country, the price shall apply to a market other than the Dominican Republic. If there is no substitute country with a similar economy in which products like those exported by the other market economy country are produced, the market in the Dominican Republic itself may be taken as a substitute.

### **CHAPTER III DETERMINATION OF THE EXPORT PRICE**

**Article 25.** Taking into account Article 11 of the Law, if there is no export price or where the Commission deems that the export price is unreliable because there is association or a compensatory arrangement between the exporter and the importer or a third party:

- (i) The export price may be constructed on the basis of the price at which the imported products are first resold to an independent buyer; or
- (ii) if the products are not resold to an independent buyer or are not resold in the condition in which they were imported, on such reasonable basis as the Commission may determine.



**Paragraph.** When the Commission determines the normal value on the basis of the country of origin, the export price shall be the price actually paid or payable for the product under investigation when sold for export in the country of origin.

#### **CHAPTER IV DETERMINATION OF INJURY AND THE CAUSAL LINK**

**Article 26.** A determination of injury for the purposes of these Regulations shall be based on positive evidence and involve an objective examination of:

- (i) The volume of the dumped imports;
- (ii) the effect of the dumped imports on prices in the domestic market for like products; and
- (iii) the consequent impact of these imports on domestic producers of such products.

**Article 27.** With regard to the volume of the dumped imports, the Commission shall consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the Dominican Republic.

**Article 28.** With regard to the effect of the dumped imports on prices in the Dominican Republic, the Commission shall consider:

- (i) Whether there has been significant price undercutting by the dumped imports as compared with the price of a like domestic product; or
- (ii) whether the effect of such imports is otherwise to depress prices to a significant degree; or
- (iii) prevent price increases which otherwise would have occurred to a significant degree.

**Article 29.** Where imports of a like product from more than one country are simultaneously subject to anti dumping investigations, the Commission may cumulatively assess the effects of such imports on the domestic industry only if it determines that:

- (i) The margin of dumping established in relation to the product under investigation for each country is more than *de minimis* and the volume of imports of the product under investigation from each country is not negligible;
- (ii) a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between the imported products and the conditions of competition between the imported products and the like domestic product;
- (iii) the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases which otherwise would have occurred to a significant degree

**Article 30.** The examination of the impact of the dumped imports on the domestic industry concerned shall include an evaluation by the Commission of all relevant economic factors and indices having a bearing on the state of the industry, including:

- (i) Actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilization of capacity;
- (ii) factors affecting domestic prices;
- (iii) the magnitude of the margin of dumping;
- (iv) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investment.

**Paragraph.** This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance

**Article 31.** The Commission shall assess the effect of the dumped imports in relation to the Dominican Republic's 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 and profits.

**Paragraph.** If such separate identification of that production is not possible, the Commission shall assess the effects of the dumped imports by examining production of the narrowest group or range of products which includes the like domestic product and for which the necessary information can be provided.

**Article 32.** The Commission shall base its determination of a threat of material injury on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent.

**Article 33.** When determining a threat of material injury, in addition to the factors identified in this Chapter, the Commission shall take into account other factors such as:

- (i) A significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importation;
- (ii) sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped exports to the importing Member's market, taking into account the availability of other export markets to absorb any additional exports;
- (iii) whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and
- (iv) inventories of the product being investigated.

**First paragraph.** No one of these factors by itself can necessarily give decisive guidance but the totality of the factors considered must lead to the conclusion that further dumped exports are imminent and that, unless protective action is taken, material injury will occur.

**Second paragraph.** With respect to cases where dumped imports threaten to cause injury, the application of anti dumping measures shall be considered and decided with special care.

**Article 34.** The Commission shall demonstrate that the dumped imports are, through the effects of dumping, causing injury. The demonstration of a causal link between the dumped imports and the injury to the domestic industry shall be based on an examination of all relevant evidence, including:

- (i) The volume and prices of imports not sold at dumping prices;
- (ii) contraction in demand or changes in the pattern of consumption;
- (iii) restrictive trade practices by foreign and domestic producers;
- (iv) developments in technology;
- (v) the export performance and productivity of the domestic industry;
- (vi) the Commission shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors shall not be attributed to the dumped imports.

## **CHAPTER V INITIATION AND CONDUCT OF INVESTIGATIONS**

**Article 35.** An application for the initiation of an investigation procedure shall be made in writing by or on behalf of the domestic industry. In exceptional circumstances, the Commission may proceed ex officio, in accordance with domestic legislation, when it has sufficient evidence of dumping and the causal link.

**First paragraph.** For the purposes of this Article, an application shall be considered to have been made by or on behalf of the domestic industry if it is supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25 per cent of total production of the like product produced by the domestic industry.

**Second paragraph.** An application shall contain a description of the facts and be accompanied by the evidence reasonably available on which it is based. The facts shall be described succinctly, clearly and precisely, as shall the causal link, in order to allow it to be determined that the entry of the products in question into the domestic market is causing or threatens to cause injury to the domestic industry.

**Article 36.** The application and the forms sent out by the Commission and duly completed, as well as the accompanying documents, shall be submitted in writing in original versions, together with as many copies as there are importers, exporters and, where applicable, foreign governments named in the application.

**Paragraph.** Where the number of exporters involved is particularly high, the full text of the written application shall be provided only to the authorities of the exporting Member or to the relevant trade or business association.

**Article 37.** An application for initiation of a dumping investigation shall be submitted in writing, together with the forms sent out by the Commission, and shall meet the requirements laid down in

Articles 32 and 33 of the Law. The application shall contain such information as is reasonably available to the applicant on the following:

- (i) The identity of the applicant and a detailed description of the volume and value of the domestic production of the like product. Where a written application is made on behalf of the domestic industry, the application shall identify the industry on behalf of which the application is made by means of a list of all known domestic producers of the like product (or associations of domestic producers of the like product) and, to the extent possible, shall provide a description of the volume and value of domestic production of the like product accounted for by such producers;
- (ii) a full description of the allegedly dumped product, its tariff classification according to the Harmonized System, 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;
- (iii) information on 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 applicable, information on the prices at which the product is sold from the country or countries of origin or export to a third country or countries, or on the constructed value of the product and information on export prices or, where applicable, on the prices at which the product is first resold to an independent buyer in the territory of the importing Member;
- (iv) information on the trend in the volume of the allegedly dumped 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, as demonstrated by relevant factors and indices having a bearing on the state of the domestic industry.

**First paragraph.** The applications referred to in this Article shall be signed by the interested party or parties or by those acting on their behalf or representing them and shall be stamped with the seal of the company, enterprise or association.

**Second paragraph.** Any application submitted in accordance with the requirements of this Law and these Regulations may be withdrawn by the person that submitted it prior to or after the initiation of the investigation.

**Article 38.** The Commission shall examine the accuracy and adequacy of the evidence provided in the application to determine whether there is sufficient evidence to justify the initiation of an investigation. Simple assertion, unsubstantiated by relevant evidence, shall not be considered sufficient to meet the requirements of Article 37 of these Regulations. The Commission may request the applicant to provide additional information before deciding whether or not to initiate an investigation.

**Article 39.** The Commission may initiate an investigation when it has determined that:

- (i) The application has been made by the domestic industry or on its behalf; or
- (ii) the criteria for ex officio initiation in accordance with the provisions of Article 35 of the Law have been met; and

- (iii) there is sufficient evidence of dumping, injury and a causal link.

**Paragraph.** The Commission shall decide whether or not to investigate an anti-dumping investigation within a period of thirty (30) days of the date of receipt of the written application. If the application raises complex issues or if the Commission seeks additional information from the applicant, this period may be extended to forty-five (45) days. The parties shall have a period of five (5) days as of the date of the Commission's request in which to supplement the information

**Article 40.** If the Commission rejects an application for the initiation of a dumping investigation submitted by the domestic industry or on its behalf because there is not sufficient evidence, it shall promptly issue a resolution to the effect that there is no dumping, injury or causal link to justify the initiation of an investigation. This resolution shall be transmitted to the interested parties at the domicile mentioned in the application for initiation.

**Article 41.** The parties may make an appeal to the Commission for review of any resolution rejecting the initiation of an investigation. The time limit for lodging such an appeal shall be fifteen (15) days as of the date of notification of the resolution rejecting the application.

**Paragraph.** The Commission shall have a period of not more than thirty (30) days in which to respond to the request for review.

**Article 42.** After the Commission has decided to initiate an investigation, it shall notify the interested parties by means of a resolution which shall be published in a national newspaper and on the Commission's website within seven (7) days of its issue and shall contain the following information:

- (i) The name(s) of the exporting country or countries and the product involved;
- (ii) the date of initiation of the investigation;
- (iii) the grounds for the allegation of dumping stated in the application;
- (iv) a summary of the factors on which the allegation of injury is based;
- (v) the domicile selected by the interested parties according to the application for initiation of an investigation;
- (vi) the time limit given to members and interested parties to make their views known;
- (vii) any other information deemed necessary by the Commission.

**Article 43.** Pursuant to Article 44 of the Law, the anti dumping procedure shall not hinder the customs clearance of the goods investigated.

**Article 44.** Any confidential information provided by the parties in the investigations referred to in the Law and these Regulations shall be accompanied by the corresponding non-confidential summary and shall be regarded as confidential subject to written justification. These summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence.

**Article 45.** Any information which is by nature confidential (for example, because its disclosure would be of significant competitive advantage to a competitor or would have a significantly adverse

effect upon a person supplying the information or upon a person from whom the latter acquired the information), or which is provided on a confidential basis by parties to an investigation shall, upon good cause shown, be treated as such by the authorities.

**Article 46.** If information has been classified as confidential and the interested party has not submitted any justification or the corresponding non-confidential summary, the Commission shall request that justification for the confidential nature of the information and the non-confidential summary be furnished within three (3) days. The Commission shall not examine the application until it has been completed within the aforementioned time limit.

**Article 47.** If the parties which submitted confidential information fail to furnish the justification for its confidential nature or the corresponding non-confidential summary within the period prescribed in the preceding Article, the Commission may disregard the information. In exceptional circumstances, the parties may indicate that such information is not susceptible of summary, in which case a statement of the reasons why summarization is not possible must be provided. If the reasons are not provided, the information shall be disregarded by the Commission.

**Article 48.** The Commission alone shall have access to the information declared to be confidential. Where necessary, only the competent authorities of the WTO dispute settlement mechanisms shall have access to the information.

**Paragraph.** Without prejudice to the foregoing, the parties to the investigation may be given access to confidential information subject to authorization by the party that provided it.

**Article 49.** If at any time during the investigation, an interested party refuses access to the necessary information or does not provide it within the period determined by the Commission or significantly impedes the investigation in any other way, the Commission may make preliminary or definitive affirmative or negative determinations on the basis of the information available, including that in the application. The provisions of Annex II to the Anti-Dumping Agreement shall be observed when applying this Article.

**Paragraph.** The Commission shall take due account of any difficulties which interested parties may experience, in particular small companies, in supplying the information requested. The Commission shall provide any assistance allowed in this respect and may extend the time limit determined for the submission of particular information when necessary.

**Article 50.** When initiating the investigation, the Commission shall send questionnaires to any persons it considers may have information relevant to the investigation, including known domestic producers, importers, exporters or foreign producers.

**Article 51.** The Commission shall give foreign exporters and producers to which it has sent questionnaires a period of thirty (30) days in which to respond. The Commission shall pay due attention to any request for extension of the period and, provided there is proven justification for doing so, the extension shall be granted whenever feasible, taking into account the periods determined for the investigation.

**First paragraph.** In the case of foreign exporters and producers, it shall be considered as having been received one week after the date on which it was sent to the addressee or to the competent diplomatic representative or the official representative of the exporting country or transmitted through the Ministry of Foreign Affairs. The period of thirty (30) days indicated above shall be calculated as of the end of the aforementioned week.

**Second paragraph.** In the case of the domestic industry and importers to which questionnaires have been sent, the Commission shall give a period thirty (30) days in which to respond.

**Third paragraph.** The Commission may disregard replies to questionnaires that have not been submitted within the period given and in the form requested.

**Article 52.** During the investigation, the Commission may seek further information from interested parties in the form of supplementary questionnaires or written requests for clarification or additional information. Such requests shall indicate the date by which the reply is to be given. Whenever feasible and depending on the time limits laid down, sufficient time shall be given to allow significant replies to be submitted.

**Article 53.** Any interested party may, on its own initiative, submit in writing any information it considers relevant to the investigation. The Commission shall examine such information unless this would create excessive difficulties for it or impede the proper progress of the investigation. In such cases, the Commission shall provide the appropriate explanation.

**Article 54.** The Commission shall base its determinations on dumping, injury and a causal link on information corresponding to defined periods, which shall be the periods for which it requests information in the questionnaires.

**First paragraph.** In dumping cases, the period of investigation shall normally be the one-year period prior to the date of initiation of the investigation for which information is available. The period of investigation may not under any circumstance be less than six (6) months.

**Second paragraph.** In cases of injury, the period of investigation shall normally be three years. The Commission may, however, select a shorter or longer period if it deems it appropriate in the light of the information available on the domestic industry and the product under investigation.

**Article 55.** In cases where the product is normally sold at the retail level in the Dominican Republic, the Commission shall give industrial users of the product under investigation and representative consumers' associations the opportunity to provide any information relevant to the investigation on dumping, injury and the causal link between them. This information shall be provided in writing.

**Paragraph.** The Commission shall allow industrial users of the product under investigation and/or representative consumers' associations to make oral presentations at any hearing held in the course of an investigation.

**Article 56.** The Commission shall terminate the investigation within a period of no less than one year, and in exceptional cases where required or justified, within a period of no less than eighteen (18) months.

## **CHAPTER VI EVIDENCE**

**Article 57.** All documentation filed with the Commission to be used as evidence shall be in written form, either in, or translated into, the official language of the Dominican Republic clearly and precisely.

