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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

ECUADOR

The following communication, dated 20 May 2011, is being circulated at the request of the Permanent Mission of Ecuador.

In accordance with the provisions of Article 18.5 of the Anti-Dumping Agreement, Article 32.6 of the Agreement on Subsidies and Countervailing Measures and Article 12.6 of the Agreement on Safeguards, I herewith submit the text of Ecuador's legislation governing unfair practices and safeguards.

Attached hereto are the relevant parts of:

- "The Organic Code of Production, Trade and Investment", published in Official Journal No. 351 of 29 December 2010 (Annex I); and
- "The Regulations to Implement Book IV of the Organic Code of Production, Trade and Investment, Regarding Trade Policy, its Supervisory Bodies and Instruments", published in Official Journal No. 435 of 27 April 2011 (Annex II).

ANNEX I

ORGANIC CODE OF PRODUCTION, TRADE AND INVESTMENT
Official Journal No. 351 of 29 December 2010

BOOK IV

FOREIGN TRADE, ITS SUPERVISORY BODIES AND INSTRUMENTS

TITLE III

Trade Defence Measures

Chapter I

Article 88. Trade Defence. The State shall promote transparency and efficiency in international markets and shall encourage equal conditions and opportunities. For these purposes and in accordance with the provisions of this Code and of the relevant international instruments, it shall adopt appropriate trade measures to:

- (a) Prevent or remedy any injury or threat of injury to domestic industry arising from unfair practices of dumping and subsidization;
- (b) restrict or regulate any imports that increase significantly and are made under such conditions as to cause or threaten serious injury to domestic producers of like or directly competitive products;
- (c) respond to trade, administrative, monetary or financial measures adopted by a third country that affect the rights and trading interests of the State of Ecuador, provided that such measures may be deemed incompatible or unwarranted in the light of international agreements, or that they nullify or impair benefits accruing under an international trade agreement;
- (d) restrict imports or exports of products on social or economic grounds to local supply, domestic price stability or protection for domestic industry and domestic consumers;
- (e) restrict imports of products for balance-of-payments protection; and
- (f) offset any adverse effects on domestic production in accordance with the provisions of international agreements duly ratified by Ecuador.

By means of international trade agreements the application of these measures may be limited or other specific trade defence mechanisms established, based on the origin or provenance of the goods.

The trade defence measures that the governing body for trade policy may adopt include anti-dumping measures, countervailing duties, safeguard measures and any other mechanism recognized by international treaties duly ratified by Ecuador.

The requirements, procedures and mechanisms for the application and execution of the trade defence measures shall be governed by the provisions of the Regulations to this Code, including the retroactive application of measures determined upon completion of the formal investigation process set forth in the Regulations; the type of products covered by the measures and the exceptions shall likewise be determined.

Article 89. Duties. Anti-dumping and countervailing duties and those arising from the application of safeguard measures shall be collected by the Customs Administration together with the applicable foreign trade charges; however, as trade levies they may not be treated as fiscal or tax charges. Accordingly, such measures shall not be bound by the general principles of tax law.

Anti-dumping and countervailing duties shall remain in force as long as and insofar as they are necessary to offset the injury to the domestic industry. Nevertheless, such duties shall be terminated within five years of their entry into force, in accordance with the terms laid down in the Regulations to this Code.

Safeguard measures shall be applied for up to four years and may be extended for a further period of up to four years where such extension is warranted, due regard being paid to implementation of the domestic industry's adjustment programme.

Economic levies applied as a result of these processes may be lower than the margin of dumping or the amount of the established subsidy, provided that they suffice to discourage the importation of products under unfair international trade practices.

Where an investigation determines a need for retroactive payment of such levies, the Customs Authority shall decide on the procedure for the retroactive collection of the surcharges set in such cases, in accordance with the terms laid down in the Regulations.

Article 90. Refunds. The amounts collected under provisional measures for anti-dumping duties, countervailing duties or provisional safeguards shall be refunded if, on completion of the investigation, there is no determination that the increase in imports has caused or threatened serious injury to a domestic industry.

Article 91. Review. Definitive anti-dumping duties, safeguards or countervailing duties may be reviewed and amended periodically at the request of a party or ex officio, at any time, further to a report of the Investigating Authority, whether or not the duties in question are the subject of national or international administrative or judicial dispute proceedings.

In any case, the resolutions announcing the initiation and the conclusion of the review shall be notified to known interested parties. The interested parties shall be entitled to participate in the review process.

CHAPTER II

Article 92. Functions. For the purpose of defending trade against trade measures applied by governments of third countries, the governing body for trade policy shall be responsible for:

- (a) Deciding on or, as appropriate, recommending such trade policy measures as are necessary to ensure observance of the rights of the State of Ecuador in accordance with international trade rules;

- (b) without prejudice to the authority of the Attorney-General of the State, deciding whether a foreign trade dispute is to be heard by a panel, court of arbitration, international court or any appellate body established in accordance with international treaties or agreements;
- (c) adopting appropriate measures, compatible with international treaties and agreements, when a third country initiates internal or international proceedings regarding trade, financial, foreign exchange or administrative matters, the outcome of which may affect the production, exports or trading interests of Ecuador;
- (d) adopting such measures as are necessary to ensure implementation of the decisions taken by trade dispute settlement bodies established in accordance with this Code and relevant international agreements; and
- (e) the other functions assigned by this Code.

