

RESTRICTED
WORLD TRADE
ORGANIZATION

G/SG/N/1/ARG/2
25 March 1996

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Committee on Safeguards

NOTIFICATION OF LAWS, REGULATIONS AND ADMINISTRATIVE
PROCEDURES RELATING TO SAFEGUARD MEASURES

ARGENTINA

The following communication, dated 4 March 1996, has been received from the Permanent Mission of Argentina.

LAW No. 24,245

Approving the Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations; the Ministerial Decisions and Declarations and Understandings and the Marrakesh Agreement.

Adopted: 7 December 1994
Enacted: 23 December 1994

The Senate and Chamber of Deputies of the Argentine Nation, meeting in Congress, etc., approve with the force of law:

Article 1. The Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations; the Ministerial Decisions and Declarations and Understandings and the Marrakesh Agreement Establishing the World Trade Organization and its four (4), annexes signed in Marrakesh, Kingdom of Morocco, on 15 April 1994, is hereby adopted and an authenticated photocopy forms part of this Law.

Article 2. For communication to the National Executive. - ALBERTO R. PIERRI. - ORALDO BRITOS. - Esther H. Pereyra Arandia de Pérez Pardo. - Edgardo Piuzzi.

Done in the Chamber of the Argentine Congress, Buenos Aires, on 7 December 1994.

FINAL ACT EMBODYING THE RESULTS OF THE URUGUAY ROUND
OF MULTILATERAL TRADE NEGOTIATIONS

1. Having met in order to conclude the Uruguay Round of Multilateral Trade Negotiations, representatives of the governments and of the European Communities, Members of the Trade

Negotiations Committee, *agree* that the Agreement Establishing the World Trade Organization (referred to in this Final Act as the "WTO Agreement"), the Ministerial Declarations and Decisions, and the Understanding on Commitments in Financial Services, as annexed hereto, embody the results of their negotiations and form an integral part of this Final Act.

2. By signing the present Final Act, the representatives *agree*:

(a) to submit, as appropriate, the WTO Agreement for the consideration of their respective competent authorities with a view to seeking approval of the Agreement in accordance with their procedures; and

(b) to adopt the Ministerial Declarations and Decisions.

3. The representatives *agree* on the desirability of acceptance of the WTO Agreement by all participants in the Uruguay Round of Multilateral Trade Negotiations (hereinafter referred to as "participants") with a view to its entry into force by 1 January 1995, or as early as possible thereafter. Not later than late 1994, Ministers will meet, in accordance with the final paragraph of the Punta del Este Ministerial Declaration, to decide on the international implementation of the results, including the timing of their entry into force.

4. The representatives *agree* that the WTO Agreement shall be open for acceptance as a whole, by signature or otherwise, by all participants pursuant to Article XIV thereof. The acceptance and entry into force of a Plurilateral Trade Agreement included in Annex 4 of the WTO Agreement shall be governed by the provisions of that Plurilateral Trade Agreement.

5. Before accepting the WTO Agreement, participants which are not contracting parties to the General Agreement on Tariffs and Trade must first have concluded negotiations for their accession to the General Agreement and become contracting parties thereto. For participants which are not contracting parties to the General Agreement as of the date of the Final Act, the Schedules are not definitive and shall be subsequently completed for the purpose of their accession to the General Agreement and acceptance of the WTO Agreement.

6. This Final Act and the texts annexed hereto shall be deposited with the Director-General to the CONTRACTING PARTIES to the General Agreement on Tariffs and Trade who shall promptly furnish to each participant a certified copy thereof.

DONE at Marrakesh this fifteenth day of April one thousand nine hundred and ninety-four, in a single copy, in the English, French and Spanish languages, each text being authentic.

MINISTERIAL DECISIONS, DECLARATIONS AND UNDERSTANDING

DECISION ON MEASURES IN FAVOUR OF LEAST-DEVELOPED COUNTRIES

Ministers,

Recognizing the plight of the least-developed countries and the need to ensure their effective participation in the world trading system, and to take further measures to improve their trading opportunities;

Recognizing the specific needs of the least-developed countries in the area of market access where continued preferential access remains an essential means for improving their trading opportunities;

Reaffirming their commitment to implement fully the provisions concerning the least-developed countries contained in paragraphs 2(d), 6 and 8 of the Decision of 28 November 1979 on Differential and More Favourable Treatment, Reciprocity and Fuller Participation of Developing Countries;

Having regard to the commitment of the participants as set out in Section B(vii) of Part I of the Punta del Este Ministerial Declaration;

1. *Decide* that, if not already provided for in the instruments negotiated in the course of the Uruguay Round, notwithstanding their acceptance of these instruments, the least-developed countries, and for so long as they remain in that category, while complying with the general rules set out in the aforesaid instruments, will only be required to undertake commitments and concessions to the extent consistent with their individual development, financial and trade needs, or their administrative and institutional capabilities.

The least-developed countries shall be given additional time of one year from 15 April 1994 to submit their schedules as required in Article XI of the Agreement Establishing the World Trade Organization.

2. *Agree* that:

(i)Expeditious implementation of all special and differential measures taken in favour of least-developed countries including those taken within the context of the Uruguay Round shall be ensured through, *inter alia*, regular reviews.

(ii)To the extent possible, MFN concessions on tariff and non-tariff measures agreed in the Uruguay Round on products of export interest to the least-developed countries may be implemented autonomously, in advance and without staging. Consideration shall be given to further improve GSP and other schemes for products of particular export interest to least-developed countries.

(iii)The rules set out in the various agreements and instruments and the transitional provisions in the Uruguay Round should be applied in a flexible and supportive manner for the least-developed countries. To this effect, sympathetic consideration shall be given to specific and motivated concerns raised by the least-developed countries in the appropriate Councils and Committees.

(iv)In the application of import relief measures and other measures referred to in paragraph 3(c) of Article XXXVII of GATT 1947 and the corresponding provision of GATT 1994, special consideration shall be given to the export interests of least-developed countries.