**First paragraph.** The Commission shall accept as evidence public and private documents, reports from expert(s), administrative recognition, oral evidence, and any other method of proof permitted by Dominican legislation.

**Second paragraph.** In order to be allowed as a method of proof, oral evidence shall be transcribed, signed by the party presenting it and made available to the other parties.

**Article 58.** The period allowed for the submission of evidence shall commence from the day following publication of initiation of the investigation up to the date on which the last public hearing in the procedure has been declared concluded.

**Paragraph.** After the period allowed for submitting evidence, interested parties shall have ten (10) days in which to transmit to the Commission in writing their conclusions regarding the substance or the events that occurred during the course of the procedure. In such case, the rules on confidentiality prescribed in the Law and these Regulations shall be observed.

**Article 59.** The Commission may conduct investigations in the territory of another country when necessary provided that it obtains the consent of the enterprises concerned and notifies the representatives of the said country's government and the country concerned does not oppose the investigation. Without prejudice to the provisions on the protection of confidential information, the authorities shall make the findings of such investigations available to the enterprises concerned or provide them with information thereon, and may make them available to the applicants.

**Paragraph.** Notifications shall be made in such a way that the interested party receives them at least ten (10) days prior to the visit, during which lapse of time the enterprise shall give its consent to the Commission.

**Article 60.** After obtaining the consent of the enterprises concerned, the Commission shall send to the authorities in the exporting country the names and addresses of the enterprises to be visited and the dates agreed.

**Paragraph.** If at any time during the investigation an interested party refuses access to the necessary information or does not provide it within the period determined by the Commission or significantly impedes the investigation in any other way, the Commission may make preliminary or definitive affirmative or negative determinations on the basis of information known to it.

**Article 61.** The notification shall contain the following information:

- (i) The competent authority issuing it;
- (ii) the name(s) or business name(s) of the persons to which the notification is to be addressed;
- (iii) the place(s) where the visit(s) is (are) to take place, which may be supplemented subject to notification to those visited, together with the date for the visit(s);
- (iv) the grounds and reasons for the visit, as well as its subject or purpose;
- (v) the signature of the competent official; and



- (vi) the names of the technical staff who will conduct the visit, whose numbers may be modified, supplemented or decreased by the Commission at any time, shall be communicated to the enterprise in due time.

**Paragraph.** Where, in exceptional circumstance, it is planned to include non-governmental experts in the investigating team, the enterprises and authorities in the exporting country shall be informed accordingly. Such non-governmental experts shall be liable to effective sanctions if they fail to comply with the provisions on the confidential nature of the information.

**Article 62.** During the investigation, the Commission may seek information from any interested party and consult other sources of information, as provided in Article 40 of the Law, and may also undertake verification visits. The enterprise visited shall have the right to indicate which information or data given or to be given to the visitors are of a confidential nature. A record shall be kept of each visit, showing the facts verified by the visitors. A copy of this record shall be handed over to the enterprise visited and placed in the public file on the case.

## **CHAPTER VII PRELIMINARY DETERMINATION**

**Article 63.** As provided in Article 45 of the Law, the Commission may make a preliminary determination of dumping, injury or threat of injury and a causal link. The preliminary determination shall be based on all the information available to the Commission at that time; the parties shall have a period of ten (10) days in which to submit their views on the preliminary determination. This period may not be extended and the period shall commence when the parties acknowledge receipt of the preliminary determination.

**Paragraph.** The resolution containing the preliminary determination issued by the Commission shall contain at least the following information:

- (a) The name of the applicant;
- (b) a description of the imported product subject to the procedure and its tariff classification;
- (c) the elements and evidence used to determine dumping, injury or threat of injury and its causal link;
- (d) the considerations of fact and of law leading the authority to initiate an investigation or to consider a preliminary determination; and
- (e) legal arguments, data, facts or circumstances substantiating and justifying the resolution in question.

**Article 64.** The Commission shall issue a public notification of all preliminary determinations. The notification shall contain the preliminary determination of dumping and injury, with reference to the questions of fact and of law on which the acceptance or rejection of the arguments is based. Taking into account the provisions on protection of confidential information, such notifications or reports shall indicate, *inter alia*:

- (i) The names of the suppliers or, where this is not feasible, the supplier countries concerned;

- (ii) a description of the product that suffices for customs purposes, including the tariff heading in the Harmonized System;
- (iii) the dumping margins determined, together with a full explanation of the reasons justifying the methodology used for the determination and the comparison between the export price and the normal value;
- (iv) considerations relating to the determination of injury;
- (v) the principal grounds substantiating the determination; and
- (vi) the amount of the provisional measures to be applied and the reasons why such provisional measures are necessary in order to prevent injury being caused during the investigation.

## **CHAPTER VIII PROVISIONAL MEASURES**

**Article 65.** The Commission shall comply with Articles 45 and 46 of the Law when imposing provisional measures.

**Article 66.** Anti-dumping duties shall be applied in an amount equivalent to or less than the margin of dumping that has been determined.

**First paragraph.** Provisional anti-dumping duties shall be in the form of *ad valorem* or specific duties. They shall be imposed in addition to other import duties on the imported products concerned, where these apply.

**Second paragraph.** The Directorate-General of Customs shall levy provisional anti-dumping duties in the appropriate amount in each case and without discrimination in respect of imports of the product declared dumped and the cause of injury, irrespective of their origin, with the exception of imports from sources regarding which price undertaking have been agreed, in accordance with the provisions of the Law and these Regulations.

**Article 67.** The Commission shall authorize the refund of duties paid in excess of the dumping margin, where applicable, in accordance with Article 55 of the Law.

## **CHAPTER IX TECHNICAL INFORMATION MEETINGS**

**Article 68.** The Commission shall hold technical information meetings with interested parties that so request within a period of fifteen (15) days of the day following the publication of the preliminary or definitive resolution for the purpose of explaining the methodology used to calculate the dumping, injury or threat of injury and the arguments relating to the causal link.

**Paragraph.** A report on the technical meeting shall be drawn up giving detailed information thereon. The report shall be signed by those participating. Interested parties may raise the questions they deem relevant provided that these relate to the information disclosed and comply with the rules on confidentiality provided in these Regulations. The report shall be placed in the administrative file on the case in question.

## CHAPTER X HEARINGS

**Article 69.** Throughout any anti-dumping investigation, all interested parties shall be given a full opportunity to defend their interests. For this purpose, subject to a written request, the Commission shall give all interested parties the opportunity of meeting with those parties having an opposing interest in order to explain their opposition and arguments against. When providing such an opportunity, the need to protect the confidential nature of information and the convenience of the parties shall be taken into account. No party shall be obliged to attend such a meeting and their absence shall not be to the detriment of their case.

**First paragraph.** When it deems necessary, the Commission may invite interested parties to attend a hearing without a request from an interested party.

**Second paragraph.** Interested parties shall have the right to present oral information at hearings and this shall be taken into account provided that it is subsequently submitted in writing within a period not exceeding five (5) days.

**Article 70.** In an investigation during which a hearing is held, at least ten (10) days prior to the date set for the hearing, any interested party may submit written arguments on any issue it deems relevant to the investigation. Following the hearing, interested parties that took part shall have a period of ten (10) days in which to submit written arguments in response to the arguments and information presented at the hearing.

**First paragraph.** No interested party shall be obliged to attend a hearing and failure to attend shall not be prejudicial to that party's interests. To the extent possible, the Commission shall arrange hearings taking into account the convenience of the interested parties.

**Second paragraph.** Interested parties that intend to be present at the hearing shall notify the Commission at least five (5) days prior to the date of the hearing of the names of the representatives and witnesses who will attend.

**Article 71.** Hearings shall be chaired by the President of the Commission, who shall ensure that confidentiality is respected and shall organize the hearing in such a way that all the parties participating are given an opportunity to express their views. The Commission shall keep a record of the hearing to be attached immediately to the public file, with the exception of confidential information.

**Paragraph.** If the President of the Commission is unable to be present at the hearing, the Commission shall appoint one of its members to preside over the hearing.

**Article 72.** Interested parties shall have the right to present oral information at hearings and this shall be taken into account provided that it is subsequently submitted in writing within a period not exceeding five (5) days. Such information shall be placed in the public file, with the exception of confidential information.

**Article 73.** During the hearings, the Commission shall first allow the applicant to explain possible solution(s) so that the other interested parties may express their views on the proposals. An administrative record of the hearings shall be kept describing their conduct, irrespective of the

outcome. The record shall be signed by the members of the Commission and the interested parties or their representatives that took part.

**Article 74.** After receiving a request for a hearing, the Commission shall examine the solution proposed and, where appropriate, within five (5) days of receipt of the request shall invite other interested parties to express their views within the five (5) days following the invitation.

## **CHAPTER XI DEFINITIVE DETERMINATION**

**Article 75.** The Commission shall adopt a definitive determination of dumping, injury or threat of injury and the causal link based on all the information obtained by the Commission in the course of the investigation and disclosed by the interested parties, subject to the provisions on confidentiality.

**First paragraph.** Thirty (30) days prior to making a definitive determination, the authorities shall inform all interested parties of the essential facts considered and used a basis for the decision on whether or not to apply definitive measures.

**Second paragraph.** The parties shall have a period of ten (10) days in which to review the essential facts and defend their interests in writing.

**Article 76.** The Commission shall issue a public notification of the affirmative or negative definitive determination. The notification shall contain all relevant information on the questions of fact and of law on which the determination is based, taking due account of the provisions on protection of confidential information, *inter alia*, the following:

- (i) The names of the known exporters and producers of the product under investigation;
- (ii) a description of the product under investigation that suffices for customs purposes, including the actual tariff classification in the Dominican Republic;
- (iii) the dumping margin that has been found to exist, where applicable, and the basis for the determination, including a description of the methodology used to determine the normal value and the export price and any adjustments that had to be made when comparing them;
- (iv) the factors that led to the determination of injury and the causal link, including information on factors other than the dumped imports that have to be taken into account;
- (v) any other reasons on which the definitive determination is based;
- (vi) the reasons for accepting or rejecting the relevant arguments or claims put forward by the exporters and importers;
- (vii) the amount of the anti-dumping duties to be imposed, including considerations relating to the examination; and
- (viii) whether definitive anti-dumping duties should be levied on the imports to which provisional measures had been applied and the grounds for the decision to do so.

**Article 77.** An interested party may withdraw the application referred to in the Law at any time during the procedure in accordance with the following rules:

- (i) If the application is withdrawn prior to publication of the resolution initiating the investigation, the Commission shall declare the investigation to be inadmissible by reason of withdrawal and shall publish the corresponding notification in a national newspaper and on the Commission's website; and
- (ii) if the application is withdrawn subsequent to publication of the resolution initiating the investigation, it shall only be accepted if the importers and foreign exporters give their consent to the Commission in writing. In such a case, the Commission shall declare the investigation terminated and shall publish the corresponding notification in a national newspaper and on the Commission's website;
- (iii) if some domestic producers wish to withdraw from the application in accordance with the foregoing rules whereas other producers do not wish to do so, the Commission may pursue the investigation if the latter represent a significant proportion of the domestic industry.

**Article 78.** In the investigation procedures referred to in this Chapter, the Commission shall compile an administrative file in accordance with which it shall issue the corresponding resolutions. The administrative file shall be composed of the following:

- (i) Documentary or other information transmitted to the Commission or obtained by the latter in the course of the administrative procedures, including any government communications relating to the case, as well as reports and minutes of meetings with one or all of the interested parties;
- (ii) the relevant resolutions issued by the Commission;
- (iii) transcriptions of the minutes of the meetings or hearings before the Commission; and;
- (iv) the notifications published in the national newspaper and on the Commission's website in relation to the administrative procedures, including reviews.

**Article 79.** Any communication made directly or through any conventional or electronic medium between the Commission and any interested party or its representatives during the investigation or review procedures shall be the subject of a written report stating briefly its purpose and its findings. In addition, the report shall include the name and title of the government official(s) who prepared it, the date and signature, and shall be promptly placed in the administrative file. Such reports shall be used to substantiate the Commission's decisions.

**Paragraph.** Where documentation referred to in this Article is transmitted, the interested parties shall also submit proof of its dispatch to the other interested parties, as well as the corresponding acknowledgement of receipt, showing the name and date of receipt in accordance with the format issued by the Commission.

**Article 80.** The Commission shall reject an application submitted in accordance with Article 37 of these Regulations and terminate the investigation promptly if it has ascertained that there is not sufficient evidence of dumping, injury or threat of injury or of a causal link to justify proceeding with

the case; the investigation shall be terminated immediately if it is determined that the margin of dumping is *de minimis* or that the real or potential volume of dumped imports or the injury is negligible.

**Paragraph.** The dumping margin shall be considered *de minimis* if it is less than 2 per cent expressed as a percentage of the export price. The volume of dumped imports shall normally be considered negligible if it is determined that those from a particular country account for less than 3 per cent of imports of the like product into the importing Member, unless countries which individually account for less than 3 per cent of the imports of the like product into the importing Member collectively account for more than 7 per cent of such imports.

**Article 81.** The Commission may levy definitive anti-dumping duties on products which were entered for consumption not more than ninety (90) days prior to the date of application of the provisional duties solely in the circumstances covered by Article 52 of the Law.

## **CHAPTER XII PRICE UNDERTAKINGS**

**Article 82.** For the purposes of Article 43 of the Law, price increases should be equivalent to or less than the margin of dumping if such increases would be adequate to remove the injury to the domestic industry.

**First paragraph.** The price undertakings accepted under this Chapter will be subject to the provisions of Chapter XIII of this Part.

**Second paragraph.** Price undertakings shall not be accepted from exporters unless the Commission has made a preliminary affirmative determination of dumping and injury caused by such dumping.

**Article 83.** Undertakings offered need not be accepted if the Commission considers their acceptance impractical (e.g. because of the high number of exporters), or for other reasons (e.g. general policy).