ANNEX II

REGULATIONS TO IMPLEMENT BOOK IV OF THE ORGANIC CODE OF PRODUCTION, TRADE AND INVESTMENT REGARDING TRADE POLICY, ITS SUPERVISORY BODIES AND INSTRUMENTS

Official Journal No. 435 of 27 April 2011.

TITLE III

Trade Defence Measures

Chapter I

Anti-Dumping Measures, Countervailing Duties and Safeguards

Article 52. Authority to approve and adopt trade defence measures. The Committee on Foreign Trade is the body having authority to approve and adopt, after taking cognizance of the relevant report submitted by the Investigating Authority in the cases set out in Article 88 of the Code of Production, Trade and Investment, trade defence measures that pertain to anti-dumping, countervailing duties, safeguards or other measures recognized by international treaties and agreements applying in Ecuador.

Article 53. Investigating authority. The administrative unit established in the Ministry of Foreign Affairs, Trade and Integration, shall be the Investigating Authority for trade defence for the purposes of the provisions of Article 75 of the Organic Code of Production, Trade and Investment and these Regulations.

The Ministry of Foreign Affairs, Trade and Integration shall include in its yearly operational budget the resources needed for the Investigating Authority to perform its duties in full, including the necessary financial resources for hiring staff and for other operational activities.

The Investigating Authority shall bring the reports on trade defence measures to the attention of COMEX, as provided in the Code and these Regulations. In drawing up such reports, the Investigating Authority shall take into account the analysis of injury or threat of injury to a domestic industry supplied by the relevant ministries and other public institutions as part of their duties.

Article 54. International Obligations of the State. When investigations are to be held in order to determine injury or threat thereof and the application of anti-dumping duties, safeguard measures or countervailing duties, the procedures to be applied shall be subject to the relevant provisions of the international treaties and agreements in force, whether bilateral, subregional, regional or multilateral, without prejudice to the provisions laid down in these Regulations and in such resolutions as the Committee on Foreign Trade may issue for the purpose.

Section I

Anti-Dumping Measures

Principles

Article 55. Application of an anti-dumping duty. An anti-dumping duty may be applied to any dumped product whose importation into Ecuador causes or threatens injury to a domestic industry.

Article 56. Determination of dumping. A product is to be considered as being dumped if its export price is less than the normal value of the same or like product when sold in the domestic market of the country of origin or of export, in the ordinary course of trade, compared at the same level of trade.

The ordinary course of trade means trade reflecting market conditions in the country of origin and carried out habitually or within a representative period between unrelated independent buyers and sellers, concerning the same or a like dumped product.

Article 57. Country of origin. The exporting country shall normally be the country of origin. However, it may be an intermediate country except where, for example, the products are merely transhipped through that country, or they are not produced in that country, or there is no comparable price for them in that country.

Article 58. Like product. For the purpose of these Regulations, "like product" shall mean a product which is identical, that is to say, 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.

Determination of the margin of dumping, the export price and the normal value

Article 59. Determination of the normal value. The normal value of an imported product shall mean the price actually paid or payable for a like product when sold for consumption or use in the domestic market of the country of origin or of export in the ordinary course of trade.

Prices between associated parties or parties bound by a compensatory agreement with each other may be considered to be in the ordinary course of trade and used to establish normal value only if it is demonstrated that such prices are unaffected by the relationship and are therefore comparable to those in trade between independent parties.

In order to determine whether two parties are associated, account shall be taken of the definition of related parties set forth in the Organic Law on the Internal Taxation Regime and its Regulations.

Sales of the like product destined for consumption in the domestic market of the exporting country shall be used, in the first instance, to determine normal value if such sales constitute 5 per cent or more of the sales in Ecuador of the product under consideration. However, a lower ratio shall be acceptable where the evidence demonstrates that domestic sales at such lower ratio are nonetheless of sufficient magnitude to provide for a proper comparison.

Article 60. Determination of normal value in special cases. When there are no sales of the like product in the ordinary course of trade in the domestic market of the country of origin or export or when, because of the particular market situation, such sales do not permit a proper determination of the normal value, such value shall be calculated using the prices of exports to an appropriate third country in the ordinary course of trade, provided that these prices are representative. It may also be calculated on the basis of the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits.

Article 61. Normal value in the case of third countries. Where products are not imported from the country of origin but from a third country, the price at which the products are sold from the country of export shall normally be compared with the comparable price in the third country.

However, comparison may be made with the price in the country of origin if, for example, the products are merely transhipped through the country of export, or such products are not produced in the country of export, or there is no comparable price for them in the country of export.

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. Authorities shall consider all available evidence on the proper allocation of costs, including that which is made available by the exporter or producer, in particular in relation to establishing appropriate amortization and depreciation periods and allowances for capital expenditure and other development costs.

Article 62. Determination of the export price. The export price shall be the price actually paid or payable for the product when sold for export from the exporting country to Ecuador in the ordinary course of trade.

When there is no export price or where the Investigating Authority deems the export price to be unreliable because of an association or compensatory arrangement between the exporter and importer or a third party, 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 if the products are not resold to an independent buyer or are not resold in the same State in which they were imported, the price may be calculated on a reasonable basis determined by the Investigating Authority.