(v)Least-developed countries shall be accorded substantially increased technical assistance in the development, strengthening and diversification of their production and export bases including those of services, as well as in trade promotion, to enable them to maximize the benefits from liberalized access to markets.

3. *Agree* to keep under review the specific needs of the least-developed countries and to continue to seek the adoption of positive measures which facilitate the expansion of trading opportunities in favour of these countries.

LAW No. 19,549

Buenos Aires, 3.4.72

Under the powers conferred by Article 5 of the Constitution of the Argentine Revolution,

THE PRESIDENT OF THE ARGENTINE NATION APPROVES AND PROMULGATES WITH
THE FORCE OF LAW:

ADMINISTRATIVE PROCEDURES

TITLE I

Administrative Procedures: Scope of Application

Article 1: Rules of procedure to be used in relation with the National Public Administration, both central and local, including autonomous bodies, except for military, defence and security agencies, shall comply with the provisions of the present law and the following requirements:

General Requirements: Ex Officio Instigation and Conduct of Proceedings

- (a) Proceedings shall be instigated and conducted *ex officio* without prejudice to the participation of interested parties therein;

Speed, Economy, Simplicity and Efficiency of Proceedings

- (b) Speed, economy, simplicity and efficiency shall govern the proceedings, and the Executive shall be empowered to regulate the disciplinary regime to ensure decorum and good order in the proceedings. The regime includes the power to apply fines of up to 100 pesos - unless otherwise provided in the specific law - by decisions which, when confirmed, shall be enforceable;

Informality

- (c) Failure by interested parties to comply with non-essential formal requirements which can be fulfilled subsequently shall be excused;

Working Days and Hours

- (d) Actions and proceedings shall take place during official working days and hours, but other days and times may be permitted *ex officio* or at the request of a party;

Time-Limits

- (e) Time-limits:
1. Shall be binding on interested parties and the Administration;
 2. Shall be counted in official working days subject to contrary legislation or authorization *ex officio* or at the request of a party;

3. Shall be counted from the day following notification. In the case of time-limits concerning acts subject to the requirement to publish, the provisions of Article 2 of the Civil Code shall apply;
4. In cases where no specific time-limit has been set for proceedings, notifications and summons, compliance with notifications and summons and replies to notifications, hearings and reports, the time-limit shall be 10 days;
5. Prior to the expiry of a time-limit the administration, *ex officio* or at the request of the interested party, may extend the time-limit for such time as it deems reasonable, giving grounds for its decision and provided that it is not prejudicial to the rights of third parties. A refusal shall be notified at least two days prior to the expiry of the time-limit for which an extension was requested;

Lodging of Appeals Out of Time

6. Once the time-limits established for lodging administrative appeals have expired, the right to submit them shall be lost. This shall not prevent the appeal being considered by a higher authority as a complaint of illegality, unless the higher authority shall resolve otherwise for reasons of legal safety or, having exceeded reasonable time-limits, it is deemed to constitute a voluntary waiver of that right;

Interruption of Time-Limits for Lodging of Appeals

7. Without prejudice to the provisions of Article 12, the lodging of administrative appeals shall interrupt the running of time-limits, even where such appeals have been improperly defined, contain insignificant formal flaws or were made through an excusable error to a body that was not competent;

Loss of Right Due to Failure to Exercise it Within the Time-Limit

8. The administration may deem a right which has not been exercised within the corresponding time-limit to have lapsed, without prejudice to the prosecution of the appropriate proceedings at its own instance and without repeating any stage in the proceedings provided that the matter does not fall within the provisions of the following paragraph;

Lapse of Proceedings

9. After 60 days from the time when proceedings have stopped for reasons attributable to the party concerned, the competent body shall notify that party that if a further 30 days elapse without any action being taken, the authorities shall declare the proceedings lapsed, and file the case. Exceptions are proceedings concerning social security and those that the Administration considers should continue due to the particular circumstances or because they are of public interest. Once the proceedings have lapsed, the interested party may, however, exercise his claims in new proceedings, in which he may rely on the evidence already produced. Actions involving the competent body shall result in the suspension of legal and regulatory time-limits, including those concerning prescription, which shall recommence from the date when the order declaring the proceedings lapsed is confirmed;

Due Process

- (f) Right of the parties to due process, including the opportunity:

Right to be Heard

- 1.To set out the grounds for their claims and defences before acts relating to their civil rights or legitimate interests are issued, to lodge appeals and to be professionally assisted or represented. When an express rule allows representation in the administrative headquarters to be exercised by persons who are not professional lawyers, qualified legal assistance shall be mandatory in cases where legal questions are raised or debated;

Right to Offer and Produce Evidence

- 2.To offer evidence and to have it produced if pertinent, whereupon the administration shall request and produce reports and opinions necessary to clarify the facts, taking into account the interested parties and their representatives, who may submit pleas and rebuttals once the period for the presentation of evidence has been concluded;

Right to a Reasoned Decision

- 3.That decision itself shall expressly set out the principal arguments and issues put forward, in so far as they led to a decision of the matter.

Special Procedures Excluded

Article 2. Within a time-limit of 120 days counted from the entry into force of the procedural rules to which Article 1 refers, the Executive Power shall determine which special procedures currently applicable shall continue in force. It is also empowered to:

Progressive Adaptation of Special Regimes to the New Procedure

- (a)Substitute legal rules and regulations of a strictly procedural nature under any remaining special regimes, with a view to adapting them progressively to the new system of procedures and administrative remedies introduced therein, to the extent that this does not affect the substantive law to which the aforementioned special regimes refer or apply;

The present law shall be of suppletory application in the administrative proceedings for which there remain special regimes;

- (b)to decide the administrative procedure to govern military bodies and, defence and security agencies, as proposed by them, adopting the basic principles of the present law and its corresponding regulations;

Reserved or Secret Proceedings

- (c)to determine the circumstances and competent authorities to qualify as reserved or secret such actions, measures, reports or opinions which should have such a character, even though included in public proceedings.