**Paragraph.** Should the case arise and where practicable, the Commission shall provide to the exporter the reasons which have led it to consider acceptance of an undertaking as inappropriate, and shall, to the extent possible, give the exporter an opportunity to make comments thereon.

**Article 84.** Price undertakings may be suggested by the Commission, but no exporter shall be forced to enter into such undertakings. The fact that an exporter does not offer such undertakings, or does not accept an invitation to do so, shall in no way prejudice the consideration of the case.

**Article 85.** The Commission may require any exporter from whom an undertaking has been accepted to provide periodically information relevant to the fulfilment of such an undertaking and to permit verification of pertinent data.

**First paragraph.** In case of violation of an undertaking, the Commission may take expeditious actions, such as the immediate application of provisional measures, using the best information available.

**Second paragraph.** In the case referred to in the preceding paragraph, definitive duties may be levied on products entered for consumption not more than ninety (90) days before the application of such provisional measures, except that any such retroactive assessment shall not apply to imports entered before the violation of the undertaking.

### CHAPTER XIII ANTI-DUMPING DUTIES

**Article 86.** The Commission shall decide whether or not to impose anti-dumping duty in cases where the requirements for imposition have been fulfilled. The Commission shall also assess the amount of the anti-dumping duty at a level equal to or lower than the full margin of dumping.

**First paragraph.** The amount of the anti-dumping duty shall not exceed the margin of dumping as established in these Regulations. The anti-dumping duty may be equal to or less than the margin of dumping, if such lesser duty would be adequate to remove the injury to the domestic industry.

**Second paragraph.** Provisional measures or anti-dumping duties shall be applied only to products which enter for consumption after the time when the decision taken by the Commission, under the provisions of the Law and these Regulations, except for those stipulated in Articles 49 and 52 of the Law, enters into force.

**Third paragraph.** The amount of the anti-dumping duty shall be assessed on a prospective basis. In such cases, provision shall be made for a prompt refund, upon request, of any duty paid in excess of the margin of dumping.

**Fourth paragraph.** In determining whether and to what extent a reimbursement should be made when the export price is reconstructed pursuant to Article 11 of the Law, the Commission should take account of any change in normal value, any change in costs incurred between importation and resale, and any movement in the resale price which is duly reflected in subsequent selling prices, and should calculate the export price with no deduction for the amount of anti-dumping duties paid when conclusive evidence of the above is provided.

**Article 87.** Anti-dumping duties shall take the form of *ad valorem* or specific duties, and shall be imposed in addition to any other import duties levied on the imported products concerned.

**Paragraph.** The Directorate-General of Customs will receive anti-dumping duty payments where appropriate.

**Article 88.** When an anti-dumping duty is imposed in respect of any product, such anti-dumping duty shall be collected in the appropriate amounts in each case, on a non-discriminatory basis on imports of such product from all sources found to be dumped and causing injury, except as to imports from those sources from which price undertakings under the terms of Articles 80 ff. of these Regulations have been accepted.

**First paragraph.** The Commission shall name the supplier or suppliers of the product concerned. If, however, several suppliers from the same country are involved, and it is impracticable to name all these suppliers, the Commission may name the supplying country concerned.

**Second paragraph.** If several suppliers from more than one country are involved, the Commission may name either all the suppliers involved, or, if this is impracticable, all the supplying countries involved.

**Article 89.** Any anti-dumping duty applied to imports from exporters or producers not included in the examination shall not exceed:

- (i) The weighted average margin of dumping established with respect to the selected exporters or producers; or
- (ii) where the liability for payment of anti-dumping duties is calculated on the basis of a prospective normal value, the difference between the weighted average normal value of the selected exporters or producers and the export prices of exporters or producers not individually examined.

**Paragraph.** For the purposes of this Article, the Commission shall not take into account any zero and *de minimis* margins. The Commission shall apply individual duties or normal values to imports from any exporter or producer not included in the examination who has provided the necessary information during the course of the investigation.

**Article 90.** If a product is subject to anti-dumping duties in the Dominican Republic, the Commission shall carry out a review for the purpose of determining individual margins of dumping for any exporters or producers in the exporting country in question who have not exported the product to the Dominican Republic during the period of investigation, provided that these exporters or producers can show that they are not related to any of the exporters or producers in the exporting country who are subject to the anti-dumping duties on the product in question.

**First paragraph.** Such a review shall be initiated and carried out on an accelerated basis, compared to normal duty assessment and review proceedings in the Dominican Republic. No anti-dumping duties shall be levied on imports from such exporters or producers while the review is being carried out.

**Second paragraph.** The Commission may, however, withhold appraisalment and/or request guarantees to ensure that, should such a review result in a determination of dumping in respect of such producers or exporters, anti-dumping duties can be levied retroactively to the date of the initiation of the review.

**Article 91.** If the definitive anti-dumping duty is higher than the provisional duty paid or payable, or the amount estimated for the purpose of the security, the difference shall not be collected. If the definitive duty is lower than the provisional duty paid or payable, or the amount estimated for the purpose of the security, the difference shall be reimbursed or the duty recalculated, as the case may be.

**Article 92.** Except as provided in Article 49 of the Law, where a determination of threat of injury or material retardation is made (but no injury has yet occurred) a definitive anti-dumping duty may be imposed only from the date of the determination of threat of injury or material retardation, and any cash deposit made during the period of the application of provisional measures shall be refunded and any bonds released in an expeditious manner.

**Article 93.** The Commission may, after initiating an investigation, take such measures as the withholding of appraisalment or assessment as may be necessary to collect anti-dumping duties retroactively, as provided for in Article 52 of the Law, once they have sufficient evidence that the conditions set forth in that paragraph are satisfied.

**Article 94.** Pursuant to paragraph I of Article 36 of the Law, any public notice of a preliminary or final determination, whether affirmative or negative, of a decision to accept a price undertaking, of the termination of such an undertaking, or of the termination of a definitive anti-dumping duty shall set forth, in sufficient detail, the findings and conclusions reached on all issues of fact and law considered



material by the investigating Commission. All such notices and reports shall be forwarded to the country or countries the products of which are subject to such determination or undertaking and to other parties known to have an interest therein.

**First paragraph.** A public notice of conclusion or suspension of an investigation in the case of an affirmative determination providing for the imposition of a definitive duty or the acceptance of a price undertaking shall contain, or otherwise make available through a separate report, all relevant information on the matters of fact and law and reasons which have led to the imposition of final measures or the acceptance of a price undertaking, due regard being paid to the requirement for the protection of confidential information. In particular, the notice or report shall contain the information described in these Regulations, as well as the reasons for the acceptance or rejection of relevant arguments or claims made by the exporters and importers, and the basis for any decision made under these Regulations.

**Second paragraph.** A public notice of the termination or suspension of an investigation following the acceptance of an undertaking pursuant to these Regulations, shall include, or otherwise make available through a separate report, the non-confidential part of this undertaking.

**Article 95.** In accordance with the time-periods established in Article 54 of the Law, anti-dumping duties shall remain in force as long as and to the extent necessary to counteract dumping which is causing injury.

**Article 96.** The Commission shall review the need for the continued imposition of the anti-dumping duties on its own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty, upon request by any interested party which submits positive information substantiating the need for a review.

**Paragraph.** Interested parties shall have the right to request the Commission to examine whether the continued imposition of the duty is necessary to offset dumping, whether the injury would be likely to continue or recur if the duty were removed or varied, or both. If, as a result of the review under this Article, the Commission determines that the anti-dumping duty is no longer warranted, it shall be terminated immediately.

**Article 97.** The reviews carried out under this chapter shall be undertaken expeditiously and shall normally be concluded within twelve (12) months the date of initiation of the review.

#### **CHAPTER XIV NOTIFICATIONS**

**Article 98.** The Commission shall promptly notify interested parties in writing of resolutions issued in connection with the procedures to which this Part of the Regulations refers.

**Article 99.** Notifications require acknowledgment of receipt of the corresponding dispatch. Acknowledgements of receipt, with the certified parts returned, shall be placed in the administrative file, along with any other record of receipt.

**Article 100.** In cases where the Commission does not know the address of the persons to be notified, the notification will be made once only through publication in a national daily newspaper. This publication will contain a summary of the request in question and the procedure being prosecuted.

**First paragraph.** In the case of persons resident outside the country, the Commission shall send the aforementioned notifications to the diplomatic representations of the relevant foreign governments through the Ministry of Foreign Affairs, for the purpose of establishing the mechanisms needed to circulate the content of the resolutions in question.

**Second paragraph.** For the purposes of this Article, the notification date is deemed to be that on which it is published in the national newspaper.

**Article 101.** The Commission, acting through the Ministry of Foreign Affairs (SEREX), shall notify the relevant WTO Committee of the application of provisional or definitive anti-dumping duties, pursuant to the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.

### **PART III SUBSIDIES AND COUNTERVAILING MEASURES**

#### **CHAPTER I SUBSIDIZATION**

**Article 102.** For the purposes of Article 16 of the Law, a subsidy shall be deemed to exist if there is a financial contribution by a government or any public body within the territory of a country, or if there is any form of income or price support in the sense of Article XVI of GATT 1994 and a benefit is thereby conferred.

**Paragraph.** A financial contribution by a government or any public body within the territory of a country shall be deemed to exist when:

- (i) A government practice involves a direct transfer of funds (e.g. grants, loans, and equity infusions), or potential direct transfers of funds or liabilities (e.g. loan guarantees);
- (ii) government revenue that is otherwise due is foregone or not collected (e.g. fiscal incentives such as tax credits);
- (iii) a government provides goods or services other than general infrastructure, or purchases goods;
- (iv) a government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions illustrated in (i) to (iii) above which would normally be vested in the government and the practice, in no real sense, differs from practices normally followed by governments.

**Article 103.** Pursuant to paragraph II(f) of Article 16 of the Law, the exemption of an exported product from duties or taxes borne by the like product when destined for domestic consumption, or the remission of such duties or taxes in amounts not in excess of those which have accrued, shall not be deemed to be a subsidy.

**Paragraph.** The Commission shall pay special attention to the provisions of Annexes II and III of the WTO Agreement on Subsidies and Countervailing Measures.

**Article 104.** A subsidy shall be countervailable only if such a subsidy is specific in accordance with the provisions of these Regulations.

**Article 105.** In order to determine whether a subsidy is specific to an enterprise or industry the following principles shall apply:

- (i) Where the granting authority, or the legislation pursuant to which the granting authority operates, explicitly limits access to a subsidy to certain enterprises;
- (ii) where the granting authority, or the legislation pursuant to which the granting authority operates, establishes objective criteria or conditions governing the eligibility for, and the amount of, a subsidy, specificity shall not exist, provided that the eligibility is automatic and that such criteria and conditions are strictly adhered to;
- (iii) if, notwithstanding any appearance of non-specificity resulting from the application of the principles laid down in this Article, there are reasons to believe that the subsidy may in fact be specific, other factors may be considered, such as the use of a subsidy programme by a limited number of certain enterprises, predominant use by certain enterprises, the granting of disproportionately large amounts of subsidy to certain enterprises, and the manner in which discretion has been exercised by the granting authority in the decision to grant a subsidy.

**Paragraph.** The expression "objective criteria or conditions", as used in paragraph (ii) of this Article, means criteria or conditions which are neutral, which do not favour certain enterprises over others, and which are economic in nature and horizontal in application, such as the number of employees or size of enterprise.

**Article 106.** A subsidy which is limited to certain enterprises located within a designated geographical region within the jurisdiction of the granting authority shall also be deemed to be specific. The setting or change of generally applicable tax rates by all levels of government entitled to do so shall not be deemed to be a specific subsidy for the purposes of these Regulations.

**Article 107.** The following subsidies shall be deemed to be specific:

- (i) Subsidies contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance;
  - (a) Subsidies shall be considered to be contingent in fact upon export performance when the facts demonstrate that the granting of a subsidy, without having been made legally contingent upon export performance, is in fact tied to actual or anticipated exportation or export earnings;
  - (b) the mere fact that a subsidy is accorded to enterprises which export shall not constitute sufficient reason for the subsidy to be considered an export subsidy within the meaning of this provision;
- (ii) subsidies contingent, in law or in fact, whether solely or as one of several other conditions, upon the use of domestic over imported goods.

**Article 108.** Any determination of specificity shall be clearly substantiated on the basis of positive evidence.

**Article 109.** Where the recipient is a State-owned enterprise which is subsequently privatized, it shall be presumed that a privatization at arm's-length and for fair market value extinguishes the benefit, except if it can be demonstrated, on the basis of positive evidence, that a benefit persists.

## **CHAPTER II CALCULATION OF SUBSIDIES**

**Article 110.** In calculating the total rate of subsidization of the investigated product for a given foreign producer or exporter, a rate of subsidization of that product for the producer or exporter shall be calculated for each investigated subsidy or subsidy programme, in accordance with the following Article. The sum of the resulting per subsidy or per programme rates shall be the total rate of subsidization of the product for that producer or exporter.

**Article 111.** To calculate the rate of subsidization of the investigated product for a foreign producer or exporter from a given investigated subsidy or subsidy programme, the Commission shall first determine the total subsidy amount(s) received by that producer or exporter from the subsidy or programme in question, in accordance with the provisions of Article 112 of these Regulations and the date(s) of receipt thereof, in accordance with the provisions of this Chapter. Second, the Commission shall determine, in accordance with the provisions of Chapter III of this Part, the portion of the total subsidy amount that is attributable to the subsidy period of investigation. Thirdly, the Commission shall determine, in accordance with Chapter IV of this Part, the total value during the subsidy period of investigation (POI) of the relevant sales of the foreign producer or exporter to which the subsidy POI amount can be attributed. Fourth, the Commission shall calculate the *ad valorem* rate of subsidization from the subsidy or programme by dividing the subsidy POI amount by the relevant sales value identified in the third step, and multiplying the result by 100.

