



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

Original: Spanish

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

CHILE

Supplement

The following communication, dated 8 April 2013, is being circulated at the request of the delegation of Chile.

APPROVAL OF ANTI-DISTORTION REGULATIONS

No. 1.314.- Santiago, 28 September 2012.- Having regard to the provisions of Article 32.6 of the Political Constitution of the Republic; Decree having Force of Law No. 31 approving the revised, coordinated and consolidated text of Law No. 18.525 establishing rules on the importation of goods into Chile; Law No. 19.612 amending Law No. 18.525; Decree No. 575 of 20 August 1993 of the Ministry of Finance adopting regulations under Article 11 of Law No. 18.525; Supreme Decree No. 16 of 5 January 1995 of the Ministry of Foreign Affairs enacting the Marrakesh Agreement Establishing the World Trade Organization and the annexed Agreements specified, including the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (GATT) 1994, the Agreement on Subsidies and Countervailing Measures and the Agreement on Safeguards; Decree No. 909 of 13 June 1999 of the Ministry of Finance adopting regulations for the application of safeguard measures in conformity with the Marrakesh Agreement; and Resolution No. 1.600 of 2008 of the Comptroller General of the Republic;

Whereas:

Decree having Force of Law No. 31 of the Ministry of Finance approving the revised, coordinated and consolidated text of Law No. 18.525 of 1986 establishing rules on the importation of goods into Chile created the Commission in charge of investigating the existence of distortion in respect of prices of imported merchandise;

The regulations establishing the procedure for conducting such investigations were enacted by Supreme Decree No. 575 of 1993 of the Ministry of Finance;

Supreme Decree No. 16 of the Ministry of Foreign Affairs approving, as a Law of the Republic, the Marrakesh Agreements, including the Agreement on Implementation of Article VI of the GATT 1994, the Agreement on Subsidies and Countervailing Measures, the Agreement on Safeguards, the Agreement on Agriculture, Article VI of the GATT 1994 and Article XIX thereof, was enacted on 5 January 1995. These Agreements establish the procedures to be followed in safeguard, dumping and subsidy investigations;

It is necessary to bring procedures for conducting import price distortion investigations into line with the rules governing such procedures at international level, and to consolidate anti-distortion regulations into a single regulatory corpus, so as to render the consultation and application of such regulations more efficient, thus facilitating international trade operators' and users' access thereto and understanding thereof and ensuring fair competition with products entering the country.

I hereby decree that the following Regulations are approved:

TITLE I
Organizational Structure

Paragraph I
National Commission

Article 1. Area of responsibility. The National Commission created under Article 9 of Law No. 18.525, hereinafter referred to as "the Commission", shall be responsible for receiving investigation requests relating to the application of anti-dumping measures, countervailing measures and global safeguard measures, ruling on the facts under investigation and, where appropriate, proposing to the President of the Republic, through the Ministry of Finance, that anti-dumping duties, countervailing duties and *ad valorem* tariff surcharges be applied. The Commission's area of responsibility shall also include the application of safeguard measures established in existing trade agreements signed by Chile.

The Commission's investigations shall be conducted in accordance with the provisions of Law No. 18.525, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (GATT) 1994, the Agreement on Subsidies and Countervailing Measures, the Agreement on Safeguards, and the GATT 1994, which form part of the Marrakesh Agreement Establishing the World Trade Organization, and with the relevant rules established in existing free trade agreements, and the provisions of these Regulations.

Article 2. Functions. The Commission may carry out the following functions:

- (a) conduct the investigations it decides to initiate, in accordance with the legislation in force and its own guidelines and instructions established to ensure the optimal performance of its functions;
- (b) initiate ex officio the investigations referred to in Article 1;
- (c) request that the Technical Secretariat provide the reports, studies, background materials, information, analyses and verification that it considers necessary for the proper performance of its functions. To this end, the Commission may request assistance from various State bodies;
- (d) request that the Technical Secretariat carry out, in the course of an investigation, any investigative and evidentiary procedures that it deems necessary;
- (e) issue and impart the guidelines and instructions that it deems appropriate for the optimal performance of its functions; and
- (f) carry out any other functions required by law.