TITLE II

Competence of the Organ

Article 3. The competence of administrative organs shall be that drawn, as applicable, from the National Constitution, laws and regulations issued thereunder. Exercise of such competence constitutes an obligation on the part of the corresponding authority or organ and cannot be delegated or substituted except where expressly authorized; removal to a higher authority shall apply unless expressly otherwise provided by law.

Questions of Competence

Article 4. The Executive Power shall resolve issues of competence arising between Ministers and those arising between authorities, agencies or other autonomous bodies exercising their activity within different Ministries. Heads of such Ministries shall resolve issues of competence arising between authorities, bodies or autonomous agencies acting within their respective Departments of State.

Negative and Positive Contentions

Article 5. When an organ, *ex officio* or at the request of a party, declares itself incompetent, it shall refer the proceedings to the body it considers competent. If the latter, in turn, refuses to take proceedings, it shall submit them to the authority competent to resolve the conflict. If two bodies consider themselves competent, the latest to have the case referred to it shall submit the matter, *ex officio* or at the request of a party, to the authority who is responsible for deciding it.

The final decision on issues of competence shall be taken, in both cases, without any substantiation other than the opinion of the corresponding judicial service and, if absolutely necessary, the technical opinion required by the case. The time-limits envisaged in this Article for the submission of proceedings shall be two days, and for production of opinions and decisions, five days.

Challenging and Excusal of Officials and Employees

Article 6. Officials and employees may be challenged for the reasons and on the occasions laid down in Articles 17 and 18 of the National Civil and Commercial Procedures Code, and their immediate superior must intervene within two days. The prior involvement of the official or employee in the matter shall not be considered a cause for challenge. If the challenged official admits the grounds, his immediate superior shall designate a replacement, if appropriate. In the contrary case, his superior shall decide the matter within five days. If it is considered necessary to produce evidence, the time-limit may be extended for a further five days. The excusal of officials and employees shall be governed by Article 30 of the above-mentioned code and shall be immediately referred to the official's direct superior, who shall decide the matter within five days without substantiation. If he accepts the excusal, a replacement shall be appointed. If he does not accept it, he shall return the proceedings to the inferior official to continue dealing with the matter.

Decisions given in relation to cases of challenge or excusal and those resolving them shall be without appeal.

TITLE III

Essential Requirements of Administrative Acts

Article 7. The following are essential requirements of an administrative act:

Competence

- (a) it must be issued by a competent authority;

Grounds

(b) it must be supported by facts and precedence serving as grounds and by the applicable law;

Subject

(c) the subject must be certain, and physically and legally possible; it must decide all the applications formulated, but may involve others which were not proposed, following a hearing of the interested party and provided that it does not affect acquired rights;

Proceedings

(d) prior to issue of the act, the essential and substantial procedures provided for or implicit in the judicial order must be fulfilled. Without prejudice to the provisions of any other special provisions that may be established, the opinion of the permanent legal advisory services must be considered essential when the act might affect civil rights or legitimate interests;

Justification

(e) the act must set out the grounds on which it is based, specifically expressing the reasons for issuing the act, including, in addition, the safeguards set out in subparagraph (b) of the present Article;

Purpose

(f) the purpose ensuing from the legislation granting the relevant powers to the issuing entity must be fulfilled, and other ends, public or private, distinct from those which justify the act, its grounds and subject must not be covertly pursued. Measures invoked by the act shall be correspondingly appropriate to that purpose.

Contracts concluded by the State, licences and administrative concessions shall be governed by their respective special laws, without prejudice to the analogous application of the rules under this Title, if applicable.

Form

Article 8. Administrative acts shall be published expressly and in writing; they shall state the place and date of issue and shall contain the form of authority issuing them; only exceptionally and if circumstances so permit may an alternative form be used.

Flagrant Irregularity

Article 9. The Administration shall refrain from:

- (a) behaviour involving flagrant administrative irregularity injurious to a constitutional right or guarantee;
- (b) implementing an act while there remains pending any of the administrative remedies which by law expressly involve suspension of the execution of the act, or which has not been notified following the decision.

Silence or Ambiguity of the Administration

Article 10. Silence or ambiguity of the administration in relation to claims which require a specific decision on its part shall be interpreted as negative.

Only by express provision may silence be deemed consent.

If the special rules do not provide for a specific time-limit for a decision, this shall not exceed 60 days. On the expiry of the appropriate time-limit, the interested party shall require immediate action and if a further 30 days elapse without any decision being taken, the administration shall be deemed to be silent.

Effectiveness of the Act: Notification and Publication

Article 11. In order for any particular administrative act to become effective it must be notified to the interested party and be the subject of general publication. Those subject to the decision may, however, prior thereto, seek execution of those acts if such acts do not injure the rights of third parties.

Presumption of Legitimacy and Executive Force

Article 12. An administrative act enjoys a presumption of legitimacy. Being enforceable, the administration is empowered to execute it by its own means - unless the law or the nature of the act require judicial intervention - and any appeal introduced by those subject to the decision shall not suspend its execution and effects, unless it is expressly otherwise provided.

Nevertheless, the administration may, *ex officio* or at the request of a party and by a reasoned decision, suspend the execution for reasons of public interest or to avoid serious injury to the interested party or where there are justified claims for absolute nullity.

Retroactivity of Acts

Article 13. An administrative act may have retroactive effects - provided that acquired rights are not injured - when it is issued in substitution for another act which has been revoked or when it is to the advantage of the parties subject to the decision.

Nullity

Article 14. An administrative act is absolutely and irrevocably null in the following cases:

(a) when the will of the administration has been thwarted by fundamental error; fraud, in that non-existent or false grounds are held as existing facts; physical or psychological violence exercised against the agent; or absolute misrepresentation;

(b) when it has been issued by an incompetent authority either in terms of territory, time or level of authority except, in the latter case, if the delegation or substitution were permitted; lack of grounds where the facts or the law invoked did not exist or were false; or violation of the applicable law, of the essential forms or of the purpose which gave rise to the act.