**Article 112.** The total subsidy amount, calculated in terms of the benefit to the recipient, shall be determined by the Commission on the basis of the benefit conferred on the latter, has established in Article 17 of Law No. 1-02.

**Article 113.** In determining the total subsidy amount received by the recipient foreign producer or exporter under an investigated subsidy or programme, or the total *ad valorem* subsidization rate of the product under investigation for that recipient, the following elements shall be deducted, as appropriate:

- (i) Any application fee, or other costs necessarily incurred in order to qualify for, or to obtain, the subsidy;
- (ii) export taxes, duties or other charges levied on the export of the product to the Dominican Republic specifically intended to offset the subsidy or subsidies.

## **CHAPTER III DETERMINATION OF THE SUBSIDY AMOUNT ATTRIBUTABLE TO THE SUBSIDY POI**

**Article 114.** The subsidy amount attributable to the subsidy POI from an investigated subsidy or subsidy programme normally shall be the total subsidy amount received by the recipient from that subsidy or subsidy programme during that period.

**Article 115.** Notwithstanding the foregoing Article, where the total subsidy amounts are allocated over a multi-year period, the subsidy POI amount shall be the portion of the total subsidy amount of benefits allocated to that period.

**Article 116.** Where the Commission finds that a particular subsidy has one or more of the characteristics referred to in the following Article, the subsidy amount may be allocated over the average useful life of the recipient's operational assets.

**Paragraph.** Subsidies to be so allocated include subsidies that:

- (i) Have been provided for the purpose of purchasing fixed assets;
- (ii) are non-recurring;
- (iii) are oriented toward future production; and
- (iv) are transferred forward in the recipient's accounting records.

**Article 117.** The Commission shall determine the subsidy amount to be attributed to the subsidy POI from an allocable subsidy by dividing the total subsidy amount by the number of years of average useful life of the recipient's operational assets, ("the allocation period").

**Paragraph.** Except as otherwise provided, the date on which the subsidy POI amount from an allocable subsidy shall be deemed to have been received shall be the anniversary date of the original date of receipt of the subsidy.

#### **CHAPTER IV SALES TO WHICH THE SUBSIDY POI AMOUNT IS ATTRIBUTABLE**

**Article 118.** The sales to which the POI subsidy amount shall be attributed are the recipient's total sales during that period, unless the Commission is satisfied on the basis of positive evidence that a subsidy amount received by a foreign producer or exporter is tied to or designated to benefit a particular portion of the recipient's products or sales (e.g., production or sales of a particular product or products for a particular market or markets, etc.).

**Article 119.** Where the Commission is satisfied on the basis of positive evidence that a subsidy amount received by a foreign producer or exporter is tied to or designated to benefit a particular portion of the recipient's production or sales, the Commission shall attribute the subsidy amount to the value of the relevant sales of the recipient during the subsidy POI. In identifying such relevant sales the Commission shall apply the following guidelines:

- (i) In the case of subsidies tied to the recipient's overall exports or export efforts, the relevant sales for attribution of the subsidy amount shall be the recipient's total export sales value during the subsidy POI.
- (ii) In the case of subsidies tied to production or sale of a particular product or products, the relevant sales for attribution of the subsidy amount shall be the recipient's total sales value of that/those product(s) during the subsidy POI.

- (iii) In the case of subsidies tied to a particular market or markets, the relevant sales for attribution of the subsidy amount shall be the recipient's total sales value to that/those market(s) during the subsidy POI.
- (iv) In the case of subsidies tied exclusively to production and/or sale of products, or for markets, other than exports of the investigated product to the Dominican Republic, no subsidy amount shall be attributed to those exports, that is, no amount of such subsidies shall be countervailed.

#### **CHAPTER V DETERMINATION OF THE TOTAL RATE OF SUBSIDIZATION OF THE INVESTIGATED PRODUCT**

**Article 120.** The Commission shall calculate the *ad valorem* rate of subsidization for a foreign producer or exporter of the investigated product, from a given subsidy or subsidy programme, by dividing the subsidy POI amount by the appropriate value of sales, determined as established, and multiplying the result by 100.

**Paragraph.** The Commission shall calculate the total *ad valorem* subsidy rate for a foreign producer or exporter of the investigated product by summing the *ad valorem* subsidy rates calculated for that producer or exporter for each of the subsidies or subsidy programmes investigated.

**Article 121.** In the case of allocable subsidies in high inflation countries the Commission may adjust the *ad valorem* subsidy rate for inflation. If such an adjustment is made it shall be performed by converting both the total subsidy amount and the value of sales for the POI into the same non-inflationary currency using the following exchange rates: for the total subsidy amount the exchange rate shall be the rate prevailing on the date when the subsidy is deemed to have been received, and for the value of sales for the POI the exchange rate shall be the average rate for the subsidy POI. In cases where there are substantial variations in sales volume over the POI this average rate may be weighted by the sales volume in appropriate sub-periods of the POI.

#### **CHAPTER VI CALCULATION METHODOLOGY FOR CERTAIN FORMS OF SUBSIDIES**

**Article 122.** In the case of a grant no portion of the value of which is repaid to the government, the total subsidy amount shall be the amount of the grant, determined in accordance with the provisions of these Regulations. The date of receipt of the subsidy is deemed to be the date of receipt of the grant.

**Paragraph.** Small-value grants received during the subsidy POI shall be attributed in full to the year of receipt.

**Article 123.** A loan by a government shall only be considered as conferring a benefit to the extent that there is a difference between the amount that the recipient pays in interest and any other charges or costs on the government loan, and the amount that the recipient would have paid on a comparable commercial loan which it did or could have obtained on the market. In this case the benefit shall be the difference between these two amounts.

**First paragraph.** In the case of deferral of principal or interest, the amount of the deferred principal and interest shall be considered as an interest-free loan.

**Second paragraph.** If all or part of a loan found to confer a benefit is forgiven or defaulted on, the amount not repaid shall be treated as a grant in accordance with Article 122 of these Regulations, received on the date of default.

**Third paragraph.** When calculating the benefit to the recipient, account shall be taken of the type of loan, i.e. short or long term.

**Article 124.** In the case of an assumption or forgiveness by the government of a firm's debt obligation, a benefit exists equal to the amount of principal and/or interest that the government has assumed or forgiven. If the government receives shares in a firm in return for eliminating or reducing the firm's debt obligations, the Commission shall determine the existence of a benefit in accordance with the provisions of Article 128 of these Regulations.

**Paragraph.** The Commission shall consider the date of receipt of the subsidy to be the date on which the debt or interest was assumed or forgiven.

**Article 125.** Reimbursable grants and contingent liability loans (loans that are not payable until the occurrence of a specified future event), shall be treated as a series of short-term loans during the period before any repayment is made. The methodology used for calculating the amount of the subsidy shall be that described for short-term loans. In the event of a determination that such a grant or loan will not be repaid, the outstanding balance of the grant or loan as of that time shall be treated as a grant received on the date on which the obligation to repay was extinguished.

**Article 126.** A loan guarantee by a government shall only be considered as conferring a benefit to the extent that there is a difference between the amount that the recipient of the guarantee pays in interest and any other charges or costs on the guaranteed loan and the amount that the firm would pay on a comparable commercial loan absent the government guarantee. In this case the benefit shall be the difference between these two amounts adjusted for any differences in fees.

**Article 127.** In the case of a loan guarantee, the Commission shall consider the subsidy to be received on the date(s) on which the recipient makes loan payment(s), or in the absence of such payment(s), on the dates on which payment(s) would have been made on the comparator commercial loan. The benefits from loan guarantees attributable to the subsidy POI shall be determined in accordance with the relevant provisions of Article 123 of these Regulations, depending on the maturity of the guaranteed loan.

**Article 128.** Government provision of equity capital shall only be considered as conferring a benefit to the extent that the government's investment decision can be regarded as inconsistent with the usual investment practice (including for the provision of risk capital) of private investors in the territory of the country where the equity infusion is made.

**Article 129.** The Commission shall consider an equity infusion to be inconsistent with usual investment practice if the price paid by the government for newly issued equity shares is greater than the price paid by private investors for the same (or a similar) form of shares, at that time. The amount of the subsidy shall be deemed to be the difference between the price per share paid by the government and the price per share paid by the private investor, multiplied by the number of shares purchased by the government.

**Article 130.** The exemption, remission or forgiveness of direct taxes constitutes a subsidy in the amount of the difference between the amount of taxes exempted, remitted or not collected and the amount that the firm otherwise would have paid absent the exemption, remission or forgiveness. The

Commission shall consider the date of receipt of the subsidy to be the date on which the taxes exempted, rebated or forgiven otherwise would have been due.

**Article 131.** In the case of a deferral of taxes (direct taxes, indirect taxes, import duties and charges, and similar fiscal charges) the Commission shall consider such tax deferral as a government loan in the amount of the taxes deferred, as appropriate, depending on whether the deferral is for less than one year or for one year or more (short or long term). Tax deferral shall not be treated as conferring a subsidy if the government collects an appropriate commercial rate of interest on the deferred amount.

**Article 132.** In the case of a full or partial exemption from indirect taxes or import charges, the Commission shall determine, subject to Law No. 1-02, the amount of any resulting subsidy as the difference between the amount of indirect taxes or import charges paid by a firm and the amount that would otherwise have been paid by the firm absent the exemption. The Commission shall consider the date of receipt of the subsidy to be the date on which the firm would have had to pay the exempted tax or charge. The Commission shall expense the amount of the subsidy.

**Article 133.** In the case of a full or partial rebate or remission of indirect taxes or import charges, the Commission shall determine the amount of any resulting subsidy as the net amount of the taxes or charges paid after the rebate or remission, compared with the amount that otherwise would have been paid absent the rebate or remission. The Commission shall consider the date of receipt of the subsidy to be the date of receipt of the rebate or remission, and shall expense the amount of the subsidy.

**Article 134.** The provision of goods or services by a government shall only be considered as conferring a benefit to the extent that the provision is made for less than adequate remuneration. The adequacy of remuneration in the country of provision shall be determined in relation to prevailing market conditions for the good or service in question in the country of provision (including price, quality, availability, marketability, transportation and other conditions of purchase or sale).

**Article 135.** When determining the adequacy of remuneration the Commission shall first seek to identify a price for the good or service in actual market transactions by private suppliers in the country of their provision. If such a price cannot be identified, the Commission may determine the adequacy of remuneration on the basis of whether the price paid to the government is sufficient to cover total costs, including selling, general and administrative expenses, to provide the goods or services supplied, plus a reasonable amount for profit, or such other reasonable basis as may be determined.

**Article 136.** The amount of the subsidy shall be the difference between the price paid by the firm for the government-provided goods or services and the adequate remuneration determined by the Commission. The Commission shall consider the date of receipt of the subsidy to be the date on which the firm pays or, in the absence of payment, would have had to pay for the government-provided goods or services.

**Article 137.** The purchase of goods by a government shall only be considered as conferring a benefit to the extent that the purchase is made for more than adequate remuneration. The adequacy of remuneration shall be determined in relation to prevailing market conditions for the good in question in the country of its purchase (including price, quality, availability, marketability, transportation and other conditions of purchase or sale).

**Article 138.** When determining the adequacy of remuneration the Commission shall first seek to identify a price for the good charged by the investigated firm in actual market sales to private purchasers in the country of purchase. If such a price cannot be determined, the Commission may determine the adequacy of remuneration by examining whether other firms in that country have sold



the same good on comparable terms and conditions to private purchasers. In cases where no such comparator price is available the Commission shall determine the adequacy of remuneration on the basis of whether the price paid by the government is sufficient to cover the investigated firm's total cost of the good, including selling general and administrative expenses, plus a reasonable amount for profit.

**Article 139.** The amount of the subsidy shall be the difference between the price paid by the government for the goods purchased and the adequate remuneration determined by the Commission. The Commission shall consider date of receipt of the subsidy to be the date on which government pays for the goods purchased, and shall expense the amount of the subsidy.

**Article 140.** In the case of government assistance to workers, a benefit shall be deemed to exist to the extent that the assistance relieves the employer firm of an obligation that it otherwise would incur. The Commission shall consider the date of receipt of the subsidy to be the date on which the government payment is made that relieves the firm of the relevant obligation.

**Article 141.** For the purposes of these Regulations, the term "prior-stage cumulative indirect taxes" shall mean multi-staged taxes levied on goods or services used directly or indirectly in making a product, where there is no mechanism for subsequent crediting of the tax if the goods or services subject to tax at one stage of production of the product are used in a succeeding stage of production thereof.

**Article 142.** For the purposes of these Regulations, the term "inputs consumed in the production process" shall mean inputs physically incorporated, energy, fuels and oil used in the production process, and catalysts which are consumed in the course of their use to obtain a product.

**Article 143.** In the case of the exemption or remission of indirect taxes, other than prior-stage cumulative indirect taxes, in respect of the production and distribution of an exported product, the Commission shall consider that a subsidy exists only to the extent that it determines that the amount of the exemption or remission exceeds the amount levied with respect to the production and distribution of the like product when sold for domestic consumption.

**Article 144.** In the case of the exemption or remission of prior-stage cumulative indirect taxes in respect of an exported product, the Commission shall consider that a subsidy exists only to the extent that it determines that the amount of the exemption or remission exceeds the amount of such taxes levied on inputs consumed in the production process, as provided for in Article 141 of these Regulations, making normal allowance for waste.

**Article 145.** The Commission shall consider the date of receipt of the subsidy to be the date on which the excessive amount was remitted or the exempted taxes were otherwise due. The Commission shall expense the amount of the subsidy.

**Article 146.** In the case of the remission or drawback of import charges in respect of an exported product, the Commission shall consider that a subsidy exists only to the extent that it determines that the amount of the remission or drawback exceeds the amount of import charges on imported inputs that are consumed in the production process, making normal allowance for waste.