Article 3. Composition. The Commission shall comprise:

- (a) the Inspector-General of the Economy;
- (b) two representatives of the Central Bank of Chile, designated by its Board;
- (c) a representative of the Ministry of Foreign Affairs;
- (d) a representative of the Ministry of Finance;

- (e) a representative of the Ministry of Economy, Development and Tourism;
- (f) a representative of the Ministry of Agriculture; and
- (g) the National Director of Customs.

The representatives indicated in points (b) to (f) shall be designated by their respective institutions in a resolution, which shall be published in the Official Journal.

The Inspector-General of the Economy and the National Director of Customs shall have deputies in accordance with the law. The other members shall have as deputies those persons designated by their respective institutions in a resolution, which shall be published in the Official Journal.

State administration bodies shall take the necessary steps to ensure that the members of the Commission may carry out their functions effectively.

Paragraph II **Chairperson and Technical Secretariat**

Article 4. Chairperson. The Commission shall be chaired by the Inspector-General of the Economy, who, in addition to his responsibilities as a member of the Commission, shall:

- (a) convene, open and close meetings and lead the discussion;
- (b) indicate the items that are to be included on the respective agenda. Where a meeting has been requested by two or more members of the Commission, the agenda shall at least include the issues indicated by the members in that request;
- (c) put to the Commission for decision any points of order raised and any votes required;
- (d) cast the deciding vote in the event of a tie;
- (e) issue whatever communications and execute whatever decisions are required for the Commission to carry out its functions; and
- (f) carry out any other functions entrusted to him by the Commission and by law.

Article 5. Technical Secretariat. The Central Bank of Chile shall act as the Commission's Technical Secretariat. The Technical Secretariat shall be headed by the person designated by the Board of the Central Bank.

The Commission, through its Chairperson, may request that the Technical Secretariat include more people in the team participating in an investigation, in accordance with the specific needs of the investigation and the funds that the Technical Secretariat has available.

Article 6. Functions of the Technical Secretariat. In the exercise of its functions, the Technical Secretariat shall:

- (a) provide objective and timely guidance to any interested party that requests it on the requirements to be met by an application so as to be considered fit for examination by the Commission;
- (b) receive and notify the Commission of applications for the initiation of an investigation and verify that the form provided by the Secretariat has been properly completed;
- (c) once the investigation has been initiated, receive and notify the Chairperson of the Commission of any request submitted;
- (d) prepare, dispatch and issue, in a timely manner, any notifications, communications and publications that are relevant to the investigations conducted by the Commission;

- (e) prepare questionnaires and process requests for any information, clarification and supplementary data that are required during the course of an investigation;
- (f) prepare and safekeep both the public and confidential versions of investigation files;
- (g) substantiate the investigation and record any actions taken, in accordance with the Commission's guidelines;
- (h) prepare and submit to the Commission any reports that it requests during the course of an investigation;
- (i) attend any meetings held by the Commission and sign the official records thereof;
- (j) safekeep confidential information and take any steps necessary to maintain its confidentiality;
- (k) during the course of an investigation, carry out visits to verify the information entrusted to it by the Commission;
- (l) notify the general public of, and duly publicize, through information available from Secretariat departments and through the Internet and other means determined by the Commission, the legislation applicable in Chile regarding investigations and the application of measures, ongoing investigations and their respective investigation requests, provisional or definitive measures applied, and any other matters of interest; and
- (n) carry out any other functions entrusted to it by the Commission and by law.

Paragraph III

Functioning of the Commission

Article 7. Meetings. The Commission shall hold its meetings in departments of the Office of the Inspector-General of the Economy, although it may hold meetings in other places where appropriate, on the day and at the time indicated in the corresponding convocation. Meetings shall be held at the request of the Chairperson or at least two members of the Commission and shall be devoted to dealing with the items included in their respective agenda, which shall be drawn up by the Technical Secretariat in accordance with instructions given by the Chairperson. Issues other than those in the agenda may also be dealt with when this is stipulated by the Chairperson or proposed by at least two members of the Commission.