Voidability

Article 15. If there has been a minor irregularity or omission or an error which does not prevent the existence of one of its essential elements, the act may be annulled by a court.

Invalidity of Incidental or Accessory Clauses

Article 16. The invalidity of an incidental or accessory clause of an administrative act shall not result in its nullity, provided that the clause in question is separable and does not affect the essential substance of the act.

Revocation of a Void Act

Article 17. An administrative act which is deemed absolutely null and void shall be considered irregular and must be revoked or substituted on the grounds of illegitimacy at administrative level. However, if the act has given rise to measures which are in progress, the maintenance of such measures and their outstanding effects can only be stopped by a judicial declaration of nullity.

Revocation of a Regular Act

Article 18. A regular administrative act which has given rise to civil rights may not be revoked, amended or substituted at administrative level once it has been notified.

Nevertheless, it may be revoked, amended or substituted *ex officio* at administrative level if the interested party was aware of the defect, if the revocation, amendment or substitution of the act is beneficial to him without causing injury to third parties and if the right was expressly and validly granted on doubtful authority. It may also be revoked, amended or substituted for reasons of expediency, merit or convenience, with indemnification of damages caused to parties subject to the measure.

Legitimization

Article 19. A voidable administrative act may be legitimized by:

Ratification

(a)ratification by a higher authority, when the act was issued by an authority which lacked competence due to its level and provided that the referral, delegation or substitution were appropriate;

Confirmation

(b)confirmation by the authority which issued the act, correcting the error contained in it.

The effects of the legitimization shall be retroactive to the date of issue of the ratified or confirmed act.

Conversion

Article 20. If the valid elements of a void administrative act permit them to be included in another act which is valid, it may be converted to the latter with the consent of the party subject to the measure. The conversion shall take effect from the moment when the new act is complete.

Lapse of an Administrative Act

Article 21. The Administration may unilaterally declare an administrative act to have lapsed when the interested party does not meet the conditions established therein, but shall allow a delay prior thereto and grant a reasonable additional time-limit for the purpose.

Review

Article 22. A confirmed act may be reviewed at administrative level:

- (a) when there are contradictions in the substantive part, whether or not their clarification has been requested;
- (b) when subsequent to issue of the act, decisive documents are recovered or discovered, the existence of which was unknown or which could not be submitted as evidence on grounds of *force majeure* or the act of a third party;
- (c) when it was issued on the basis of documents which were not known to have been declared false or incorrect or which have been declared false or incorrect after the issue of the act;
- (d) when it had been issued under coercion, deception, violence or any other proven fraudulent device or serious irregularity.

The application shall be made within 10 days of notification of the act in the case of subparagraph (a). In the remaining cases, application for review shall be made within 30 days of recovery or discovery of the documents or the cessation of *force majeure* or the act of a third party; or when the matters indicated in subparagraphs (c) and (d) are legally proven.

TITLE IV

Judicial Challenge of Administrative Acts

Article 23. An act of individual scope may be challenged by judicial process:

- (a) when it is definitive and all administrative processes have been exhausted;
- (b) when, although no decision has been taken on the substance of the issue, it totally prevents the processing of the claim submitted;
- (c) in the case of the silence or ambiguity to which Article 10 refers;
- (d) when the Administration violates the provision of Article 9.

Article 24. An act of general scope may be challenged by judicial process:

- (a) when the civil rights of an interested party who is or may be subject to the act are certainly and imminently affected, and that party has made an appeal to the issuing authority and the result was adverse or there arose one of the outcomes provided for in Article 10;
- (b) when the authority executing the act of general scope has implemented it through definitive measures and administrative remedies against those acts have been exhausted without success.

Time-Limits Within Which the Challenge Must be Entered
(By Action or Appeal)

Article 25. An action against the State or its autonomous agencies shall be initiated within the mandatory period of 90 days, counted as follows:

- (a) in the case of acts of individual scope, from date of notification to the interested parties;
- (b) in the case of acts of general scope, against which a claim has been made which has been decided negatively by express decision, from the date of notification of the refusal to the interested party;
- (c) in the case of acts of general scope subject to challenge through individual applications, from the time of notification to the interested party of the express measure which exhausts the administrative recourse;
- (d) in the case of flagrant administrative irregularity or *fait accompli*, from the time it occurs.

When as a result of an express legal provision the challenge to an administrative act must be made by appeal, the time-limit for entering it shall be 30 days from notification of the final resolution which exhausts the administrative procedures.

Article 26. The application may be initiated at any time when the act acquires a definitive character after the expiry of the time-limit set out in Article 10 and without prejudice to the relevant rules of prescription.

Challenge of Acts by the State or its Autonomous Agencies; Time-Limits

Article 27. There shall be no time-limit for taking proceedings in cases where the State or its autonomous agencies are involved, subject to the related rules of prescription.

"Amparo" (Enforcement of Constitutional Rights) on Grounds of Delay
by the Administration

Article 28. A party to an administrative expedient may conditionally request the issue of an order for immediate execution. Such an order shall be applicable when the administrative authority has allowed the fixed time-limits to expire - and in the absence of such time-limits, where a time exceeding what is reasonable has expired - without issuing the order or decision on procedure or substance required by the interested party. On presentation of the application, if the court deems it appropriate having regard to the circumstances, it shall require the administrative authority concerned, within the time-limit set by the court, to inform it as to the cause of the delay in question. When the requirement has been answered or the time-limit has expired without compliance, the relevant matters concerning the delay shall be decided, and if appropriate an appropriate order shall be given to the administrative authority responsible to take measures within a reasonable time as established by the court depending on the nature and complexity of the order or outstanding proceedings.

Article 29. In the event of failure to comply with the order for prompt execution, the provisions of Article 17 of Decree Law No. 1285/58 shall apply.