Article 63. Conditions for making comparisons and adjustments. A fair comparison shall be made between the export price and the normal value, at the same level of trade.

Where the normal value and the export price as established are not on such a comparable basis, due allowance in the form of adjustments shall be made in each case, on its merits, for differences in factors which affect prices and price comparability. The parameters for comparison shall be based on the provisions made for such cases in international instruments and in those established by COMEX for the purpose.

Article 64. Determination of the margin of dumping. The margin of dumping shall be determined by the difference between the normal value and the export price. The margin shall be calculated per unit of the product imported into Ecuador at the dumped price.

Where the product under investigation consists of goods which are not basically identical with each other, the margin of dumping shall be estimated according to the type of good, in such a way that the normal value and the export price involved in each calculation correspond to comparable goods;

in this case, the margin for the product under investigation shall be determined as the weighted average of all the individual margins which have been estimated. The weighting shall be calculated according to the proportion of each type of good relative to the total volume of the product exported during the period of investigation.

Article 65. Determination of injury. For the purposes of these Regulations, "injury" shall mean a significant overall impairment in the position of a domestic industry.

The determination of injury shall be based on sufficient and positive evidence and involve an objective examination of the volume of the dumped imports, their impact on prices of the like product in the domestic market and their effects on the domestic industry. With regard to the volume of the dumped imports, consideration shall be given to whether there has been a significant increase in the dumped imports, either in absolute terms or relative to domestic production or consumption.

Article 66. Imposition of measures for countries with no regulations on dumping. If the investigation relates to products originating in or consigned from countries in respect of which there are no applicable international obligations, Ecuador may impose anti-dumping or countervailing duties merely on a finding of dumping.

Article 67. Determination of a threat of injury. For the purposes of these Regulations, "threat of injury" shall mean injury that is clearly imminent, in accordance with Article 78.

A determination of a threat of material injury to a domestic industry shall be based on facts and not mere 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. In making a determination regarding a threat of material injury, the authorities shall consider the parameters established by COMEX for the purpose.

Article 68. Causal link. In order to determine whether there is a causal link between the dumped imports and the injury to the domestic industry, the Investigating Authority shall also examine known factors other than dumped imports which at the same time are injuring or could injure the domestic industry. Factors that may be relevant in this respect include the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, restrictive trade practices by and competition between domestic and foreign producers, developments in technology, and the export performance and productivity of the domestic industry.

Article 69. Initiation of proceedings. Proceedings for a dumping investigation shall be initiated ex officio or on application by an interested party on behalf of the domestic industry. The requirements and other procedural aspects of the investigation shall be established in a resolution issued by COMEX.

The Investigating Authority shall examine the accuracy and relevance of the evidence provided in the complaint, in order to determine whether there is sufficient evidence for the initiation of an investigation.

Article 70. Consultations. Once the application is accepted, in the course of the investigation into dumping practices the Investigating Authority shall hold consultations with the interested parties, namely, the government authorities and the exporters of the exporting country, the importers and domestic producers of the product in question, and domestic industrial users and domestic consumers, in order to find a mutually agreed solution.

If, in the process of the consultations, a mutually agreed solution is reached between the parties, the initiation of an investigation shall be declared inappropriate or the investigation shall be suspended. If, after one month from the commencement of the consultations no mutually agreed solution has been reached, the investigation shall be continued.

Notwithstanding the provisions of this Article, the Investigating Authority may arrange consultations throughout the period of the investigation, but this shall not suspend or prevent continuation of the investigation.

Article 71. Publication and notification. Once the application has been accepted, before initiating the investigation the Investigating Authority shall notify the government of the exporting country. The Investigating Authority shall likewise publish in the Official Journal the resolution initiating the dumping investigation, expressly indicating the dates of initiation and completion of the investigation, the name of the exporting country or countries and the product concerned, the basis of the dumping allegation made in the application, a summary of the factors on which the injury allegation is based, an address for the interested parties to contact and the time period in which the interested parties may submit their views. The resolution shall be notified to the Committee on Anti-Dumping Practices of the World Trade Organization where the country concerned is a Member of the latter and to the interested parties.

Such resolutions shall be published in a newspaper with a large circulation in Ecuador, for the information of all concerned.

Article 72. Determination and imposition of provisional measures. The Investigating Authority shall prepare a technical report determining, as appropriate, the level of any provisional anti-dumping measures and shall submit it for examination and a resolution by COMEX, which shall hold a special meeting for the purpose, as necessary.

Provisional measures shall not be applied during the 60 days following the initiation of the investigation.

Provisional measures may be applied if:

- (a) An investigation has been initiated in accordance with these Regulations, public notice has been given to that effect and the interested parties have been given adequate opportunities to submit information and make comments;
- (b) a preliminary affirmative determination has been made of dumping and consequent injury to a domestic injury; and
- (c) the competent authority deems such measures necessary to prevent injury being caused during the investigation.

Article 73. Application of provisional duties. The provisional anti-dumping duties shall be applied through the same resolution as that adopting the preliminary determination, which may opt for any of the following decisions:

- (a) To continue the investigation, without the application of provisional duties;
- (b) to continue the investigation, with the application of provisional duties; or

- (c) to terminate the investigation.