Meetings shall be convened in writing in a communication from the Chairperson transmitted by any suitable means at least three days in advance. In exceptional circumstances, the Chairperson, with the agreement of at least three members of the Commission, may reduce this period to as little as one day. The convocation shall include all the available information that is needed for the Commission to carry out its functions properly.

The quorum of the meeting shall be at least four Commission members and shall always include the Chairperson or his legally appointed deputy.

Article 8. Participation in meetings. The meetings of the Commission may be attended by such invited persons or institutions as at least three Commission members decide to call upon for the examination of the matters indicated in the respective convocation.

Article 9. Quorum for the adoption of agreements. The resolutions of the Commission shall be adopted by a majority of votes; in the case of a tied vote the Chairperson shall have the deciding vote.

However, the application of a global safeguard measure which, when added to the tariff in effect, amounts to a figure higher than the tariff bound in the World Trade Organization shall require the approval of three quarters of the members of the Commission.

Article 10. Commission records. The deliberations and decisions of the Commission shall be consigned in an official record kept by the Technical Secretariat, which shall set down the resolutions adopted, the votes held and the explanations of votes by both the majority and the minority.

The official record shall be approved by the members of the Commission and signed by the Chairperson of the Commission and the designated person from the Technical Secretariat, within five working days following the meeting to which it relates.

The Commission's official records shall be kept in the archives of the Technical Secretariat.

TITLE II Investigations

Paragraph I Provisions common to all investigations

Article 11. Time-limits. The time-limits established in these Regulations shall be in working days, unless otherwise indicated.

Article 12. Submission of applications. The process shall begin upon the submission of a written application for an investigation concerning the application of a measure. The application shall be submitted by or on behalf of a domestic industry, or by an association representing it, that considers itself affected by serious injury or the threat thereof in the case of safeguard measures, or by injury in the case of anti-dumping and countervailing measures.

For the purposes of initiating an anti-dumping or countervailing duty investigation, the application shall be considered to have been made by or on behalf of the domestic industry only if it is supported by those domestic producers whose collective output constitutes more than 50% of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. However, the Commission shall not initiate an investigation if the domestic producers expressly supporting the application account for less than 25% of total production of the like product produced by the domestic industry. In the case of fragmented industries involving an exceptionally large number of producers, support and opposition may be determined by using statistically valid sampling techniques.

The application for an investigation shall be submitted to the Technical Secretariat, be addressed to the Chairperson of the Commission, and contain at least the following information:

- (a) designation of the Commission to which the application is made;
- (b) particulars of the applicant, including an e-mail address;
- (c) description of the imported product(s) covered by the request and the corresponding tariff classification, and description of the like or directly competitive product concerned;
- (d) volume and value of the imports and their country or countries of origin or provenance;
- (e) volume and value of domestic production of the like or directly competitive product;
- (f) information demonstrating the existence of serious injury or the threat thereof in the case of safeguard investigations, or of injury in the case of dumping or subsidy investigations;
- (g) information demonstrating the causal link between the imports and the alleged injury;
- (h) place and date; and
- (i) signature of applicant.

Together with the application for initiation, the applicant shall provide the information requested in the form approved for this purpose by the Commission, which shall be available from the Technical Secretariat. Without prejudice to the foregoing, the applicant may provide any other information that it considers relevant to its investigation application.

Where the application also includes a request for the application of a provisional measure, it shall be accompanied by information on the conditions justifying such a measure, which are established in Article 23 of these Regulations for safeguard measures and Article 62 of these Regulations for anti-dumping and countervailing measures.

Article 13. Conformity of the application. Once an investigation application has been submitted, the Secretariat shall have a maximum of ten days to verify and certify that the information requested in the form issued by the Secretariat has been provided, and shall notify this to the applicant.

Where the investigation application does not include the information mentioned above, the Secretariat shall communicate this fact to the applicant within the aforementioned ten days and return it to him, together with all accompanying information, via the offices of the Secretariat.

To this end, notifications shall be sent by registered post and e-mail to the contact address indicated by the applicant in the investigation application and shall be considered validly made the day on which the Technical Secretariat sends the respective letter or e-mail.