Administrative Claim Prior to Judicial Application

Article 30. Except in the circumstances set out in Articles 23 and 24, the State may not be the subject of judicial application without prior administrative claim, directed to the Ministry or Commander in Chief concerned.

The claim shall be based on the same facts and rights as those to be invoked in a possible judicial application and shall be decided by the Executive Power or by the above-mentioned authorities if such power is delegated.

Article 31. The decision on the claim shall be made within 90 days of its submission. On the expiry of this time-limit, the interested party shall require immediate execution, and after a further 45 days may initiate an application at any time, without prejudice to any relevant provisions relating to prescription.

Article 32. The prior administrative claim to which the above Articles refer shall not be necessary if an express law so establishes and when:

- (a) an *ex officio* act can be executed before the time-limits in Article 31 expire;
- (b) before an act is issued *ex officio* by the Executive Power, the party subject to the measure has submitted a contrary claim;
- (c) in the case of claiming repayment from the State for an amount paid pursuant to enforcement or reclaiming a charge paid that was not due;
- (d) claims for damages and injuries against the State or an action for evacuation against it or an action that does not follow the normal procedures;
- (e) there is clear conduct by the State that leads to the presumption of the certain failure of the procedure, so that the prior claim becomes a futile formality;
- (f) the claim is against a decentralized agency with the right to take part in court proceedings.

Article 33. The present law shall enter into force 120 days following its publication in the Official Gazette.

Article 34. This law shall be proclaimed, published, transmitted to the National Directorate for Official Records and filed.

LANUSSE

Carlos A. Rey
Carlos G.N. Coda
Ismael E. Bruno Quijano

DECREE No. 1759

Buenos Aires, 3.4.72

BEARING IN MIND AND CONSIDERING: the provisions of Law No. 19,549 and the proposals of the National Minister of Justice,

THE PRESIDENT OF THE ARGENTINE NATION

DECREES:

Article 1. The annexed provisions, which constitute Regulations under the National Law on Administrative Procedures, are approved.

Article 2. The approved regulations shall enter into force 120 days following their publication in the Official Gazette and shall apply to administrative proceedings initiated *ex officio* or at the request of a party with effect from that date.

Article 3. The Ministry of Justice shall immediately invite the heads of the various legal services of the central and local National Public Administration, including autonomous agencies, meeting in committee, for the purpose of proposing which special procedures currently applicable shall continue in force. Their conclusions shall be submitted to the Executive Power, together with the proposed regulations, 30 days after the end of the time-limit laid down in Article 2 of the law.

Article 4. Each of the heads of the above-mentioned legal services shall progressively propose to the Executive Power, through the Department of State or body of which they form part, the measures to which Article 2, paragraph (a) of the law refers. Likewise, the heads of the military, defence and security legal services shall make their proposals through the Commanders in Chief of their respective arms and agencies, concerning the administrative procedures to which paragraph (b) of the same Article refers.

Article 5. This Decree shall be proclaimed, published, transmitted to the National Directorate of Official Records and filed.

LANUSSE

Carlos A. Rey
Ismael E. Bruno Quijano
Carlos G.N. Coda

REGULATIONS UNDER THE NATIONAL LAW ON
ADMINISTRATIVE PROCEDURES

TITLE I

Competent organs

1. Administrative proceedings shall be handled and resolved through the action of the organs to which a law or decree has assigned competence to do so. In the absence of such a law or decree, action shall be taken by the bodies determined by the internal regulations of the Ministry or the governing body of the decentralized agency, as appropriate.

Powers of the higher body

2. Ministers and governing bodies of decentralized agencies may direct or instigate action by lower bodies by means of orders, instructions, circulars and internal regulations, in order to ensure speed, economy, simplicity and efficiency of proceedings; delegate powers to them; intervene in them; and take over the proceedings from the lower body and decide on a matter unless exclusive competence is attributed by law to the lower body.

The above is without prejudice, where applicable, to hearing the appropriate appeals which may be entered in the matter.

Initiation of proceedings. Interested party

3. Administrative proceedings may be initiated *ex officio* or at the request of any natural or legal person, whether public or private, who invokes a civil right or a legitimate interest. Such persons shall be considered interested parties in the administrative proceedings. Other interested parties are those whose civil rights or legitimate interests may be affected by the act to be issued and who have participated in the proceedings at the request of the original interested party, whether spontaneously or having been summoned by the body concerned when it becomes aware of their existence during the course of those proceedings.

Adult minors shall have full capacity to intervene directly in administrative procedures as interested party to defend their own civil rights or legitimate interests.

Instigation *ex officio* and at the request of an interested party

4. All administrative actions shall be instigated *ex officio* by the competent body, which shall not prevent the interested party also instituting proceedings. Excepted from this principle are proceedings concerning only the private interest of the parties subject to the measure unless, notwithstanding, the resolution to be issued could in any way affect the general interest.

Duties and powers of the competent organ

5. The competent organ shall direct the proceedings and endeavour:

- (a) to transact proceedings in order and decide them as soon as they are in a position to be resolved. The order of proceedings and decision may be changed only by a reasoned resolution;
- (b) to include in a single resolution all proceedings which, by their nature, can be instigated simultaneously and concentrate in a single act or hearing all the relevant proceedings and evidence;

- (c) to indicate, before proceeding with any request, any defects it contains, and order that they should be corrected *ex officio* or by the interested party within such reasonable time-limit as it shall determine, dealing in the same manner with proceedings necessary to prevent them being void;
- (d) to require at any time the personal appearance of the interested parties, their legal representatives or those holding power of attorney to require such explanations as it deems necessary and to reduce discrepancies which might exist on matters of fact or law, keeping records thereof. The summons shall state the specific purpose of the hearing.