**Paragraph.** In the case of remission or drawback of import charges in respect of inputs consumed in the production of an exported product, the Commission shall consider the date of receipt of the subsidy to be the date on which the excessive amount was remitted or drawn back. The Commission shall expense the amount of the subsidy.

**Article 147.** The provisions of this Article shall also apply to cases of substitution drawback, where a firm uses a quantity of home market inputs equal to, and having the same quality and characteristics as, the imported inputs as a substitute for them. In such a case the Commission shall only deem that a subsidy exists when:

- (i) The import and the corresponding export operations did not both take place within a reasonable time period, of not more than two years; or
- (ii) the amount drawn back exceeds the amount of the import charges levied initially on the imported inputs for which drawback is claimed.

## **CHAPTER VII INJURY AND CAUSAL LINK**

**Article 148.** A determination of injury for the purposes of these Regulations shall be based on positive evidence and involve an objective examination of:

- (i) The volume of the subsidized imports;
- (ii) the effect of the subsidized imports on prices in the domestic market for like products; and
- (iii) the consequent impact of these imports on domestic producers of such products.

**Article 149.** With regard to the volume of the subsidized imports, the Commission shall consider whether there has been a significant increase in subsidized imports, either in absolute terms or relative to production or consumption in the Dominican Republic.

**Article 150.** With regard to the effect of the subsidized imports on market prices in the Dominican Republic, the Commission shall consider:

- (i) Whether there has been a significant price undercutting by the subsidized imports as compared with the price of the domestic like product; or
- (ii) whether the effect of such imports is otherwise to depress prices to a significant degree; or
- (iii) to prevent price increases, which otherwise would have occurred, to a significant degree.

**Article 151.** Where imports of a like product from more than one country are the subject of simultaneous countervailing duty investigations, the Commission may cumulatively assess the effects of such imports on the domestic industry only if it determines that:

- (i) The rate of subsidization established in relation to the investigated product from each country is more than *de minimis* and the volume of the investigated product imported from each country is not negligible;

- (ii) a cumulative assessment of the effects of the imports is appropriate in the light of the conditions of competition between the imports and the conditions of competition between the imports and the domestic like product.

**Article 152.** The examination of the impact of the subsidized imports on the domestic industry concerned shall include an evaluation by the Commission of all relevant economic factors and indices having a bearing on the state of the industry, including:

- (i) Actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilization of capacity;
- (ii) factors affecting domestic prices;
- (iii) actual or potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments; and,
- (iv) in the case of agriculture, whether there has been an increased burden on government support programmes.

**Paragraph.** This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.

**Article 153.** The Commission shall assess the effect of the subsidized imports in relation to production in the Dominican Republic of the domestic like product when available data permit the separate identification of that production on the basis of such criteria as the production process, and producers' sales and profits.

**Paragraph.** If such separate identification of that production is not possible, the Commission shall assess the effects of the subsidized imports by an examination of the production of the narrowest group or range of products which includes the domestic like product and for which the necessary information can be provided.

**Article 154.** The Commission shall base its determination of a threat of material injury on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the subsidy would cause injury must be clearly foreseen and imminent.

**Article 155.** When determining a threat of material injury, in addition to the factors identified in Articles 148 to 151 and 152 of these Regulations, the Commission shall take into account other factors such as:

- (i) The nature of the subsidy or subsidies in question and the trade effects likely to arise therefrom;
- (ii) a significant rate of increase of subsidized imports into the Dominican market indicating the likelihood of substantially increased importations;
- (iii) sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased subsidized exports to the Dominican market, taking into account the availability of other export markets to absorb any additional exports;

- (iv) whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices in the Dominican Republic, and would likely increase demand for further imports; and
- (v) inventories of the investigated product.

**First paragraph.** No one of these factors by itself can necessarily give decisive guidance but the totality of the factors considered must lead to the conclusion that further subsidized exports are imminent and that, unless protective action is taken, material injury will occur.

**Second paragraph.** With respect to cases where subsidized imports threaten to cause injury, the Commission shall consider and decide the application of countervailing measures with special care.

**Article 156.** The Commission shall demonstrate that the subsidized imports are, through the effects of subsidies, causing injury. The demonstration of a causal link between the subsidized imports and the injury to the domestic industry shall be based on an examination of all relevant evidence, including:

- (i) The volume and prices of non-subsidized imports of the product in question;
- (ii) a contraction in demand or changes in the patterns of consumption;
- (iii) the trade restrictive practices of and competition between the foreign and domestic producers;
- (iv) developments in technology; and
- (v) the export performance and productivity of the domestic industry in the Dominican Republic.
- (vi) The Commission shall also examine any known factors other than the subsidized imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the subsidized imports.

## **CHAPTER VIII INITIATION AND CONDUCT OF INVESTIGATIONS**

**Article 157.** A subsidy investigation shall be initiated upon a written application by or on behalf of the domestic industry. In special circumstances, the Commission may initiate an investigation ex officio without having received a written application by or on behalf of the domestic industry. It shall proceed only if it has sufficient evidence subsidized imports, injury and a causal link to justify the initiation of an investigation.

**Article 158.** An application under the preceding Article shall contain a description of the facts and shall include evidence of (i) a subsidy and if possible its amount; (ii) injury; and (iii) a causal link within the meaning of these Regulations.

**First paragraph.** The application and the forms sent out by the Commission and duly completed, as well as the accompanying documents, shall be submitted in writing in original versions, together with as many copies as there are importers, exporters and, where applicable, foreign governments named in the application.

**Second paragraph.** All of the aforementioned documents shall be deposited with the Commission in electronic format using Word for the texts, Excel for the charts and Adobe Acrobat for the annexes, or programs that are compatible with these.

**Third paragraph.** In addition to being submitted in writing and fulfilling the requirements set out in Articles 32 and 33 of the Law, the application for the initiation of an investigation shall be filed together with the forms sent out by the Commission. The application shall contain such information as is reasonably available to the applicant on the following:

- (a) The name, address and telephone number of the applicant;
- (b) the identity of the domestic industry by or on behalf of which the application is being made, including the names, addresses and telephone numbers of all other known producers in the domestic industry;
- (c) information relating to the degree of domestic industry support for the application, including:
  - (i) the total volume and value of domestic industry production of the domestic like product; and
  - (ii) the volume and value of the domestic like product produced by the applicant and by each domestic producer identified;
- (d) a complete description of the product to be investigated and the like product manufactured by the domestic industry, including the technical characteristics and uses of the product and its tariff classification number;
- (e) the country in which the allegedly subsidized product is manufactured or produced and, if it is imported from a country other than the country of manufacture or production, the intermediate country from which the product is imported;
- (f) the name and address of each person the applicant believes sells the allegedly subsidized product and the proportion of total exports to the Dominican Republic which that person accounted for during the most recent twelve-month period, and a list of persons known to import the product in question;
- (g) evidence with regard to the existence, amount and nature of the subsidy in question;
- (h) evidence that alleged injury to a domestic industry is caused by subsidized imports through the effects of the subsidies; this evidence includes information on the evolution of the volume of the allegedly subsidized imports, the effect of these imports on prices of the domestic like product in the Dominican market and the consequent impact of the imports on the domestic industry, as demonstrated by relevant factors and indices having a bearing on the state of the domestic industry.

**Fourth paragraph.** Applications under this Article shall be signed by the interested party or parties, or by persons acting on their behalf or representing them, and shall bear the official stamp of the company, enterprise or association in question.

**Fifth paragraph.** The Commission shall examine the accuracy and adequacy of the evidence provided in the application to determine whether there is sufficient evidence to justify the initiation of an investigation.

**Article 159.** The Commission shall avoid, unless a decision has been made to initiate an investigation, any publicizing of the application for the initiation of an investigation.

**Article 160.** As soon as an application for the initiation of an investigation has been accepted, and before the investigation is initiated, the Commission shall invite for consultations the government representatives of the countries the products of which may be subject to such investigation.

**First paragraph.** Throughout the period of investigation, countries the products of which are the subject of the investigation shall be afforded a reasonable opportunity to continue consultations with a view to clarifying the facts of the case and to arriving at a mutually agreed solution. As soon as the application for initiation of an investigation has been filed, the Commission may invite for consultation the parties involved.

**Second paragraph.** Upon request from the government representatives of the countries the products of which are the subject of the investigation, the Commission shall permit access to non-confidential evidence, including the non-confidential summary of confidential data being used for initiating or conducting the investigation.

**Third paragraph.** Any application made in accordance with the Law and these Regulations may be withdrawn prior to initiation of the investigation.

**Fourth paragraph.** The Commission may seek additional information from the applicant before deciding whether to initiate an investigation.

**Article 161.** The Commission may initiate an investigation when it has determined that:

- (i) The application is made by or on behalf of the domestic industry; or
- (ii) conditions exist to initiate an investigation ex officio pursuant to Article 35 of the Law; and
- (iii) there is sufficient evidence of subsidized imports, injury and causal link.

**Article 162.** Where the Commission does not consider it appropriate to initiate an investigation, it shall notify the applicant(s) of the reasons for not doing so.

**Article 163.** The Commission shall normally decide whether or not to initiate a countervailing measures investigation within thirty (30) days of the date of receipt of the written application.

**Paragraph.** When the application involves complex issues, or if the Commission has sought additional information from the applicant, this time period may be extended to forty-five (45) days. Any additional information required will be requested prior to the decision to initiate an investigation, within the 30-day deadline or extension thereof as specified in this paragraph.

**Article 164.** For the purposes of this Chapter, an application shall be considered to have been made "by or on behalf of the domestic industry" if it is supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the like product produced

by that portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25 per cent of total production of the like product produced by the domestic industry.

**Article 165.** The Commission shall not initiate an investigation with respect to a given allegedly subsidized product and country, if, from information reasonably available to the Commission, it determines that:

- (i) The rate of subsidization is *de minimis*, i.e. less than 1 per cent *ad valorem*, or in the case of subsidies provided by a developing country does not exceed 2 per cent *ad valorem*. For developing countries covered by Annex VII of the Agreement on Subsidies, an *ad valorem* rate of 3 per cent shall apply;
  - (ii) the volume of the subsidized imports, actual or potential, is negligible.
- (a) In cases where the allegedly subsidized product is being imported from one or more developed countries, imports are considered to be negligible if the volume of the allegedly subsidized imports from a developed country represents less than 1 per cent of the total imports of the domestic like product, unless imports from developed countries whose individual shares of total imports represent less than 3 per cent of the total imports of the domestic like product;
  - (b) in cases where the allegedly subsidized product is being imported from one or more developing countries, imports are considered to be negligible if the volume of the allegedly subsidized imports represents less than 4 per cent of the total imports of the domestic like product, unless imports from developing countries whose individual shares of total imports represent less than 4 per cent collectively account for more than 9 per cent of the total imports of the domestic like product.

**Paragraph.** If, during the investigation process, the Commission finds that the amount of the subsidy is *de minimis*, or that the volume of subsidized imports, actual or potential, is negligible, the investigation shall be terminated immediately.

**Article 166.** As soon as the Commission has decided to initiate an investigation, it shall: (i) notify the initiation of an investigation to the exporters, importers and representative associations of importers or exporters known to the Commission to be concerned, as well as representatives of the exporting country(ies), the applicant(s) and other parties known to the Commission to have an interest therein; and (ii) give public notice in a national newspaper in the Dominican Republic and posted on the relevant section of the Commission's website.

**First paragraph.** If the Commission rejects an application for the initiation of a subsidy investigation submitted by or on behalf of the domestic industry on grounds of insufficient evidence, it shall promptly issue a resolution to the effect that there is no injury or causal link to justify the initiation of an investigation. This resolution shall be transmitted to the interested parties at the domicile mentioned in the application for initiation, and shall be published in a national newspaper and posted on the relevant section of the Commission's website.

**Second paragraph.** The parties may make an appeal to the Commission for review of any resolution rejecting the initiation of an investigation. The time limit for lodging such an appeal shall be fifteen (15) days as of the date of notification of the resolution rejecting the application.

**Third paragraph.** The Commission shall have a period of not more than thirty (30) days in which to respond to the request for review.

**Article 167.** The notification and public notice of the initiation of an investigation pursuant to the foregoing Article shall contain the following:

- (i) The name(s) of the country(ies) of export, and if different, the country or countries of origin, of the investigated product;
- (ii) a full description of the investigated product, including the technical characteristics and uses of the product and its current tariff classification number;
- (iii) a description of the subsidy practice or practices to be investigated;
- (iv) a summary of the factors on which the allegations of injury and causal link are based;
- (v) the address where information and comments may be submitted;
- (vi) the date of initiation of the investigation; and
- (vii) the proposed schedule for the investigation.

**Paragraph.** The initiation of the investigation shall be effective on the date on which the public notice appears.

**Article 168.** Subject to the requirement to protect confidential information pursuant to Articles 171 ff. of these Regulations, the Commission shall, as soon as the investigation is initiated, provide the full text of the written application received to the known exporters and foreign producers and to the authorities of the exporting country and make it available, upon request, to other interested parties.

**Paragraph.** Where the number of exporters involved is particularly high, the Commission may provide of the text to the relevant trade association(s) or, where that is not possible, to the authorities of the exporting country(ies).

**Article 169.** The Commission shall, except in special circumstances, conclude countervailing measures investigations within one year, and in no case more than 18 months, after their initiation.

**Article 170.** A countervailing proceeding shall not hinder customs clearance procedures. Once measures are adopted, no additional formalities other than those required for the application of these measures shall be applied.

**Article 171.** The Commission shall, during and after an investigation, keep confidential any information submitted to it which is entitled to such treatment. Such information shall not be disclosed without specific permission of the party submitting it.

**Article 172.** Information shall be deemed to be inherently confidential, unless the Commission determines that disclosure in a particular case would neither be of significant competitive advantage to a competitor, nor have a significantly adverse effect upon a person supplying the information or



upon a person from whom he/she acquired the information. The following information is deemed confidential:

- (i) Business or trade secrets concerning the nature of a product, production processes or operations, and production equipment or machinery;
- (ii) information concerning the financial condition of a company which is not publicly available;
- (iii) information concerning the costs, identification of customers, sales, inventories, shipments, or amount or source of any income, profit, loss or expenditure related to the manufacture and sale of a product.