An applicant whose application is not certified as being in conformity shall have a period of five days from the end of the period referred to in the first paragraph, to request in writing that the Chairperson of the Commission rule on the Secretariat's refusal to certify the conformity of the application. The Chairperson shall rule as sole instance within a maximum of five days following the receipt of the request and shall inform the applicant of its decision in accordance with the provisions of the above paragraph.

Article 14. Opening an investigation. Once the application has been certified as being in conformity, the Technical Secretariat shall immediately bring it to the attention of the Commission. The application shall be considered formalized on the fifth working day after it has been certified. Once an investigation application has been formalized, the Commission shall issue a reasoned decision on whether to initiate the investigation. If the Commission decides to initiate the investigation, it shall announce this fact within five working days after the complaint has been duly formalized, by means of a notice published in the Official Journal, which shall contain at least the following information:

- (a) the date of the initiation of the investigation;
- (b) the identity of the applicant(s);
- (c) a description of the imported product(s) subject to investigation and the corresponding tariff classification;
- (d) the nature of the investigation; and
- (e) the address, telephone and fax numbers, and e-mail address of the Technical Secretariat, and an indication that interested parties may use these to submit documents, make applications and, in general terms, obtain information on the conduct of the investigation.

In the case of investigations for the application of anti-dumping or countervailing measures, this notice shall also contain:

- (a) the name of the country or countries exporting the imported product(s) subject to investigation;
- (b) the basis of the allegation of dumping set out in the application or a description of the subsidization practice(s) to be investigated; and

- (c) a summary of the factors on which the allegation of injury is based.

Investigations shall be considered initiated on the date of publication of the notice in the Official Journal. The Commission shall publish this fact, together with the corresponding information, on its website.

Where the conditions established in Article 12 are not met, the Commission may decide not to initiate the investigation. It shall issue a reasoned resolution to that effect within five working days after the complaint has been duly formalized and shall order the Technical Secretariat to file the background information. This resolution shall be notified to the applicant by registered post within ten days following the decision.

Article 15. Ex officio investigations. In special circumstances and provided it has the information to justify doing so, the Commission may initiate the investigations referred to in these Regulations on its own initiative and shall, as far as possible, apply the same procedures as for investigations initiated at the request of an interested party.

Article 16. Confidentiality. Upon the initiation of an investigation, a confidential section shall be opened in the file, in which documents, submissions and information classed as such shall be recorded and placed.

Any information which is by nature confidential or which is provided on a confidential basis shall, upon cause being shown, be treated as such by the competent authorities. Such information shall not be disclosed without the permission of the party submitting it. Parties providing confidential information may be requested to furnish non-confidential summaries thereof or, if such parties indicate that the information cannot be summarized, the reasons why a summary cannot be provided. However, if the competent authorities find that a request for confidentiality is not warranted, and if the party concerned is either unwilling to make the information public or to authorize its disclosure in generalized 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.

Paragraph II **Safeguard investigations**

Article 17. Global safeguards. Safeguard measures in the form of *ad valorem* tariff surcharges may be applied where the Commission has determined that as a result of unforeseen developments and of the effect of the obligations incurred by Chile, including tariff concessions, any product is being imported 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 products.

Investigations for the application of safeguards shall be conducted in accordance with the rules and procedures laid down in Law No. 18.525, Article XIX of the GATT 1994 and the Agreement on Safeguards, both of the World Trade Organization, and the provisions of these Regulations. The length of an investigation may not exceed 90 days from its start date.

Article 18. Definitions. For the purposes of this paragraph, the following definitions shall apply:

- (a) "domestic industry": producers as a whole of products that are like, or directly competitive with, the imported product forming the subject of the investigation application, who operate within national territory, or those whose collective output of products that are like, or directly competitive with, the imported product forming the subject of the investigation application, constitutes a major proportion of the total domestic production of those products;
- (b) "serious injury": a significant overall impairment in the position of the domestic industry producing the product that is like, or directly competitive with, the imported product subject to investigation; and
- (c) "threat of serious injury": serious injury that is clearly imminent.