Disciplinary powers

6. In order to maintain order and decorum in the proceedings, the competent body may:
- (a) strike out any insulting phrase or any phrase couched in offensive or impolite terms;
 - (b) exclude any person disrupting a hearing;
 - (c) caution or take of those responsible;
 - (d) apply the fines authorized under Article 1(b) "in fine" of the law, and any other sanctions including financial sanctions, set out in other laws in force. The confirmed fines shall be executed by the respective judicial representatives of the State following the procedure under Article 604 and 605 of the National Civil and Commercial Procedures Code;
 - (e) Dismiss those with powers of attorney for failure to act or for clearly delaying the proceedings, indicating to the principal that he should participate directly or through a new attorney, subject to notice of suspension of the proceedings or continuing them without his participation, as appropriate. Infractions committed by agents of the administration shall be governed by their special laws.

TITLE II

Concerning proceedings: identification

7. The identification under which a record of proceedings is initiated shall be retained throughout successive proceedings regardless of the bodies participating them. It shall be prohibited to assign another number or identification system to a record of proceedings other than the one allocated by the initiating body.

Compagination

8. Records of proceedings shall be compaginated in numbered documents not exceeding 200 pages, except where such a limit would require division of written material or documents constituting a single text.

FOREIGN TRADE

Decree No. 766/94

Establishing the National Commission for Foreign Trade. Functions. Composition and Rules of Procedure. Investigations, Reports, Opinions and Activities. General and Transitional Provisions

Buenos Aires, 12 May 1994

BEARING IN MIND the Customs Code (Law No. 22,415) and its regulations, Law No. 16,834 on the Accession of the Argentine Republic to the General Agreement on Tariffs and Trade and Law No. 24,176 approving the Agreement on Implementation of Article VI and the Agreement on Interpretation and Implementation of Articles VI, XVI and XXIII of the General Agreement, Law No. 20,744, and

CONSIDERING:

That the Argentine Republic has in recent years operated a policy of opening up of the economy by reducing customs tariffs and eliminating many non-tariff barriers, in a context of freedom to fix prices and salaries.

That the objective of the policy has been to increase competition in the Argentine domestic market and ensure supply of goods in conditions similar to those of the international market with regard to price and quality.

That it is a function of the National Government to take all necessary steps to ensure that producers established in the country do not suffer material injury as a result of imports under conditions of unfair competition, including dumped and subsidized imports.

That situations may also arise in which events unconnected with the country's trade policy, and unconnected with acts of unfair competition may give rise to a significant increase in imports which makes it desirable to introduce measures to safeguard domestic production.

That in administering trade policy instruments against unfair trade practices and those relating to safeguard measures, maximum efficiency and transparency should be sought in order to ensure that prices paid by consumers do not exceed those which would have obtained under conditions of normal competition in the international market.

That the analysis and investigation of cases of unfair competition at international level and the imposition of safeguard measures should be carried out in conformity with the recommendations of the General Agreement on Tariffs and Trade (GATT), to which the Argentine Republic has been a signatory since 1965, and under the terms of the Agreements approved by Law No. 24,176.

That Article 3 of the aforementioned Law and Article 722 of the Customs Code authorize the implementing authority to delegate to a competent body the functions related to the implementation of regulations on unfair international competition, except for the power to take decisions which establish anti-dumping and countervailing duties, which is vested solely in the Minister of the Economy and Public Works and Services.

That it is desirable to delegate to different bodies the powers of the implementing authorities concerning investigation of material injury to domestic industry and investigation into the margin of dumping and subsidization on imports under conditions of unfair competition, or into the significant increase in imports, in the evaluation of safeguard measures.

That, for that purpose, it is desirable to establish a special body in the form of a National Commission, to undertake analysis of material injury to domestic industry drawing, for that purpose, on the best international experience in this area, and retain investigations concerning the margin of dumping and rate of subsidization in the Under-Secretariat for Foreign Trade.

That as a body specializing in the analysis of injury, it is appropriate for the National Commission for Foreign Trade, hereby established, to permanently review the effects of international competition on domestic industry and identify situations for which provision might be made in existing legislation or which might be of interest to the economic authorities.

That it is desirable for this body also to be empowered to act in an advisory capacity to the Secretariat for Trade and Investment of the Ministry of the Economy and Public Works and Services, in its specialist area, on those parts of legislation on international trade and foreign trade policy not directly related to GATT rules on unfair competition and safeguards, but which involve aspects concerning the analysis of material injury or threat of material injury to domestic production.

That the Commission should also act as the competent national body for this matter in cases deriving from international treaties.

That to ensure the proper functioning of the Commission, it is desirable to establish it as a decentralized agency having legal personality.

That the establishment of such bodies by the National Executive Power has been accepted, as evidenced by the most authoritative doctrine and the case law of the Attorney General of the Nation.

That, for the proposed objectives to be met, it is desirable that the staff of the Commission be governed by Labour Law No. 20,744 (1976) and its amendments.

That, likewise, it is necessary to adjust the distribution of administrative resources and credits under item 5000-Ministry of the Economy and Public Works and Services in the General Budget of the National Administration for the year 1994, in order to permit the Commission to become operative, without changing the source of funding.

That the Executive Committee of the Comptroller for Administrative Reform and the Technical Advisory Committee on Public Sector Wage Policy have taken the appropriate action in accordance with their attributions.

That its functions, attributions and operational procedures are consistent with the restructuring by the State of the organization of international trade, the regulations of Law No. 24,176 and international agreements arising from the Uruguay Round of the General Agreement on Tariffs and Trade (GATT), to the extent that the Argentine Republic accedes thereto.

That the National Executive is competent to issue the present decree, under the provisions of Article 86, paragraph 1 of the National Constitution.

Wherefore,

THE PRESIDENT OF ARGENTINA

DECREES:

CHAPTER I

Establishment and Functions

Article 1. The National Commission for Foreign Trade is hereby established as a decentralized agency under the Secretariat for Trade and Investment of the Ministry of the Economy and Public Works and Services.

The Commission shall be the specialized agency of the National Government, which shall act as the authority responsible for analysis, investigation and regulation in the determination of material injury to domestic production in the circumstances laid down in the legislation on international trade of the Argentine Republic.

Article 2. The National Commission for Foreign Trade shall have full legal capacity to act under both public and private law. Its assets shall consist of those transferred to it and those acquired by it in the future from whatever source.