The duties shall be paid on imports of the products subject to investigation, irrespective of the importer.

The payment of provisional duties may be replaced by a bond or security posted in the form and subject to the conditions laid down in the customs legislation.

Article 74. Duration of the application of provisional measures. The provisional measures shall be applied for a period of up to six months.

When a decision is taken to adopt a definitive anti-dumping measure, the period of application of any provisional measure shall be counted as part of the total period of duration of the measure.

The resolution determining the provisional measure shall be notified by the Committee on Foreign Trade to the National Customs Service of Ecuador for information and implementation.

Duties shall not be imposed if the Investigating Authority determines that the volume of the dumped imports is negligible, or if the margin of dumping is *de minimis*, or if the injury caused by the imports in question is negligible.

Article 75. Negligible imports and "de minimis" conditions. For the purposes established in the these Regulations, the following criteria shall be taken into account:

- (a) In the case of dumped imports, the value shall be regarded as negligible if: the volume of dumped imports from a particular country accounts for less than 3 per cent of total imports of that product;
- (b) the volume of dumped imports from countries which individually account for less than 3 per cent of the imports of the like product and which collectively represent less than 7 per cent of those imports;
- (c) a margin of dumping of less than 2 per cent, expressed as a percentage of the export price, shall be regarded as *de minimis*.

Article 76. Termination of the investigation. Once the period for completing all relevant aspects of the proceedings has expired and before the investigation is concluded, the Investigating Authority, on the basis of the evidence and information in the file, shall draw up the conclusions of the investigation and submit them to COMEX for a resolution.

Article 77. Implementation of the COMEX resolution. The decision adopted by COMEX shall be notified to the National Customs Service of Ecuador for information and implementation.

The resolution shall set out as a minimum the following information:

- (a) The factual and legal basis of the decision and the proven causal link;
- (b) the names of the suppliers, or when this is impractical, the supplying countries involved;

- (c) a description of the product concerned by the measure;
- (d) the margins of dumping established and a full explanation of the reasons for using the methodology applied in determining and comparing the export price and the normal value;
- (e) considerations relevant to the injury determination; and
- (f) the duration of the provisional measure.

When a decision is made to adopt a definitive measure, the period of application of the provisional measure shall be counted as part of the total duration of the measure.

The resolution shall be published in the Official Journal and notified to the interested parties within five working days of the date of publication.

Where a resolution imposes definitive duties, they shall be set in monetary units or *ad valorem* percentages, or a combination of the two.

When the decision to impose definitive measures is based on the existence of a threat of injury or material retardation (the injury not yet having occurred), definitive anti-dumping measures may be established only from the date of the determination of the threat of injury or material retardation in the establishment of a domestic industry, and the provisional duties shall be refunded and the corresponding securities released.

Article 78. Review of duties. One year after the imposition of definitive duties, the Investigating Authority, ex officio or upon application by an interested party, reopen the investigation in order to review the duties, if it considers that the conditions which led to their being imposed have changed.

The resolution reopening the investigation shall be equivalent to that which initiated it. The investigation shall be concluded within five months at most of the date of the resolution.

Pending termination of the investigation, the anti-dumping duties imposed shall be applied in full.

Article 79. Excess amounts and refunds. Any amounts found to be in excess of the anti-dumping duties established shall be refunded in full to the importer, or the security shall be refunded or collected only in part, where the margin of the definitive anti-dumping duties is found to have been less than the amount of the provisional duties applied.

The refunds shall be made by the customs authority in accordance with the procedures established for the purpose.

Article 80. Anti-dumping duties and importation. The application of anti-dumping duties shall not prevent the importation of the goods concerned into Ecuador.

Article 81. Anti-circumvention measures. Parts or components intended for the assembly or finishing in Ecuador of a like product to that on which definitive duties are imposed, may be subjected to payment of provisional or definitive duties if these operations are shown to be a way of circumventing the duties imposed on the product.

Section II

Safeguard Measures, Investigation and Conditions of Application

Article 82. Adoption and application of safeguard measures. COMEX may, ex officio or on application by an interested party, apply a provisional or definitive safeguard measure to a product or group of products if, as a result of an investigation, it has determined that the product or group of products is being imported into the national territory in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten serious injury to the domestic industry that produces like or directly competitive goods.

The safeguard measures shall be applied to the imported product irrespective of its source.

Article 83. Application requirements. The requirements and procedures for applying for the imposition of safeguard measures shall be set as provided in the relevant international rules and in resolutions issued by COMEX.

Article 84. Acceptance of the application and initiation of the investigation. Immediately after an investigation has been initiated, the Investigating Authority shall notify the governments of the countries whose exports could be affected in the event of a safeguard measure being applied, so that they may submit evidence and state their opinions.

Notice that the initiation of an investigation is warranted shall be given by the Committee on Foreign Trade in a resolution setting out the factual and legal grounds for the decision.

Nevertheless, the Investigating Authority may apply provisional safeguard measures, in accordance with the provisions of these Regulations and of resolutions issued by COMEX.

Article 85. Information. The Investigating Authority may request the data and information it deems relevant for the fulfilment of its task directly from the interested parties, the National Customs Service of Ecuador and other public or private sector companies and bodies, which must provide the information concerned within the prescribed time-limits.