Article 19. Determination of serious injury or threat thereof. In determining whether increased imports of the product subject to investigation have caused or are threatening to cause serious injury to a domestic industry, the Commission shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry, in particular:

- (a) the rate and amount of the increase in imports of the product subject to investigation in absolute terms or in relation to domestic production;
- (b) the share of the domestic market taken by increased imports;
- (c) changes in the level of sales;
- (d) production;
- (e) productivity;
- (f) capacity utilization;
- (g) profits and losses; and
- (h) employment.

Article 20. Causation and non-attribution. A determination of serious injury or threat thereof shall not be made unless the investigation demonstrates, on the basis of objective evidence, the existence of a causal link between increased imports of the product subject to investigation, in absolute terms or in relation to domestic production, and serious injury or the threat thereof.

Where factors other than increased imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports.

Article 21. Presentation of evidence and background information. During the investigation interested parties shall be given ample opportunity to provide all the evidence and background information they deem necessary. Such evidence and background information may be provided from the start of the investigation up until the date set for the public hearing referred to in the article below.

Without prejudice to the foregoing, the Commission may order and execute any evidentiary and investigative procedure that it considers relevant to the investigation from the start of the investigation up until before it makes its final determination.

Article 22. Hearing. Before making its final determination, the Commission shall hold a hearing with the interested parties at which they shall be given the opportunity to present their opinions, express their views on the information and evidence provided by other parties, and discuss anything they consider relevant.

The date, place and time of the public hearing shall be decided by the Commission at least 15 days ahead of time. This date shall be posted on the Commission's website within three days of having been set. The Technical Secretariat shall also send a copy of the summons by registered letter and by e-mail to the applicants and to those taking part in the investigation.

Parties interested in the investigation may participate in the hearing when they have requested to do so in writing at least three working days before the date on which it is to be held. The Chairperson, with the agreement of the Commission, shall determine the duration of the hearing.

Parties that have given an oral presentation during the hearing shall submit a written version of their presentation within the following five days if they wish it to be taken into account when the Commission makes its final determination.

Article 23. Provisional measures. In critical circumstances where delay would cause damage that would be difficult to repair for the domestic industry producing the product that is like, or directly competitive with, the imported product, the Commission, ex officio or at the request of an interested party, may recommend to the President of the Republic, through the Ministry of Finance, that a provisional safeguard measure consisting of an *ad valorem* tariff surcharge be applied.

The Commission's decision shall be based on a preliminary determination of the existence of clear evidence that the increase in imports has caused or threatens to cause serious injury. The resolution recommending the application of a provisional safeguard measure shall be submitted for the consideration of the President of the Republic, who shall rule on the proposed measure and its amount and formalize its application through a Ministry of Finance decree published in the Official Journal.

Article 24. Opportunities to express views on the application of a provisional measure. The Commission shall have a period of 30 days from the initiation of the investigation in which to make a recommendation on the application of a provisional safeguard measure.

Where the interested party has requested the application of a provisional measure at the same time as requesting the initiation of an investigation, the Commission shall rule on that request in the same act as that in which it rules on the initiation of the investigation.

Article 25. Duration of a provisional measure. The provisional safeguards adopted shall apply from the publication in the Official Journal of the supreme decree imposing them, until the publication of the decision announcing their repeal or the application of a definitive measure. In no circumstances shall they remain in force for longer than 200 calendar days.

At any stage of the investigation, whether ex officio or at the request of the interested party, the Commission may recommend to the President of the Republic, through the Ministry of Finance, that the provisional measures be modified or repealed.

Article 26. Application of definitive measures. Where, at the end of an investigation, the Commission determines, on the basis of available information, that the requirements for the application of a definitive safeguard measure have been met, it shall issue a reasoned resolution to that effect, which, as well as establishing this final determination, shall recommend the application of the measure.