**Article 173.** Parties seeking confidential status for certain information shall request such treatment at the time such information is submitted, including the reasons why confidential treatment is warranted. The Commission shall consider such requests expeditiously, and inform the party submitting the information if it determines that the request for confidential treatment is not warranted.

**Article 174.** The parties shall furnish non-confidential summaries of all information for which confidential treatment is sought. These summaries shall be sufficiently detailed to permit a reasonable understanding of the substance of the information submitted in confidence.

**Article 175.** If the Commission finds that a request for confidential treatment is not warranted, and if the supplier of the information is unwilling to make the information public, the Commission shall disregard such information, and return the information concerned to the party submitting it.

**Article 176.** Information declared as confidential shall be accessible to the Commission alone. Where appropriate, access shall be available only to the competent authorities of the WTO dispute settlement mechanisms.

**Paragraph.** Without prejudice to the provisions of this Article, access to confidential information may be given in writing by the parties involved in the investigation, subject to prior authorization from the party that has supplied the confidential information in question.

**Article 177.** If, at any time during the investigation, an interested party refuses access to, or otherwise does not provide, necessary information within the period of time prescribed by the Commission, or otherwise significantly impedes the investigation, the Commission may reach preliminary or final determinations, affirmative or negative, on the basis of the information available, including the application.

**Article 178.** The Commission shall take due account of any difficulties experienced by interested parties, in particular small companies, in supplying information requested. In that context, the Commission shall provide any assistance practicable and/or may extend any time period prescribed for the submission of a given item of information whenever applicable.

**Article 179.** The Commission shall establish and maintain a public file relating to each investigation or review pursuant to these Regulations. Subject to the requirement to protect confidential information, the Commission shall promptly place in the public file:

- (i) All public notices relating to the investigation or review;

- (ii) all materials, including questionnaires, responses to questionnaires, and written communications submitted to the Commission;
- (iii) all other information developed or obtained by the Commission, including any verification report(s) prepared;
- (iv) any other documents the Commission deems appropriate for public disclosure; and,
- (v) a table of contents for the public file.

**Article 180.** The public file shall be available to the general public for review and copying at the offices of the Commission throughout the course of the investigation or review and any resulting judicial review.

## **CHAPTER IX INVESTIGATION PROCEDURE**

**Article 181.** The Commission shall, in the public notice of initiation, include the proposed schedule for the conduct of the investigation, including the proposed time-limits for submission of written arguments, the date of any hearing, the proposed date for the preliminary determination, and the proposed date for the final determination.

**Article 182.** Upon initiation of the investigation, the Commission shall send questionnaires to any person they believe may have information relevant to the investigation, including known domestic producers, importers, exporters, foreign producers and the governments of the countries the products of which are subject to such investigation.

**Article 183.** The Commission shall give exporters, foreign producers and interested countries receiving a questionnaire at least thirty (30) days for reply. This time-limit shall be counted from the date on which the questionnaire was sent to the respondent or transmitted to the appropriate diplomatic or official representative of the exporting country. The Commission shall give due consideration to any request for an extension of the period, and shall grant such an extension whenever practicable, upon good cause shown, taking into account the time-limits for the investigation.

**First paragraph.** In the case of foreign exporters and producers it shall be deemed to have been received one week from the date on which it was sent to the respondent or transmitted to the appropriate diplomatic representative, or to the official representative of the exporting country, or sent via the Ministry of Foreign Affairs. The above-mentioned 30-day period shall begin as soon as the week has passed.

**Second paragraph.** The Commission shall give the domestic industry and importers receiving a questionnaire a time-limit of thirty (30) days for reply.

**Third paragraph.** The Commission may disregard replies to questionnaires not submitted within the time-limit envisaged and in the manner requested.

**Article 184.** The Commission may, during the course of the investigation, request further information from interested parties, by means of supplementary questionnaires, or written requests for clarification or additional information. Such requests shall state the date by which reply is due. Provided it is practicable, sufficient time shall be granted in order to allow for meaningful replies.

**Article 185.** Any interested party may, on its own initiative, submit, in writing, any information it considers relevant to the investigation. The Commission shall consider such information unless such consideration would be unduly burdensome to it or disrupt the timely progress of the investigation.

**Article 186.** The Commission shall base its assessments of subsidization, injury and causal link on data relating to defined periods, which shall be the periods for which information is requested in questionnaires:

- (i) The investigation period for the determination of subsidization normally shall be the most recently completed calendar or fiscal year, as relevant, preceding the initiation of the investigation;
- (ii) the investigation period for injury shall normally be three (3) years. However, the Commission may select a shorter or longer period if it so deems appropriate in the light of available information regarding the domestic industry and the investigated product;
- (iii) where different periods from those specified as the norms in subparagraphs (i) and (ii) are used, the Commission shall include in its published report on the investigation an explanation of the reasons therefor.

**Article 187.** No later than fifteen (15) days before the scheduled date of the preliminary determination, interested parties may submit written arguments to the Commission concerning any matter relevant to the investigation.

**Article 188.** Pursuant to Article 45 of the law, the Commission may make a preliminary determination of subsidisation, injury or the threat of injury and causal link. The preliminary determination shall be based on all information available to the Commission at that time; the Parties have a period of ten (10) days in which to submit their opinion on the preliminary determination. There shall be no extension in this case and the said period shall run from the time the Parties acknowledge receipt of the preliminary determination.

**Article 189.** The Commission shall issue a public notice of the preliminary determination, whether affirmative or negative, as envisaged in Article 36, Paragraph I of the Law. The notice of preliminary determination shall set forth in sufficient detail the investigations made and the conclusions reached on all issues of fact and law considered material, due regard being given to the protection of confidential information. The notice shall also contain the following:

- (i) The names of the known exporters and producers of the investigated product;
- (ii) a description of the investigated product, including the tariff classification in force;
- (iii) the amount of subsidy established and the basis on which the existence of a subsidy has been determined;
- (iv) the factors that have led to the determinations of injury and causal link, including information on factors other than subsidized imports that have been taken into account; and

- (v) the amount of any provisional measures to be applied and the reasons why such provisional measures are necessary to prevent injury caused during the investigation;
- (vi) an explanation of the investigation period for the subsidy or injury;
- (vii) the main reasons underlying the determination.

**Article 190.** The Commission shall publish the notice in a national newspaper and in the relevant section of the Commission's electronic portal.

**Article 191.** The public notice shall be forwarded to the country or countries exporting the investigated product and to other known interested parties via the appropriate channels.

**Article 192.** The Commission shall, on request made within fifteen (15) days of the publication of the preliminary determination, hold separate disclosure meetings with exporters or producers requesting such a meeting, to explain the subsidy calculation methodology preliminarily applied for that foreign producer or exporter.

**Article 193.** Where the Commission continues the investigation pursuant to these regulations, it shall publish a notice of the continuation of the investigation, setting forth the proposed date for the final determination, and any other modifications to the proposed schedule of the investigation. Any final determination in such a continued investigation shall normally be made within 120 days from the date of publication of the notice of preliminary determination.

**Article 194.** In the course of the investigation, the Commission shall examine the accuracy and adequacy of the evidence provided by the interested parties.

**Article 195.** To verify information provided or to obtain further details, the Commission may carry out investigations in other countries as required, provided it obtains the prior agreement of the firms concerned and provided it notifies the representatives of the government of the country in question and the latter do not object to the investigation.

**Paragraph.** The Commission shall prepare a report on any verification carried out. It shall make the report available in full to the interested party and place a non-confidential version in the public file, and shall endeavour to complete any such verification prior to the date of any hearings in the investigation.

**Article 196.** In an investigation in which no hearing is requested, any interested party may submit written arguments concerning any matter it considers relevant to the investigation no later than thirty (30) days before the date proposed for the final determination.

**Article 197.** The Commission shall, upon request by an interested party made no later than thirty (30) days after publication of the preliminary determination, schedule a hearing at which all interested parties may present information and arguments. The hearing shall be held no later than sixty (60) days prior to the date proposed for the final determination.

**Article 198.** In an investigation in which a hearing is held, no later than ten (10) days before the scheduled date of the hearing, any interested party may submit written arguments concerning any matter it considers relevant to the investigation. Following the hearing, interested parties who participated in the hearing may, within ten (10) days, submit written arguments in response to arguments and information presented at the hearing.

**First paragraph.** There shall be no obligation on any interested party to attend a hearing, and failure to do so shall not be prejudicial to that interested party's case. Hearings shall, to the maximum extent possible, be organized by the Commission so as to take into account the convenience of the interested parties.

**Second paragraph.** Interested parties intending to appear at the hearing shall notify the Commission of the names of representatives and witnesses who will appear at the hearing at least five (5) days before the date of the hearing.

**Article 199.** Hearings shall be presided over by the Chair of the Commission, who shall ensure that confidentiality is preserved, and shall organize the hearing in a manner to ensure that all parties participating have an adequate opportunity to present their views. The Commission shall maintain a record of the hearing, which shall be promptly placed in the public file, with the exception of any confidential information.

**Paragraph.** Should the Chair of the Commission be unable to attend the said hearing, the Commission shall appoint one of its members to preside over it.

**Article 200.** Interested parties should have the right to present information orally at hearings, and that information shall be considered, provided it is subsequently submitted in writing, in a period not exceeding five (5) days. This information will be placed in the public file, with the exception of any confidential information.

**Article 201.** In cases where the product is normally sold at the retail level in the Dominican Republic, the Commission shall give industrial users of the product under investigation and representative consumers' associations the opportunity to provide any information relevant to the investigation on subsidy, injury and the causal link between them. Such information shall be provided in writing.

**Paragraph.** The Commission shall allow industrial users of the product under investigation and/or representative consumers' associations to make oral presentations at any hearing held in the course of an investigation.

**Article 202.** After any hearing has been held and the Commission has completed verification of information collected in the course of the investigation and, in any event, at least thirty (30) days before the proposed date for the final determination, the Commission shall inform all interested parties, in writing, subject to the applicable confidentiality requirements, of the essential facts under consideration which will form the basis for the decision whether to apply definitive measures.

**Article 203.** Interested parties shall submit comments, if any, on information disclosed to them, in writing and within fifteen (15) days of the disclosure.

**Article 204.** The Commission shall normally make a final determination of subsidization, injury, and causal link within one hundred and twenty (120) days of the preliminary determination. The final determination shall be based on all information obtained by the Commission during the course of the investigation that has been disclosed to interested parties, subject to the applicable confidentiality requirements.

**Article 205.** The Commission shall issue a public notice of the final determination, whether affirmative or negative. The notice of final determination shall include all relevant information on the

matters of fact and law and reasons that have led to the determination, regard being given to the protection of confidential information, including:

- (i) The names of the known exporters and producers of the investigated product;
- (ii) a description of the investigated product that is sufficient for customs purposes, including the current tariff classification;
- (iii) an explanation of the investigation period for the subsidy or injury;
- (iv) the amount of subsidy established and the basis on which the existence of a subsidy has been determined;
- (v) the factors that have led to the determination of injury and causal link, including information on factors other than subsidized imports that have been taken into account;
- (vi) any other reasons leading to the final determination;
- (vii) the reasons for the acceptance or rejection of relevant arguments or claims made by exporters and importers;
- (viii) the amount of any countervailing duties to be imposed, including any considerations relevant to the Commission's examination of the Dominican Republic's interest and of whether a duty less than the amount of the subsidy would be adequate to remove the injury to the domestic industry; and,
- (ix) if final countervailing duties are to be collected with regard to the imports to which provisional measures were applied, the reasons for the decision to do so.

**Article 206.** The Commission shall publish the notice in a national newspaper and in the relevant section of the Commission's electronic portal.

**Paragraph.** The notice shall be forwarded to the country or countries the products of which are subject to such determination and to other known interested parties, via the appropriate channels.

**Article 207.** After the final determination has been issued, the Commission shall, on request made within fifteen (15) days of the publication of the final determination, hold separate disclosure meetings with exporters or producers requesting such a meeting, to explain the subsidy amount calculation methodology finally applied for that foreign producer or exporter.

## **CHAPTER X CONCLUSION OF THE INVESTIGATION**

**Article 208.** An application for the start of an investigation may be withdrawn at any time after an investigation has been initiated, in which case the Commission shall terminate the investigation without imposing definitive measures, unless it determines that it is in the interest of the Dominican Republic to continue the investigation.

**Article 209.** An investigation shall be terminated promptly when the Commission is satisfied that there is not sufficient evidence of subsidization, injury or causal link to justify proceeding with the

case. The investigation shall also be terminated upon the occurrence of any of the situations foreseen in Article 165 of these Regulations.

**Article 210.** The Commission shall, due regard being paid to the protection of confidential information, issue a public notice of the conclusion of an investigation without imposition of measures. The said public notice shall set forth the investigations made and the conclusions reached on all issues of fact and law considered material, including the issues of fact and law that led to the acceptance or rejection of the arguments.

## **CHAPTER XI PROVISIONAL MEASURES**

**Article 211.** The Commission may impose provisional measures if it makes an affirmative preliminary determination of subsidization, injury, and causal link, and determines that provisional measures are necessary to prevent injury being caused during the investigation. A negative preliminary determination of subsidization shall not automatically terminate the investigation, but no provisional measures shall be imposed in such a case. The Commission shall take account of Paragraphs I and II of Article 45 of the Law for the purposes of imposing provisional measures.