When the information requested by the Investigating Authority is not provided within the time-limits laid down in these Regulations, or when the investigation is seriously impeded, findings may be made on the basis of available data. If the Investigating Authority finds that an interested party has supplied it with false or misleading information, it shall disregard such information and may use the data available.

Information received may be used only for the purpose for which it was requested.

Article 86. Application of safeguard measures. Provisional and definitive safeguard measures shall be applied only to the extent and for such period of time as may be necessary to prevent threat of injury or to remedy serious injury and facilitate adjustment.

Safeguard measures shall consist preferably of an *ad valorem* or a specific tariff or a combination of the two; only where measures of this nature are inappropriate shall quantitative restrictions be applied.

Article 87. Quantitative restrictions. If the safeguard measure consists of a quantitative restriction in the form of an import quota or ceiling, such quota or ceiling shall on no account be

lower than the average level of imports of the product entered in the three calendar years immediately preceding the year in which the investigation was initiated, unless clear cause is shown of the need to set a different level in order to remedy or prevent serious injury or threat thereof, as the case may be.

Article 88. Provisional measures. During the investigation and in critical circumstances where delay would cause serious injury, a provisional safeguard measure may be applied. In such cases, the Investigating Authority shall prepare a preliminary technical report containing all relevant factors of an objective and quantifiable nature allowing an assessment of the relevance of such a measure and its potential impact on the domestic market.

The preliminary report shall be founded on clear proof that the increase in imports has caused or is threatening to cause serious injury to the domestic industry and shall be submitted with the corresponding recommendation to COMEX for approval.

Article 89. Amount of the provisional measure. The amount of the provisional safeguard measure shall be paid or guaranteed for payment by the importer, by cash deposit or security, through the National Customs Service of Ecuador.

When the amount of a definitive safeguard measure is higher than that of a provisional safeguard measure that has been paid or guaranteed, the excess shall not be payable. Conversely, provisional duties collected in an amount higher than that fixed for a definitive measure shall be refunded. For this purpose the National Customs Service of Ecuador shall use the simplified refund system.

In the event that no definitive safeguard measure is established, reimbursement of the full amount paid shall be ordered promptly, or the security put up for the amount of the provisional duties shall be returned to the importers.

Article 90. Definitive safeguards. To reach a determination on the imposition of definitive safeguard measures, the Investigating Authority shall submit to COMEX the requisite final technical report on the serious injury caused or threatened by the increased imports, so that COMEX may approve the application of safeguard measures and their amount.

Article 91. Consultations. As soon as a provisional measure is adopted and before imposing or extending a definitive safeguard measure, the Investigating Authority shall provide adequate opportunity for consultations to be held between the interested parties.

Article 92. Publications. If the initiation of an investigation is approved, the Investigating Authority shall publish in the Official Journal the resolution to initiate the investigation issued by COMEX. The same procedure shall be followed when the Investigating Authority decides on provisional and definitive measures. The resolutions shall also be published in a newspaper with a broad circulation in Ecuador, for the information of all interested parties.

Unless a decision has been made to initiate an investigation, the authorities shall avoid publicizing the application for initiation of an investigation.

Article 93. Definitive safeguards. The period of application of definitive safeguard measures shall not exceed four years, unless the measures are extended.

The total duration of a safeguard measure, including the period of application of any provisional measure, the initial period of application and any extension thereof, shall not exceed eight years.

Article 94. Revocation. The Investigating Authority shall request information on a regular basis from the company or sector protected by the safeguard measure, concerning the evolution of production and sales and whether they have begun to recover, in order to determine whether the measure should be revoked.

Article 95. Extension. A safeguard measure may be extended ex officio or at the request of a party no less than two months before expiry of the period prescribed for the initial measure. In such event the procedure provided for the adoption of the original measure shall be followed.

Article 96. Approval. A safeguard measure may be extended provided that the Investigating Authority has determined, in accordance with the procedures established in these Regulations, that the safeguard measure continues to be necessary to prevent or remedy serious injury and that there is evidence that the industry is undergoing a process of adjustment.

However, a new safeguard measure may not be applied to the same product until two years have elapsed since the end of the initial measure, including any extension.

Article 97. Notwithstanding the provisions of the preceding Article, safeguard measures of a duration not exceeding 180 days may be applied again to imports of the same product in cases where:

At least one year has elapsed since the date of introduction of the safeguard measure on the import of the product concerned; and

such a measure has not been applied to the same product more than twice in the five-year period immediately preceding the date of introduction of the safeguard measure.

Article 98. Review of measures. The Investigating Authority, ex officio or upon application by an interested party, may reopen the investigation in order to review the definitive measures, if it considers that the conditions which led to their being imposed have changed. In such event it shall follow the procedures laid down in regulations issued for the purpose by COMEX.

Article 99. Information. All public sector entities shall supply, in good time, any information or documentation requested by the Investigating Authority for the purpose of acquiring data needed to conduct an unfair practices or safeguard investigation.

Agricultural Products

Article 100. Special safeguards. In the case of agricultural products designated for the use of special safeguards in the schedule of bindings under the WTO, account shall be taken of the relevant provisions of the WTO Agreement on Agriculture and any other binding decisions the WTO may adopt in this connection, subject to the application of the provisions on safeguards laid down in these Regulations and in any resolutions issued by COMEX on the matter.