The resolution shall set forth the Commission's findings and reasoned conclusions regarding the following aspects:

- (a) the identity of the applicant(s);
- (b) the identity of the imported product(s) subject to investigation and the corresponding tariff classification;
- (c) the identity of the producers, exporters or importers of the product that is like, or directly competitive with, the imported product, and of other parties that have participated in the investigation;
- (d) the likeness or directly competitive nature of the product produced by the domestic industry concerned and the imported product(s) subject to investigation;
- (e) the fact that, as a result of unforeseen developments and of the effect of the obligations incurred by Chile, including tariff concessions, imports of the product(s) subject to investigation have increased in such quantities, in absolute terms or in relation to domestic production, and under such conditions, as to cause or threaten to cause serious injury to the domestic industry producing like or directly competitive products;
- (f) considerations relating to the determination of serious injury or threat thereof;

- (g) considerations concerning the determination of a causal link between increased imports of the product(s) subject to investigation and the serious injury or threat thereof to the domestic industry producing like or directly competitive products;
- (h) the amount and duration of the recommended definitive safeguard; and
- (i) considerations relating to the rate and form of progressive liberalization of the proposed measure, in cases where the duration of the measure exceeds one year.

The Commission's resolution, together with the background information and the conclusions of the investigation, shall be transmitted through the Ministry of Finance to the President of the Republic, who shall rule on the proposed measure, its duration and amount, and the rate and form of progressive liberalization, and formalize the application of the measure through a Ministry of Finance decree published in the Official Journal.

Article 27. Rejection of measures. Where, upon the conclusion of the investigation, the Commission rules that the background information does not permit the establishment of a definitive safeguard measure, it shall issue the relevant resolution terminating the investigation and inform the Ministry of Finance of this decision so that a summary may be published in the Official Journal.

Article 28. Developing countries. Neither provisional nor definitive safeguard measures shall be applied against products originating in a developing country Member of the World Trade Organization when its share of imports of the product subject to investigation does not exceed 3%, provided that developing countries with an import share below 3% collectively account for no more than 9% of total imports of the product subject to the measure.

The Commission shall, in the resolution recommending the application of a measure, indicate the countries excluded from the measure, according to the information provided to it by the representative of the Ministry of Foreign Affairs, in accordance with its legal powers.

Article 29. Duration of definitive measures. Definitive safeguard measures shall be applied only for as long as is necessary to prevent or remedy serious injury and facilitate adjustment of the domestic industry concerned.

The period of application of definitive safeguard measures shall not exceed two years from the date of publication of the decree establishing them, unless they are extended in accordance with the following articles. Where provisional measures are applied, the two-year period shall be calculated from the date of publication of the decree in which they were established.

Article 30. Extension of definitive measures. Definitive safeguard measures may be extended at the request of the domestic industry that applied for them. Such a request shall be made at least 90 calendar days before the end of the two-year application period or the period established by the Commission for the application of the definitive safeguard measure. The Commission may, however, initiate ex officio an examination of the extension and recommend its application.

Before adopting its decision on whether or not to recommend a measure, the Commission shall open a discussion and evidence period of 45 calendar days so as to enable interested parties in the investigation to submit any written requests and evidence and information that they consider relevant. Requests and information may be submitted from the date of publication of the notice of the initiation of this discussion and evidence period up until before the public hearing.

Before ruling on the extension of definitive measures, the Commission shall hold a public hearing in accordance with the terms and conditions established in Article 22 of these Regulations.

Article 31. Conditions for an extension. The Commission may recommend the extension of a definitive safeguard measure provided that it has determined, on the basis of available information, that the measure continues to be necessary to prevent or remedy serious injury and that there is evidence that the domestic industry concerned is adjusting. The Commission shall issue a reasoned resolution to this effect and transmit it, together with the background information

and conclusions of the investigation, through the Ministry of Finance, to the President of the Republic, who shall rule on the extension of the measure and its amount and formalize its application through a Ministry of Finance decree published in the Official Journal.

Extended safeguard measures shall not be more restrictive than at the end of the initial period of application of the definitive safeguard measure.

Article 32. Maximum duration of an extension. A definitive safeguard measure may be extended for a maximum period of two years. In no circumstances shall the overall period of validity of a safeguard measure, including the period of application of the provisional measure, the original measure and the extension, exceed four years.

Article 33. Progressive liberalization of definitive measures. Where the application of the definitive safeguard measure exceeds one year, the Commission shall facilitate the adjustment of the domestic industry concerned.