**Paragraph.** A public notice of the imposition of provisional measures shall set forth, or otherwise make available through a separate report, sufficiently detailed explanations for the preliminary determinations on dumping and injury and shall refer to the matters of fact and law which have led to arguments being accepted or rejected. Such a notice or report shall, due regard being paid to the requirement for the protection of confidential information, contain in particular:

- (i) The names of the suppliers, or when this is impracticable, the supplying countries involved;
- (ii) a description of the product which is sufficient for customs purposes;
- (iii) the amount of subsidy established and the basis on which the existence of a subsidy has been determined;
- (iv) considerations relevant to the injury determination as set out in Chapter II of this Part;
- (v) the main reasons underlying the determination.

## **CHAPTER XII UNDERTAKINGS**

**Article 212.** For the purposes of Article 43 of the Law, the Commission shall neither seek nor accept undertakings unless the Commission has made a preliminary affirmative determination of subsidization, injury, and causal link, and in the case of undertakings from exporters, has obtained the consent of the exporting country.

**Article 213.** Undertakings offered need not be accepted if the Commission considers their acceptance impractical (for example, if the number of actual or potential exporters is too great, or for other reasons, including reasons of general policy).

**Article 214.** In the case envisaged in the preceding Article, and provided it is feasible, the Commission shall provide the reasons that have led to the determination that the acceptance of an

undertaking is inappropriate and, to the extent possible, shall give the exporter an opportunity to make comments thereon.

**Article 215.** If an undertaking is accepted, the Commission shall nevertheless complete the investigation of subsidization and injury if the exporting country so desires or the Dominican Republic so decides. In this case, if the Commission makes a negative determination of subsidization or injury, the undertaking shall automatically lapse, except in cases where such a determination is due in large part to the existence of such an undertaking.

**Paragraph.** In such cases the Commission may require that an undertaking be maintained for a reasonable period of time, in accordance with the provisions of the Law and of these Regulations.

**Article 216.** The Commission may suggest price undertakings, but no exporter shall be forced to enter into such undertakings. The fact that governments or exporters do not offer such undertakings, or do not accept an invitation to do so, shall in no way prejudice the consideration of the case. However, the Commission shall be free to determine that a threat of injury is more likely to be realized if the subsidized imports continue.

**Article 217.** The Commission may require any government or exporter from whom undertakings have been accepted to provide periodically information regarding the fulfilment of such undertakings, and which permits verification of pertinent data. In case of violation of an undertaking, the Commission may, pursuant to the Law and these Regulations, take actions which may constitute immediate application of provisional measures using the best information available.

**Paragraph.** In these cases, definitive duties may be levied in accordance with the Law and these Regulations on goods entered for consumption not more than ninety (90) days before the application of such provisional measures, except that any such retroactive assessment shall not apply to imports entered before the violation of the undertaking.

**Article 218.** Having taken account of Article 43 of the Law, the Commission shall publish the notice in a national newspaper and in the relevant section of the Commission's electronic portal.

**Article 219.** The public notice of the acceptance of an undertaking shall include the non-confidential part of the undertaking and set forth in sufficient detail the findings and conclusions on all issues of fact and law considered material by the Commission.

### **CHAPTER XIII COUNTERVAILING MEASURES**

**Article 220.** The amount of the countervailing duty shall not exceed the rate of subsidization as established pursuant to these Regulations. When the Commission has determined that all requirements for the imposition of countervailing measures have been fulfilled, it shall examine whether the imposition of such measures would be in the interest of the Dominican Republic.

**Paragraph.** The amount of the countervailing duty shall be assessed on a prospective basis. In these cases, provision shall be made for a prompt refund, upon request, of any duty paid in excess of the amount of the subsidy.

**Article 221.** The amount of the countervailing duty shall not exceed the amount of the subsidy as established pursuant to these Regulations. The countervailing duty may be equal to or lower than the



amount of the subsidy if that lower duty would be adequate to remove the injury to the domestic industry.

**Article 222.** Countervailing duties shall take the form of *ad valorem* or specific duties and shall be additional to any other import duties levied in connection with the imported products in question.

**Paragraph.** The Commission shall collect the countervailing duties in the appropriate amounts in each case, on a non-discriminatory basis on imports of such product from all sources found to be subsidized and causing injury.

**Article 223.** Provided it is possible, the Commission shall establish an individual countervailing duty rate for any exporter or producer not included in the examination who has provided the necessary information during the course of the investigation, and may apply a residual countervailing duty rate for imports from exporters and producers not known to the Commission at the time the final determination was made.

**Paragraph.** No imported product may be subject to both anti-dumping and countervailing duties to compensate for the same situation of dumping or export subsidization.

**Article 224.** In the interest of the Dominican Republic, the Commission may suspend the application of measures imposed pursuant to these Regulations for a specified period. The Commission may suspend measures only where market conditions have temporarily changed and the Commission determines that the application of the measures would not be in the interest of the Dominican Republic, and provided that the domestic industry has been given an opportunity to comment.

**Article 225.** A definitive countervailing duty may be collected on products which were entered for consumption not more than ninety (90) days prior to the date of application of provisional measures in critical circumstances where, for the subsidized product in question, the Commission finds that injury which is difficult to repair is caused by massive imports in a relatively short period of an investigated product benefiting from subsidies paid or bestowed inconsistently with the provisions of GATT 1994 and of the WTO Agreement on Subsidies and Countervailing Measures, and where the Commission deems it necessary, in order to preclude the recurrence of such injury, to assess countervailing duties retroactively on those imports.

**Article 226.** Where the Commission makes a final determination of injury (but not of a threat thereof or of material retardation of the establishment of an industry) or, in the case of a final determination of a threat of injury, where the Commission determines that the effect of the subsidized imports would, in the absence of the provisional measures, have led to a determination of injury, definitive countervailing duties may be levied retroactively for the period for which provisional measures, if any, have been applied.

**Article 227.** If the definitive countervailing duty is higher than the amount estimated for the purpose of the security, the difference shall not be collected. If the definitive duty is lower than the amount estimated for the purpose of the security, the difference shall be released in the case of a bond, or reimbursed, with an appropriate amount for interest, in the case of a cash deposit.

**Article 228.** Except as provided in the preceding Article, where the Commission make a determination of threat of injury or material retardation (but no injury has yet occurred), a definitive countervailing duty may be imposed only from the date of the determination of threat of injury or material retardation.

**Article 229.** Where the Commission makes a negative final determination or terminates the investigation without the imposition of definitive measures, any security provided during the period of application of the provisional measures shall be released.

#### **CHAPTER XIV DURATION AND REVIEW OF THE COUNTERVAILING MEASURES**

**Article 230.** A countervailing duty shall remain in force only as long as and to the extent necessary to counteract subsidization which is causing injury.

**Article 231.** Any definitive countervailing duty shall be terminated on a date not later than five years from its imposition or from the date of the most recent review, if that review has covered both subsidization and injury. The Commission shall, no later than ninety (90) days preceding the date of expiry of the duty, publish a notice of impending expiry of countervailing duties in its own Official Bulletin, in a national newspaper with broad circulation in the Dominican Republic and on its website. However, definitive duties may be continued if the Commission determines, in a review initiated before the date of expiry on its own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within forty-five (45) days from the public notice of impending termination of the definitive countervailing duties concerned, that the expiry of the duty would be likely to lead to continuation or recurrence of subsidization and injury. The duty may remain in force pending the outcome of such a review.

**Article 232.** The Commission shall review the need for the continued imposition of the duty, on its own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive countervailing duty, upon a written request from any interested party which contains positive information substantiating the need for a review. Upon initiation of the review, the Commission shall publish a notice in its own Official Bulletin, in a national newspaper with broad circulation in the Dominican Republic and on its website.

**Article 233.** In conducting a review under this Article, the Commission shall, upon request from any interested party, examine whether the continued imposition of the duty is necessary to offset subsidization, whether the injury would be likely to continue or recur if the duty were removed or varied, or both. If, as a result of a review under the preceding Article, the Commission determines that the countervailing duty is no longer warranted, it shall be terminated immediately.

**Article 234.** If a product is subject to definitive countervailing duties, the Commission shall promptly carry out a review for the purpose of determining an individual countervailing duty rate for any exporters or producers in the exporting country(ies) concerned who did not export the product to the Dominican Republic during the period of investigation, provided that these exporters or producers can show that they are not related to any of the exporters or producers in the exporting country who are subject to the countervailing duties on the imported investigated product. Such a review shall be initiated within thirty (30) days following the date of receipt of the application by the producer or exporter concerned. The review shall normally be completed within six (6) months from its initiation and, in any event, no later than twelve (12) months.

**Article 235.** No countervailing measures shall be levied on imports from such exporters or producers while the review is being carried out. The Commission may, however, request guarantees in the amount of the residual countervailing duty rate determined pursuant to these Regulations to ensure that, should such a review result in a determination of subsidization in respect of such producers or exporters, countervailing duties can be levied retroactively to the date of the initiation of the review.

**Article 236.** Reviews carried out under this Chapter shall be done expeditiously, and shall normally be completed within twelve (12) months from their initiation.

**Article 237.** Any interested party who participated in an investigation, a review conducted by the Commission, or a refund procedure, by submitting information or written argument, or participating in any hearing, may seek prompt review of actions taken by the Commission relating to final determinations, reviews of determinations, and refund determinations, in the independent administrative tribunal.

**Article 238.** "Actions relating to final determinations" shall include intermediate decisions and actions taken by the Commission during the course of the investigation, including actions relating to the preliminary determination, the acceptance or rejection of undertakings, and the conduct of the investigation.

## **PART IV GENERAL SAFEGUARD MEASURES**

### **CHAPTER I THREAT OF SERIOUS INJURY, SERIOUS INJURY AND CAUSAL LINK**

**Article 239.** Where it is determined that as a result of unforeseen developments and of the effect of obligations incurred by the Government of the Dominican Republic under the GATT 1994, the investigated product is being imported in such increased quantities and under such conditions as to cause or threaten to cause serious injury to the domestic industry producing like or directly competitive products, a safeguard measure may be applied.

**Article 240.** In its investigation to determine whether increased imports of the investigated product have caused or are threatening to cause serious injury to a domestic industry, the Commission shall use as its basis an evaluation of all relevant objective and quantifiable factors having a bearing on the situation of that industry, in particular:

- (i) The rate and amount of the increase in imports of the investigated product, in absolute terms and relative to domestic production of like or directly competitive products;
- (ii) the share of the domestic market taken by increased imports of the investigated product;
- (iii) the impact of increased imports of the investigated product on the domestic industry, as evidenced by relevant indicators including: actual and potential decline in sales, profits, production volume, market share, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments.

**Paragraph.** In investigating whether the increased imports threaten to cause serious injury, the Commission shall also assess the following:

- (i) The actual and potential export capacity of the country or countries of production or origin;
- (ii) any build-up of inventories in the country and in the countries of export;

- (iii) the probability that exports of the investigated product will enter the country's market in increasing quantities;
- (iv) any other factor deemed appropriate by the investigating authority.

**Article 241.** The Commission may only determine that increased imports of the investigated product have caused or are threatening to cause serious injury to the domestic industry if the Commission finds that there is a relationship of cause and effect between the increased imports and the actual, or threatened, serious injury.

**Article 242.** When factors other than increased imports of the investigated product are at the same time causing or threatening to cause injury to the domestic industry, such injury shall not be attributed to the increased imports.

## **CHAPTER II INITIATION OF PROCEEDINGS**

**Article 243.** An investigation to determine whether increased imports of the investigated product have caused or threaten to cause serious injury to a domestic industry may be initiated:

- (i) Upon a written request addressed to the Commission by or on behalf of a domestic industry;
- (ii) ex officio by the Commission for the Regulation of Unfair Trade Practices and Safeguard Measures.

**Article 244.** The request by an interested party to initiate an investigation into safeguard measures, in addition to being submitted in writing and satisfying the requirements prescribed in Article 61 of the Law, shall contain the following:

- (i) The name or business name and domicile of the interested party and of his legal representative, accompanied by accrediting documents;
- (ii) his principal activity;
- (iii) the percentage of domestic production of the like or directly competitive products represented by the requesting enterprises;
- (iv) in addition to the names and addresses of the enterprises or entities represented in the application ("the requesting enterprises"), the names and addresses of all other known producers of the domestic like or directly competitive products shall also be included;
- (v) a complete description of the investigated product, including its technical characteristics and uses, and an identification of its tariff classification and the duties applicable;
- (vi) a complete description of the domestic like or directly competitive products, including their technical characteristics and uses;
- (vii) a description of the increase in imports alleged to exist;

(viii) detailed information relevant to the existence of serious injury or threat thereof to the domestic industry in the three years preceding the request, and any more recent partial-year data, including but not limited to:

(a) With respect to serious injury:

1. Volume and value of domestic production;
2. utilization of production capacity;
3. changes in inventory levels;
4. market share;
5. changes in sales levels;
6. level of employment and wages in the domestic industry;
7. productivity;
8. profit and loss;
9. return on investment;
10. cash flow;
11. any other indicators considered relevant.

(b) With respect to threat of serious injury, if alleged, the following shall also be analysed:

1. Export capacity in the exporting countries;
2. inventories in (country) and in the exporting countries;
3. information regarding the probability that imports will increase, including, e.g., trade restrictions on exports to third country markets.

**Article 245.** If a provisional measure is sought, information must be provided regarding critical circumstances facing the affected domestic industry and proof that the damage to the industry would be difficult to repair, as well as a statement indicating the level of tariff increase requested as a provisional measure.

**Article 246.** Any request under these Regulations may be withdrawn prior to initiation, in writing, in which case it shall be considered not to have been made.

**Article 247.** The Commission may initiate an investigation, whether at the request of a domestic industry or on its own initiative, only when it has determined that there is sufficient evidence that, as a result of unforeseen developments and of the effect of the obligations incurred by the Government of the Dominican Republic under the GATT 1994, the investigated product is being imported in such

increased quantities and under such conditions as to cause or threaten to cause serious injury to the domestic industry producing like or directly competitive products.