Article 101. Special measures or specific safeguards in international treaties and agreements.

Where bilateral, multilateral, regional or subregional trade agreements to which Ecuador is a party provide for special measures or specific safeguards relating to agricultural products, where appropriate, the provisions of such international trade instruments shall apply, subject to the application of the provisions on safeguards laid down in these Regulations.

If, for the application of such measures, a special report is required of some public institution and the latter fails to produce it within the period prescribed, the Board of COMEX may ask the Ministry in charge of the institution to set appropriate penalties to apply to the official or officials responsible for such failure.

Section III

Subsidies and Countervailing Duties

Article 102. Application of countervailing duties. The Committee on Foreign Trade may apply countervailing duties to offset any subsidy applied by a third country that is causing injury to a domestic industry, when the subsidy is specific to an enterprise or industry or a group of enterprises or industries and, in addition, is granted directly or indirectly for the manufacture, production or export of any product, in accordance with the provisions of applicable international and community treaties and rules and the provisions of these Regulations.

Countervailing duties shall not exceed the estimated amount of the subsidy granted directly or indirectly for the manufacture, production or export of the product in question in the country of origin or export, including any special subsidy for the transportation of a particular product.

Article 103. Subsidies. For the purposes of these Regulations, "subsidy" shall mean:

A financial contribution that a foreign government or any public or semi-public body, its entities, or any regional public or semi-public body comprising various countries, grants, either directly or indirectly, to an enterprise or industry or group of enterprises or industries, thereby conferring an economic benefit or an incentive, having effects on the costs of production, sales, exportation or logistics; and

Any form of income or price support that confers an economic benefit.

The parameters for the existence of a financial contribution shall be set in regulations issued by COMEX for the purpose.

Article 104. Calculation of the amount. The amount of the countervailable subsidies shall be calculated in terms of the benefit obtained by the recipient during the period of subsidization under investigation. Normally this period shall be the most recent accounting year of the beneficiary, but may also be any other period of at least six months prior to the initiation of the investigation for which reliable financial and other relevant data are available. The deductions that may be made from the amount of the total subsidy and the parameters for determining the benefit obtained shall be fixed in regulations issued by COMEX for the purpose.

Article 105. Evidence of injury. If the investigation relates to products originating in or consigned from countries in respect of which there are no applicable international obligations, Ecuador may impose countervailing duties on a mere finding of subsidization.

Article 106. Determination of a threat of injury. A determination of threat of material injury to a domestic industry shall be based on facts and not mere 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. In making a determination regarding a threat of material injury, the authorities shall consider such factors as:

- (a) The nature of the subsidy and its probable effects on trade;
- (b) a significant rate of increase of subsidized imports, indicative of the likelihood of substantially increased importation;
- (c) sufficient freely disposable, or an imminent substantial increase in, installed capacity of the exporter, that indicates the likelihood of substantially increased subsidized exports to Ecuador, taking into consideration the availability of other export markets able to absorb the possible increase in exports;
- (d) imports entering at prices that will have a significant depressing or suppressing effect on domestic prices, and that will probably increase the demand for further imports;
- (e) inventories of the product under investigation.

None of these factors will necessarily give decisive guidance on its own, but considered all together they must lead to the conclusion that further subsidized exports are imminent.

Article 107. Period of analysis of the injury or threat thereof. The analysis of the injury or threat of injury shall comprise a period covering imports of the like product in the last 12 months for which information is available.

Article 108. Causal link. In order to determine whether there is a causal link between the subsidized imports and the injury to the domestic industry, the Investigating Authority shall also examine known factors other than the imports, which at the same time are injuring or could injure the domestic industry. Factors which may be considered in this respect include the volume and prices of unsubsidized imports, contraction in demand or changes in the patterns of consumption, restrictive trade practices of and competition between domestic and foreign producers, developments in technology, and the export performance and productivity of the domestic industry.

Article 109. Initiation of investigation proceedings. The proceedings for an investigation regarding countervailing duties shall be initiated ex officio or on application by an interested party, in accordance with the procedure laid down in resolutions issued by COMEX for the purpose.

Article 110. Publication and notification. Once the application has been accepted, before initiating the investigation the Investigating Authority shall notify the government of the exporting country concerned. If the initiation of an investigation is in order, the Investigating Authority shall publish the resolution opening the investigation in the Official Journal, expressly indicating the dates of the initiation and completion of the proceedings, the name of the exporting country or countries and the product concerned, the grounds for claiming countervailing duty stated in the application, a summary of the factors on which the injury allegation is based, an address for the interested parties to

contact and the time-period in which the interested parties may submit their views. The resolution shall be notified to the Committee on Anti-Dumping Practices and the Committee on Subsidies and Countervailing Measures of the World Trade Organization when the country concerned is a Member of that Organization, and to the interested parties.

Such resolutions shall also be published in a newspaper with a large circulation in Ecuador.

Article 111. Provisional measures. The Investigating Authority shall prepare a technical report determining whether provisional countervailing measures are warranted and shall submit it for examination and a resolution by the Committee on Foreign Trade, which, if appropriate, shall hold a special meeting for the purpose.

Provisional measures shall not be applied during the 60 days following the initiation of the investigation.

The provisional countervailing duties shall be applied through the same resolution as that adopting the preliminary determination.