For the purposes of this Article, the adjustment of the domestic industry concerned shall be facilitated through the progressive liberalization of the measure, at regular intervals, during the period of application.

Article 34. Mandatory review. Where a definitive safeguard measure is applied for more than one year, including the period of application of the provisional measure, the Commission shall examine the existing measure on an annual basis in order to assess whether to maintain or modify its terms of application, such as its validity, its amount or its rate and amount of liberalization, or even whether to annul it. It shall do this taking into consideration the situation of the domestic industry concerned and the rules set out in existing trade agreements.

Article 35. Modification or annulment of existing safeguard measures. The Commission may, at any time, and when in possession of sufficient information to justify doing so, recommend to the President of the Republic, through the Ministry of Finance, that the amount and/or duration and/or rate and form of liberalization of definitive safeguard measures in force be modified or annulled before their initial expiry or the expiry of their extension period.

Before making such a recommendation, the Commission shall first have heard the interested parties' views on the information which, in its opinion, makes it necessary to modify or annul the measure adopted. Interested parties shall be deemed to have been heard 20 days after being sent a communication to that effect by the Commission, whether or not they have made comments on the information brought to their attention.

Article 36. Period of non-application of a safeguard measure. No safeguard measure shall be applied to the import of a product that has already been subject to such a measure, for a period of time equal to that during which such a measure was previously applied, which in any event shall be at least two years.

However, a safeguard measure with a duration of 180 calendar days or less may be applied again to the import of a product if:

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

Article 37. Notification and consultation. Where the Commission initiates an investigatory process relating to serious injury or threat thereof, or makes a finding of serious injury or threat thereof caused by increased imports and takes a decision to apply or extend a safeguard measure, it shall communicate this fact to the Ministry of Foreign Affairs so that this Ministry can issue, in accordance with its legal powers, communications and notifications and hold the relevant prior consultations with interested governments, in accordance with Article 12 of the Agreement on Safeguards. In the case of the application of provisional measures, consultations shall be initiated immediately after the measure is taken.

The Ministry of Foreign Affairs, in accordance with its legal powers, shall inform the President of the Republic, through the Ministry of Finance, of the outcome of the consultations and of the compensation agreed and its amount, where applicable. In such cases, the supreme decree establishing the safeguard measure, or that providing for its extension, shall specify the reduction in tariffs or the acceleration of the tariff reduction process for the duration of the measure.

Article 38. Safeguard measures provided for in trade agreements. Without prejudice to the global safeguards provided for in Title III of these Regulations, the President of the Republic may apply the safeguard measures provided for in the trade agreements signed by Chile that are currently in force.

To this end, the Commission shall conduct investigations in accordance with the rules established in the respective trade agreements and, on a supplementary basis, Law No. 18.525 and these Regulations.

Article 39. Refund and payment of duties. Persons affected by provisional measures during investigations for the application of safeguard measures may request a refund of the total amount paid if it is finally decided not to apply tariff surcharges.

Likewise, persons affected by a provisional safeguard measure may request a partial refund in cases where its application as a definitive measure is for an amount lower than that paid while it was provisional.

Current interest shall be paid on the sums refunded. The right to request a refund shall be exercised within 90 days from the date on which the refund became payable, otherwise the refund shall be forfeited.

Payment due as a result of the application of a provisional safeguard measure shall be made by payment of an amount equivalent to the applicable percentage in the relevant customs declaration, and the calculations shall be made by applying the percentage of the tariff surcharge to the customs value of the corresponding item.

Where duties resulting from the application of provisional safeguard measures are to be refunded, the importer claiming the refund shall submit an application in writing to the Regional Director or Administrator of Customs before whom the respective declaration was processed.

Paragraph III

Dumping and subsidy investigations

§ 1. Application and definitions

Article 40. Anti-dumping duties and countervailing duties. Anti-dumping or countervailing duties consisting of *ad valorem* tariff surcharges may be applied where the Commission has determined that imports of a product are dumped or subsidized, respectively, and that as a result of the dumped or subsidized imports, injury is caused to the domestic industry producing like products.