Article 3. The Commission shall have the following functions:

- (a) to conduct investigations and analysis of injury to domestic production as a result of imports effected under conditions of unfair competition as defined by Article VI of the General Agreement on Tariffs and Trade (GATT), in the framework of the laws and regulations governing its implementation in the Argentine Republic;
- (b) to analyse the injury that a significant increase in imports might cause to domestic production and assess whether it is appropriate to introduce safeguard measures, in accordance with Article XIX of the General Agreement on Tariffs and Trade, in the framework of the laws and regulations governing its application in the Argentine Republic;
- (c) at the request of the Secretariat of Trade and Investment, to analyse the aspect of injury to domestic production, in connection with the evaluation of foreign trade policy measures resulting from the application of the Customs Code and other relevant legislation;
- (d) to propose appropriate measures, whether provisional or final, to alleviate injury as set out in the foregoing paragraphs, including voluntary price agreements, and to review them periodically and assess whether they should be continued;
- (e) to undertake continuous monitoring of trends in international trade and the effects of foreign competition on domestic production, identifying cases of actual or potential injury;
- (f) to apply the provisions contained in international treaties on matters relevant to its missions and functions, acting as the competent national body for that purpose;
- (g) to undertake such other studies, analysis and advice as falls within its areas of competence, or as specifically requested by the Secretariat of Trade and Investment.

Article 4. The definition of injury used in the present Decree shall include:

- (a) material injury or damage caused to a domestic industry;
- (b) threat of material injury or damage to a domestic industry;
- (c) material retardation of the establishment of a domestic industry.

CHAPTER II

Composition and Rules of Procedure

Article 5. The National Commission for Foreign Trade shall be directed by a Board whose Members shall hold the rank of Under-Secretary and which shall consist of one Chairman and four Members, whose remuneration is set out in Annex I to the present Decree, appointed by the National Executive Power on the recommendation of the Ministry of the Economy and Public Works and Services. The Members shall serve for a term of four years, which may be renewed.

Article 6. The Members of the Board of the Commission shall be Argentine citizens and have the appropriate qualifications, professional background and experience in economics, law and foreign trade, to ensure that they are able to carry out their tasks effectively.

Membership of the Board shall be incompatible, without prejudice to the other cases established under legislation governing the civil service, with:

- (a) the exercise of any other remunerated activity in any department of the National, Provincial or Municipal Public Administration, including the Legislature and the Judiciary, other than teaching and study commissions;
- (b) other posts, tasks or professional consultancies in areas directly or indirectly linked with persons who are or may be involved in practices or situations covered by the present Decree;
- (c) judicial or extrajudicial representation, counsel or action against the National State, the Provinces, Municipal Authorities or any other official body.

Article 7. Members may only be removed from office by the National Executive Power on serious grounds, following application of the procedure which guarantees due process. The National Executive Power may remove the Chairman, without having to give the grounds for so doing.

Article 8. Members of the Board and staff of the Commission are not permitted to hold discussions or negotiations concerning a current investigation outside the relevant proceedings with persons who have an interest in the case. Failure to obey this rule shall be justifiable grounds for dismissal of staff, without prejudice to any other liabilities that they may have under general legislation.

Article 9. The functions of the Board shall be:

- (a) to interpret and apply the rules to which Article 3 of the present decree refers, within the competence of the Commission;
- (b) to prepare the annual budget of expenses and calculation of resources of the Commission;
- (c) to approve annually the report and balance sheet, prior to its presentation to the relevant supervisory bodies; and

(d) to carry out all other acts specifically assigned to the Commission and in general such acts as are necessary to fulfil its functions and the objectives of the present decree.

Article 10. The Chairman shall be responsible for the administrative functions of the Commission and shall be its legal representative; should he be prevented from doing so or temporarily absent, he shall be replaced by one of the members appointed for that purpose by the Board.

The Chairman of the Commission shall be responsible for appointing, promoting, suspending and dismissing staff.

Article 11. Except for the purpose of adopting decisions to which Article 14, 19, 21, paragraphs 2 and 22 of the present decree refer, when the presence of all members is required, the Board may meet with a minimum three members and adopting decisions by a majority of the votes of those present. In the case of equality of votes, the Chairman's vote shall count double.

CHAPTER III

Investigations, Reports, Opinions and Activities

Article 12. In investigations concerning imports under conditions of unfair competition, reports shall contain, as a minimum, the following information:

- (a) description of the industry and its international situation;
- (b) trends in the factors determining the relationship between imports under conditions of unfair competition and injury to the domestic industry, in particular:
 - (I) value and physical volume of imports under conditions of unfair competition;
 - (II) effects of such imports on prices in the local market;
 - (III) effects of such imports on, *inter alia*, employment, utilization of capacity, rate of return on investment and other factors which could be indicators of injury;
 - (IV) effects of other factors on the competitive situation of the industry, including cyclical factors, entrepreneurial capacity, regulations and any other cause unconnected with unfair trade which may be a determining factor;
 - (V) prospects for market trends in the absence of countervailing measures; and
 - (VI) probable behaviour of the market following application of the recommended measures. Effects of those measures on consumers.

The test of injury to the domestic industry shall be based on facts and objective information and not on mere conjecture or remote possibility.

- (c) Recommendation on whether it is appropriate to apply or maintain trade measures in the form of anti-dumping or countervailing duties to offset the injury to the domestic industry.

Article 13. In investigations concerning evaluation of safeguard measures, reports shall contain, as a minimum, the following information:

- (a) a report of the facts which led to the investigation and description of the industry and its international situation;
- (b) report of the factors which show injury to domestic production, such as imports, employment, industrial capacity utilization, rate of return on investment and any other factor which allows adequate evaluation;
- (c) economic impact on consumers, as a result of the application of safeguard measures; and
- (d) recommendation as to the most appropriate safeguard measures for the case in question.