The duties shall be paid on imports of the products under investigation irrespective of the importer.

The payment of provisional duties may be replaced by a bond or security posted in the form and subject to the conditions laid down in the customs legislation.

When a decision is made to adopt a definitive countervailing measure, the period of application of any provisional measure shall be counted as part of the total duration of the measure.

The resolution determining the provisional measure shall be notified by the Committee on Foreign Trade to the National Customs Service of Ecuador for information and implementation.

Duties shall not be imposed if the Investigating Authority determines that the volume of subsidized imports is negligible, or if the overall level of subsidization is *de minimis*, or if the injury caused by the imports in question is negligible. The parameters for determining whether the injury is negligible shall be set in resolutions issued by COMEX for the purpose.

Article 112. Evidence and information requested or provided during the investigation. During the period set for conducting the investigation, the Investigating Authority may request and take such evidence as it considers pertinent.

The Investigating Authority may request any kind of information, including technical advice, from the various departments of government, which shall respond by the dates set in the proceedings. It may also request any opinion it considers relevant and any action conducive to the ascertainment of the facts. Interested parties may comment on the information.

Likewise, interested parties and all those who demonstrate a legitimate interest in participating in the investigation may furnish pertinent evidence, reports and documents, up to 45 working days before the date on which the Investigating Authority concludes the investigation.

Article 113. Confidential information. Information shall be considered confidential if its disclosure or publication might injure the competitive position of the enterprise concerned or have a significantly adverse effect upon the person supplying the information or if it is provided on a

confidential basis. A separate file, which may be inspected only by the competent authorities, shall be opened for confidential information provided by the applicant, other interested parties or the authorities.

Any confidential information submitted to the investigation must be accompanied by a non-confidential summary that is detailed enough to permit a reasonable understanding of the information submitted in confidence.

If the authorities find that a request for confidentiality is not warranted and if the supplier of the information is unwilling either to make the information public or to authorise its disclosure in general terms or summary form, the authorities may disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.

Access to confidential information shall be restricted to the competent authorities acting in performance of their functions, in the course of which confidentiality must be duly maintained.

Article 114. Solutions agreed by the parties. The competent authorities of the country of origin or export and the country's producers or exporters may express, through the Investigating Authority, their intention to eliminate or limit the subsidy, revise the export prices or cease exports to Ecuador, as the case may be, so that the injury caused to the domestic producers is removed.

The Investigating Authority may not force exporters to enter into price undertakings. The exporters shall periodically submit information relevant to the fulfilment of undertakings accepted.

Article 115. Amount of the countervailing duties. If, once the investigation has been completed, it is determined that definitive countervailing duties are to be imposed, the corresponding decision shall determine an amount, either equal to or less than the subsidy, that is necessary or sufficient to remove the injury or threat thereof.

The duties shall be assessed in monetary units or as *ad valorem* percentages, or a combination of the two.

Article 116. Retroactive application of duties. The retroactive application of definitive duties may be ordered in the following cases:

On imports entered between the date of initiation of the investigation and the date of application of provisional duties, subject to a maximum of 90 working days. In qualifying the imports, account shall be taken of import trends during the above-mentioned period as compared with the trend over a period of three years prior to the date of initiation of the investigation or the invitation to hold consultations. Moreover, in each particular case the size of the market for the product investigated and other circumstances, such as a rapid build-up of inventories of the imported product, shall be taken into consideration.

On imports entered during the 90 days preceding the establishment of provisional duties, in the event of non-fulfilment of undertakings given in statements of intent. The period of application shall not exceed the duration of the period of non-fulfilment.

Article 117. Application and duration of countervailing duties. A countervailing duty shall be automatically eliminated five years after its imposition, unless it is determined from periodic reviews that the causes of its imposition still exist. The public shall be notified by resolution of the maintenance or elimination of the duties.

The National Customs Service of Ecuador shall apply the duties in accordance with the resolution imposing them, taking into account the arrangements for collection and the applicable procedures prescribed by COMEX.

In any event, a countervailing duty shall remain in force only as long and as far as is necessary to offset the subsidy which is causing injury.

Article 118. Review of duties. One year after the imposition of definitive duties, the Investigating Authority, ex officio or upon application by an interested party, shall order the investigation to be re-opened in order to review the duties, if it considers that the conditions which led to their being imposed have changed.

The resolution ordering the investigation to be reopened shall be equivalent to that which initiated the investigation. Where an investigation is reopened by resolution, it shall be concluded within a period not exceeding five months.

Pending the conclusion of the investigation, the countervailing duties shall be applied in full.

Article 119. Margin of countervailing duties. In submitting its conclusions, the Investigating Authority shall be responsible for recommending an amount for the countervailing duties to be applied, taking into account the amount of the subsidy and the level of injury caused to the domestic industry. The countervailing duties may on no account be higher than the amount of the subsidy.

Article 120. Excess amounts and refunds. Where the margin of the definitive countervailing duties is found to be lower than the amount of the provisional duties paid, the full amount or the overpayment shall be refunded to the importers, or the security shall be refunded or collected only in part. The refunds shall be made by the customs authority in accordance with the procedures established for the purpose.