**Article 248.** Immediately after taking a decision regarding initiation, the Commission shall provide public written notice of that decision to the exporting countries, and shall notify interested parties by publishing a notice regarding initiation of a safeguard investigation in a national daily newspaper; for exporters, the corresponding channel shall be the Ministry of Foreign Affairs of the Dominican Republic. The date of initiation of an investigation shall be the date of such publication.

**Article 249.** If there are other interested parties desiring to participate in the investigation, they shall have a period of fifteen (15) days from the date of the notification to indicate to the Commission in writing their interest in participating in the investigation.

**Article 250.** Upon the initiation of an investigation and the determination of serious injury or threat of serious injury caused by the increase in imports, and once the decision has been taken to apply or extend a safeguard measure, the Committee of Safeguards of the World Trade Organisation (WTO) shall be notified and provided with all relevant information. As soon as the measure has been applied, the consultations referred to in Article 12.4 of the Agreement shall be initiated.

**Article 251.** The notice regarding initiation of a safeguard investigation shall include the following information:

- (i) A description of the investigated product, including its technical characteristics and uses, and an identification of its tariff classification and the duties applicable;
- (ii) a complete description of the domestic like or directly competitive products, including their technical characteristics and uses;
- (iii) the names of the requesting enterprises, if any, and of all known producers of the domestic like or directly competitive products;
- (iv) the name(s) of the country or countries of origin of the investigated product;
- (v) a summary of the information on which the allegations of increased imports and serious injury or threat thereof caused by increased imports are based, including a summary of the unforeseen developments that led to the alleged increase in imports of the investigated product, or to the change in the conditions under which such imports occur, and a summary of the effect of relevant obligations incurred by the Government of the Dominican Republic under the GATT 1994;
- (vi) the statement that the date of initiation is the date of publication of the notice regarding initiation of a safeguard investigation;
- (vii) whether or not application of a provisional measure will be considered;
- (viii) the timetable for the investigation.

**Article 252.** The Commission shall complete the investigation within period of at least one year, which may, in exceptional and justified cases, be extended to eighteen (18) months.

**Article 253.** The Commission may request directly from the interested parties, customs agents, forwarders and public and private institutions such data as it considers relevant for the better performance of its tasks. This information will be placed in the public file, with the exception of any confidential information.

**Article 254.** The Commission may conduct on-the-spot investigations to verify or obtain further details concerning the information provided. Where such investigations are conducted, the Commission shall prepare a report describing the findings of the verification. This verification report, with the exception of any confidential information, shall be placed promptly in the public file.

**Article 255.** Any information which is by nature confidential or which is provided on a confidential basis shall, upon cause shown, be treated as such. If the Commission finds that a request for confidential treatment is not warranted, and if the provider of the information is unwilling to make the information public or authorize its disclosure in general terms or in gist, the Commission may disregard such information unless it is given cogent evidence that the information is accurate.

**Article 256.** The provision by the Government of the Dominican Republic of confidential information to a WTO dispute settlement panel in the context of the Agreement on Safeguards shall not be deemed to be a disclosure of confidential information within the meaning of this Chapter. The Government of the Dominican Republic shall request that the panel requesting the information make reasonable efforts to preserve the confidentiality of the information provided to it.

**Article 257.** Participating interested parties shall have the opportunity, in accordance with the provisions of these Regulations, to present evidence and arguments in writing.

**Article 258.** In an investigation in which application of a provisional safeguard measure will be considered, any participating interested party may submit, as rapidly as possible, written arguments concerning any matter it considers relevant to the preliminary phase of the investigation. Those arguments shall, however, be submitted before the date proposed for the determination regarding the application of a provisional safeguard measure.

**Article 259.** In any investigation in which no hearing is requested, any participating party may submit written arguments concerning any matter it considers relevant to the investigation no later than thirty (30) days before the date for the determination regarding serious injury and causation.

### **CHAPTER III HEARINGS**

**Article 260.** The Commission shall, upon request of a participating interested party schedule a public hearing at which all participating interested parties may present information and arguments orally.

**First paragraph.** Any hearing shall be held no less than sixty (60) days prior to the date proposed for the final determination regarding serious injury or threat thereof and causation.

**Second paragraph.** In an investigation in which a hearing is held, no later than ten (10) days before the scheduled date of the hearing, any party may submit written arguments and information concerning any matter it considers relevant to the investigation.

**Article 261.** There shall be no obligation on any participating interested party to appear at a hearing, and failure to do so shall not be prejudicial to that participating interested party's case.

**Article 262.** Participating interested parties intending to appear at a hearing shall notify the Commission at least seven (7) days before the date of the hearing of the names of their representatives and witnesses who will appear at the hearing.

**Article 263.** Hearings shall be presided over by the Chair of the Commission, who shall ensure that confidentiality is preserved, and shall organize the hearing in a manner to ensure that all parties participating have an adequate opportunity to present their views. The Commission shall maintain a record of the hearing, which shall be promptly placed in the public file, with the exception of any confidential information.

**Paragraph.** Should the Chair of the Commission be unable to attend the said hearing, the Commission shall appoint one of its members to preside over it.

#### **CHAPTER IV PROVISIONAL SAFEGUARD MEASURES**

**Article 264.** Upon taking a decision regarding the application of a provisional safeguard measure, the Commission shall publish a notice in a national newspaper and shall notify the exporting country via the appropriate channels. The notice shall contain the following information:

- (i) A description of the investigated product, including its technical characteristics, uses, its tariff classification and the duties applicable;
- (ii) the volume and value of the imported product for the three years preceding the request, and any more recent partial-year data available, by country of origin;
- (iii) a description of the domestic like or directly competitive products, including their technical characteristics, uses and their tariff classification;
- (iv) the names of all known producers of the domestic like or directly competitive products;
- (v) the basis for the determination of critical circumstances, where delay would cause damage that would be difficult to repair, and the basis for the determination of the existence of clear evidence that the investigated product is being imported in such increased quantities and under such conditions as to cause or threaten to cause serious injury to the domestic industry producing like or directly competitive products;
- (vi) the amount of tariff increase proposed as the provisional safeguard measure;
- (vii) the duration of the provisional safeguard measure.

**Article 265.** If the Commission decides not to apply a provisional safeguard measure, the notice regarding the non-application shall include the following information:

- (i) A complete description of the investigated product, including its technical characteristics, uses, its tariff classification and the duties applicable;
- (ii) an identification of the domestic like or directly competitive products;



- (iii) an explanation of the reasons for the decision not to apply a provisional safeguard measure;
- (iv) a statement indicating whether the investigation will be terminated at that point, or continued through the final phase.

**Article 266.** With respect to Article 74 of the Law, the Commission may take a provisional safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury, and this in the case of critical circumstances, where delay would cause damage that would be difficult to repair.

**Article 267.** As regards Article 75 of the Law, and in the case of provisional measures taking the form of tariff increases, such increases must be promptly reimbursed if the subsequent investigation under these Regulations does not determine that increased imports have caused or threaten to cause serious injury to the domestic industry.

**Article 268.** The duration of the provisional measures shall be calculated as part of the initial period and the corresponding extensions granted under Chapter VI of this Part.

**Article 269.** The WTO Committee on Safeguards shall be notified before any provisional safeguard measure is adopted. Once the measures adopted, the relevant consultations must begin.

**Article 270.** The body responsible for the assessment and collection of provisional safeguard measures shall be the Directorate-General of Customs.

## **CHAPTER V DEFINITIVE SAFEGUARD MEASURES**

**Article 271.** Upon taking a decision regarding the application of a definitive safeguard measure, the Commission shall publish a notice in a national newspaper which shall include the following information:

- (i) A description of the investigated product, including its technical characteristics, uses, tariff classification and the duties applicable;
- (ii) the volume and value of the imported product for the three years preceding the request, and any more recent partial-year data available, by country of origin;
- (iii) a description of the domestic like or directly competitive products, including their technical characteristics and uses;
- (iv) the names of all known producers of the domestic like or directly competitive products;
- (v) a summary of the unforeseen developments that led to the increase in imports of the investigated product, or to the change in the conditions under which such imports occur;
- (vi) a summary of the affirmative injury determination, including the factors considered, as well as of the findings and reasoned conclusions reached on the issues of fact and

law considered, or a cross-reference to the notice of determination regarding injury and causation;

- (vii) the reasons for which it has concluded that application of a definitive safeguard measure is in the public interest;
- (viii) details concerning the domestic industry's adjustment plan;
- (ix) the form, level and duration of the proposed definitive safeguard measure, and an explanation thereof;
- (x) the proposed date of application of the definitive safeguard measure;
- (xi) if a quantitative restriction is proposed, the allocation of the quota among the supplier countries, an explanation and the relevant information;
- (xii) if the proposed duration of the measure, including the period of application of any provisional safeguard measure, is more than one year, a timetable for the progressive liberalization of the measure.

**Paragraph.** The allocation of quotas mentioned in subparagraph (xi) of this Article shall be done in conformity with Article 5 of the Agreement on Safeguards.

**Article 272.** A definitive safeguard measure normally shall be applied in the form of a tariff increase, a tariff quota or an import ceiling.

**First paragraph.** Safeguard measures shall not be applied to a product originating in a developing country as long as its share of imports into the Dominican Republic does not exceed three (3) per cent, provided that developing countries with individual shares of less than three (3) per cent of imports collectively represent not more than nine (9) per cent of total imports of the product concerned.

**Second paragraph.** The body responsible for the collection of a definitive safeguard measure in the form of a tariff increase shall be the Directorate-General of Customs.

**Article 273.** The WTO Committee on Safeguards shall be notified of the non-application of a definitive safeguard measure to imports, in conformity with the requirements established by that Committee.

**Article 274.** A definitive safeguard measure in the form of a quota or quotas on imports of the investigated product shall not reduce the quantity of those imports below the average level registered in the most recent three (3) representative years for which statistics are available, except as provided in Article 73 of the Law.

**Article 275.** If at any point during an investigation, the Commission terminates the investigation with no definitive safeguard measure applied, or in the event it is determined not to apply a definitive safeguard measure, the WTO Committee on Safeguards shall be notified immediately, in conformity with the requirements established by that Committee.

**Article 276.** If the domestic industry considers that there is a continuing need to apply a definitive safeguard measure beyond the initial period of application, it shall submit a written request for extension of the measure along with evidence that the industry is carrying out its adjustment plan, not

less than (six) months before the end of that period. The Commission shall conduct an investigation to determine whether an extension is warranted. To that end, the procedures set forth in these Regulations for applying the original measure shall be followed.

**Article 277.** The Commission may extend a definitive safeguard measure only if it determines through investigation that the measure continues to be necessary to prevent or remedy serious injury, and that there is evidence that the domestic industry is adjusting.

**Article 278.** The notice of extension of a definitive safeguard measure shall be subject to the same requirements prescribed for the notice of application of a definitive safeguard measure.

**Paragraph.** The provisions of this Article shall apply when a definitive safeguard measure is extended, while maintaining the level of concessions and obligations existing under the GATT 1994 between the Dominican Republic and the exporting countries that would be affected by the measure.

## **CHAPTER VI DURATION AND REVIEW OF THE SAFEGUARD MEASURES**

**Article 279.** For the purposes of Article 79 of the Law, if the duration of the measure exceeds three years, the Commission shall, not later than the mid-term of the period of application of the measure, examine the situation, and if appropriate, withdraw it or increase the pace of liberalization.

**Paragraph.** As a developing country, the Dominican Republic shall abide by the provisions of the Article 9.2 of the Agreement on Safeguards regarding the period of application of a safeguard measure.

**Article 280.** Notwithstanding the provisions of Article 80 of the Law, a safeguard measure with a duration of 180 days or less may be applied again to the import of a product if:

- (a) At least one year has elapsed since the date of introduction of a safeguard measure on the import of that product; and
- (b) such a safeguard measure has not been applied on the same product more than twice in the five-year period immediately preceding the date of introduction of the measure.

## **CHAPTER VII NOTIFICATION AND CONSULTATION**

**Article 281.** With regard to Article 5 of the Law, as well as Article 12 of the WTO Agreement on Safeguards, the Commission shall notify the Committee of Safeguards upon:

- (i) Initiating an investigatory process relating to serious injury or threat thereof and the reasons for it;
- (ii) making a finding of serious injury or threat thereof caused by increased imports; and
- (iii) taking a decision to apply or extend a safeguard measure, whether provisional or definitive.

**Article 282.** The Commission shall provide the WTO Committee on Safeguards with all pertinent information, which shall include evidence of serious injury or threat thereof caused by the increased imports, a precise description of the good involved and the proposed measure, the proposed date of introduction of the measure and its expected duration and a timetable for the progressive liberalization of the measure.

**Paragraph.** In the case of an extension of a measure, evidence that the industry concerned is adjusting shall also be provided.

**Article 283.** The Commission shall provide adequate opportunity for prior consultations with those members having a substantial interest as exporters of the product concerned, with a view to, *inter alia*, reviewing the information provided under the preceding article, exchanging views on the measure, and achieving the levels of concessions envisaged in Article 8 of the WTO Agreement on Safeguards.

## **CHAPTER VIII SPECIFIC PROVISIONS**

**Article 284.** The Commission shall consider the special safeguard provisions laid out in Article 5 of the WTO Agreement on Agriculture, for the cases of the agro-industrial products described in Annex I of that Agreement.

**Paragraph.** In such cases, the Commission shall work together with the Ministry of Agriculture's Office of Agricultural Trade Agreements (OTCA) to ensure compliance of the Dominican Republic's international commitments *vis-à-vis* the WTO.

**Article 285.** The provisions regarding Regulation 520-06 for the Application of Safeguard Measures under the Central America-Dominican Republic-United States Free Trade Agreement shall continue in force for the specific case of the countries that form part of that trade agreement.

**Paragraph.** In such cases, the Commission shall collaborate with the Directorate of Foreign Trade and Administration of International Trade Agreements, a division of the Ministry of Industry and Trade, to ensure the fulfilment of the Dominican Republic's commitments under that agreement.

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