Article 14. The Commission may approve and publish guides, examples and detailed instructions for investigations, in order to inform the public and interested parties concerning the methods and features of its analyses, reports and recommendations.

Article 15. In order to fulfil its functions, the Commission may, as necessary, engage specialists or special consultants, subject to the current regulations to supplement its permanent technical team. It may also conclude technical cooperation agreements with bodies in the country or abroad, specializing in areas related to its functions.

Article 16. In analysing and recommending measures, the Commission shall be guided by the criteria of preventing injury and shall avoid using legislation for protectionist purposes. In particular, it shall not propose measures similar to those considered by the Under-Secretariat for Foreign Trade if it concludes that the injury can be remedied by other measures which have a less restrictive effect on imports. In no case, shall the proposed duties be higher than the margin of dumping or the rate of subsidy estimated by the Under-Secretariat for Foreign Trade.

Article 17. The Commission may require any data and information that it considers relevant to complete its investigation, in which case the provisions of Article 707 of the Customs Code apply. It may also carry out investigations in other countries when circumstances so require.

Article 18. When appropriate for the purposes of conducting investigations, the Commission may hold hearings with the participation of the parties concerned.

Article 19. Decisions on investigations shall be adopted by the Board of the Commission in meetings convened for the purpose with all members present. Records of each meeting shall be prepared, setting forth the votes of the directors, the reasons therefor, and the final decision as approved, which shall be notified to the Secretary for Trade and Investment.

Decisions shall be adopted by a majority vote of the Board, which shall be accounted for, and the opinions of the minority shall also be presented.

Article 20. Reports of the National Commission for Foreign Trade and the decisions of its Board shall be the only means of establishing the existence or non-existence of injury to domestic industry in cases concerning imports under conditions of unfair competition and evaluation of safeguard measures.

When the Commission concludes that there is no injury, the Minister of the Economy and Public Works and Services shall not take measures relating to imports.

In cases where the Commission finds sufficient injury to justify measures, its recommendations concerning the level of anti-dumping and countervailing duties and the adoption of safeguard measures shall take the form of advice to the Minister of the Economy and Public Works and Services.

CHAPTER IV

General and Transitional Provisions

Article 21. The Commission shall fulfil its functions within the time-limits established by the legislation to which Article 3 of the present decree refers, and it must coordinate its activities with the investigations carried out by the Under-Secretariat for Foreign Trade and issue its reports in a timely manner so as not to delay the relevant formalities, procedures and resolutions.

The Commission shall issue its own rules of procedure and shall have the power to issue rules of interpretation and clarification concerning matters within its competence, as well as the form, time-limits and other arrangements for its internal procedures, in accordance with current legislation.

Article 22. The Commission shall take precautions to protect confidential information, concerning its use and storage, and shall establish appropriate responsibilities and sanctions for staff who break any rules established to this end.

Article 23. Once every six months, the Commission shall publish a summary of its activities, and any other additional information on measures adopted by third countries concerning exports by the Argentine Republic.

Each year, it shall prepare and publish the Annual Report of the Commission.

Article 24. In order to renew the Board on a gradual basis, the National Executive Power shall, when establishing the Board for the first time, establish two posts of members to be renewed at the end of the second year.

Article 25. The functions to which Article 722 of the Customs Code (Law No. 22,415) and Article 3 of Law No. 24,176 are delegated to the National Commission for Foreign Trade, subject to the limitations established therein, within the competence and functions conferred by the present decree and in the framework of the implementing regulations of those Laws. The delegation of powers to the Under-Secretariat of Foreign Trade by Resolution No. 104 of 24 May 1989 of the Ministry of the Economy and Public Works and Services, is limited to functions not assigned by the present decree to the National Commission for Foreign Trade. The Secretariat for Trade and Investment, at the request of the National Commission for Foreign Trade and considering the process for starting up the new entity, shall establish the date from which this delegation of powers shall operate.

Article 26. The National Commission for Foreign Trade shall, within 180 working days from the date of the present Decree, submit to the National Executive Power for approval, the organizational structure of the agency, which must aim to form a highly qualified specialist group. The employment relationship of the staff shall be governed by Labour Law No. 20,744 (1986) and its amendments.

Article 27. Until such time as the organizational structure of the Commission is approved, the Chairman and Members of the Commission are assigned the responsibilities of Cabinet Advisers as set out in Article 1 of Decree No. 736/92 for Under-Secretaries of the National Executive Power, such advisers being subject to the Basic Terms and Conditions of Employment of the Civil Service approved under Law No. 22,140 and its regulations, to the extent applicable.

Article 28. The distribution of administrative resources of the General Budget of the National Administration for the year 1994 - Human Resources - Item 5000 - Ministry of the Economy and Public Works and Services, Programme 17 - Definition of Investment, Trade and Public Services Policies and Programme 21 - Regulation of the Postal Services shall be amended, as set out in detail in the tables annexed to the present Article which form an integral part thereof.

Article 29. The General Budget of the National Administration for 1994, Item 5000 - Ministry of the Economy and Public Works and Services, Programme 17 - Definition of Investment, Trade and Services Policies and Programme 21 - Regulation of the Postal Services shall be amended, in accordance with the details set out in the tables annexed to the present Article which form an integral part thereof.

Article 30. The operating expenses of the National Commission of Foreign Trade shall be charged for the year 1994 to the budget of the Secretariat for Trade and Investment, in the amounts established in the tables annexed to Article 29 of the present Decree. The draft budget law for 1995 shall make provision for the corresponding charges and credits for the entity which is being established.

Article 31. The Decree shall be promulgated, published, transmitted to the National Directorate for Official Records and filed. MENEM. Domingo F. Cavallo.

Note: The tables annexed to Articles 28 and 29 are not published.

ANNEX I

National Commission for Foreign Trade

Salary Scale

Post	Salary	Post allowance	Board members supplement	Total
Chairman	1,900	1,900	4,000	7,800
Members	1,900	1,900	3,000	6,800

Non-remunerative and not subject to bonus.