When the decision to impose definitive measures is based on the existence of a threat of injury or material retardation (the injury not yet having occurred), definitive countervailing duties may be established only from the date of the determination of threat of injury or material retardation in the establishment of a domestic industry, and the provisional duties shall be refunded and the corresponding securities released.

The application of countervailing duties shall not prevent the importation of the goods concerned into Ecuador.

Article 121. Anti-circumvention measures. Parts or components intended for the assembly or finishing in Ecuador of a like product to that on which definitive duties are imposed may be subjected to payment of provisional or definitive duties if such operations are shown to be a way of circumventing the duties imposed on the product.

Assistance for Interested Parties in Dumping, Subsidies and Safeguards Investigations

Article 122. Investigations of Ecuadorian exports for dumping, subsidies or safeguards. When an Ecuadorian producer or exporter learns that an investigation of its products for dumping,

subsidies or safeguards has been initiated abroad, it may call upon the Investigating Authority for technical and legal assistance in defending its interests.

The technical and legal assistance shall include guidance and collaboration in obtaining information, advice on the completion of forms and questionnaires, assistance in the event of on-the-spot investigations by foreign authorities and, in general, any help which the Ministry is able to provide through its Investigating Authority.

Article 123. Report to COMEX. If investigations of Ecuadorian products for dumping, subsidies or safeguards are initiated abroad, the Investigating Authority shall inform COMEX of the substantive elements of the investigations, the measures adopted, the producers or exporters, the results obtained and the current situation. The Investigating Authority may set up committees to monitor dumping, subsidies or safeguards investigations conducted abroad into Ecuadorian products.

The committees shall consist of representatives of the chambers or associations of the industry to which the producer or exporter under investigation belongs and of the Investigating Authority. The committees shall regularly submit reports and recommendations to COMEX.

Balance-of-Payments Protection Measures

Article 124. Balance-of-payments protection measures. The Committee on Foreign Trade may adopt trade measures in accordance with the procedures provided in international trade agreements and treaties ratified by Ecuador, in order to safeguard Ecuador's external financial position and balance of payments.

Article 125. Notification. The governing body for foreign trade policy shall be responsible for notification and other procedures required by the multilateral, regional or subregional organizations under which Ecuador has signed trade agreements or treaties.

Other Trade Defence Measures

Article 126. Other trade defence measures. The Committee on Foreign Trade may adopt any temporary trade measure recognized by international trade agreements and treaties duly ratified by Ecuador, the aim of which is to develop specific productive activities in accordance with the government policy laid down in the National Development Plan and the objectives established in this Code.

Article 127. Foreign exchange safeguards. The Committee on Foreign Trade may adopt transitional remedial measures, provided that they are allowed by the international trade agreements and treaties ratified by Ecuador, where a currency devaluation by one of its trading partners alters the normal conditions of competition in one or more sectors of the domestic industry.

Article 128. Preliminary reports. In approving such measures, the Committee on Foreign Trade shall take as a basis the reports, analyses, studies or other technical documents that the institutions represented on the Sectoral Production Committee submit for the purpose through the Technical Secretariat. In each case the implementation procedure shall be approved by COMEX in a resolution.

Article 129. International obligations of the State. The Ministry in charge of foreign trade policy shall be responsible in each case for carrying out any actions provided for in trade agreements or treaties that facilitate the adoption of such measures, and for submitting notifications and explanations to the competent bodies that form part of such trade agreements and treaties.

Trade Measures Applied by Governments of Third Countries

Article 130. Monitoring of trade measures taken by foreign States. The Ministry in charge of foreign trade policy shall continuously monitor any tariff and non-tariff measures adopted by trading partners that affect Ecuador's trading interests, and to this end shall submit regular reports on the main problems affecting Ecuador's exports, so that the Committee may determine a suitable approach and guidance.

Article 131. Follow-up of dispute proceedings. The Ministry in charge of foreign trade policy shall report to the Committee on Foreign Trade every quarter on any dispute proceedings submitted to a panel, court of arbitration, international court or any appellate body established in accordance with international treaties or agreements, that concern Ecuador's trading interests, so that the Committee may decide as to Ecuador's participation as a third interested party.

Article 132. Decisions in foreign trade disputes. The Ministry in charge of foreign trade policy shall report to COMEX any trade disagreements arising between Ecuador and a trading partner that need to be referred to dispute settlement bodies established in accordance with international treaties or agreements. The Committee shall decide whether such dispute is to be submitted to a panel, court of arbitration, international court or any appellate body, provided that there are no other means of reaching a mutually satisfactory solution with the trading partner or partners.

The Attorney-General of the State shall be the legal representative of the State of Ecuador and shall plead its case where the treaties and agreements in force require a dispute to be referred to international arbitral or judicial bodies. To this end, the Committee on Foreign Trade, acting through the Ministry in charge of foreign trade, shall undertake the necessary coordination with the Attorney-General of the State.

Article 133. Resources for defending the country. The Committee on Foreign Trade shall ensure the availability of both human and financial resources should a trade dispute between Ecuador and a trading partner or partners be referred to a panel, court of arbitration, international court or any appellate body.

Article 134. Implementation of decisions by international bodies. The Ministry in charge of foreign trade policy shall submit for approval by COMEX, appropriate measures to be taken pursuant result of rulings that panels, courts of arbitration, international courts or any appellate bodies issue for the settlement of trade disputes referred to them.