Investigations for the application of anti-dumping and countervailing duties shall be conducted in accordance with the rules and procedures laid down in Law No. 18.525, the Agreement on Implementation of Article VI of the GATT 1994, the Agreement on Subsidies and Countervailing Measures, the GATT 1994, and these Regulations.

Article 41. Definitions. For the purposes of this paragraph, the following definitions shall apply:

- (a) "injury": unless otherwise specified, material injury to a domestic industry, threat of material injury to a domestic industry, or material retardation of the establishment of such an industry;

- (b) "massive imports": imports of the product subject to investigation, from the date of initiation of the investigation to the date of entry into force of a provisional measure, which in light of their timing, volume and other circumstances, such as a rapid build-up of inventories of the imported product, are likely to seriously undermine the remedial effect of the definitive anti-dumping or countervailing duty;
- (c) "interested parties": interested parties shall include: (i) exporters, foreign producers or importers of the product subject to investigation; (ii) trade or business associations a majority of the members of which are producers, exporters or importers of that product; (iii) the government of the country exporting the product subject to investigation; (iv) producers of the like product in Chile or trade or business associations a majority of the members of which are such producers; and (v) other parties accepted as such by the Commission;
- (d) "like product": a product which is identical, i.e. alike in all respects to the imported product subject to investigation, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the imported product subject to investigation; and
- (e) "domestic industry": the domestic producers as a whole of the like products or those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products.

When producers are related to the exporters or importers or are themselves importers of the allegedly dumped or subsidized product, the term "domestic industry" may be interpreted as referring to the rest of the producers. For this purpose, producers related to exporters or importers shall be understood to mean those in any of the following circumstances: (a) one of them directly or indirectly controls the other; (b) both of them are directly or indirectly controlled by a third person; or (c) together they directly or indirectly control a third person, provided that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers.

For the purpose of this definition, a person shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

In exceptional circumstances, and only in the event of compliance with the requirements established in Article 4 of the Agreement on Implementation of Article VI of the GATT 1994 or Article 16 of the Agreement on Subsidies and Countervailing Measures, the national territory may, for the production in question, be divided into two or more competitive markets and the producers within each market may be regarded as a separate industry.

§ 2. Dumping

Article 42. Existence of dumping. A product shall be considered as dumped when it is imported at less than its normal value, i.e. when the export price of the product exported to Chile is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the country of origin.

The application of an anti-dumping duty may be recommended where the Commission determines that the imports of the product subject to investigation are being dumped and as a result cause injury to the domestic industry.

Article 43. Export price. Export price shall be understood to mean the price of the product for its export to Chile.

In cases where there is no export price or where the Commission determines that the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be calculated on the basis of the price at which the imported products are first sold to an independent buyer, or if the products are not sold to an independent buyer, or not sold in the condition as imported, on such reasonable basis as the Commission may determine.

Article 44. Normal value. Normal value shall be understood to mean the price of a product like the imported product, when that like product is sold for consumption in the domestic market of the country of origin, in the ordinary course of trade.

In cases where there are no sales of the like product in the ordinary course of trade in the domestic market of the country of origin or where, because of the particular domestic market situation in the country of origin or the low volume of sales of the like product in that market, such sales do not permit a proper comparison, the Commission shall determine the margin of dumping by comparison with:

- (a) a comparable price of the like product when exported to an appropriate third country, provided that this price is representative, or
- (b) the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits.

Sales of the like product destined for consumption in the domestic market of the exporting country shall normally be considered a sufficient quantity for the determination of the normal value if such sales constitute 5% or more of the sales of the like product to Chile. However, the Commission may accept a lower ratio where the evidence demonstrates that domestic market sales in the country of origin are nonetheless of sufficient magnitude to provide for a proper comparison.

Article 45. Comparison between the export price and normal value. In order to determine whether the product subject to investigation is being dumped, the Commission shall compare the export price with the normal value. This comparison shall always be made on a fair basis. For this purpose, the comparison shall be made at the same level of trade, normally at the **ex-factory** level, and in respect of sales made at as nearly as possible the same time.

Similarly and depending on each case and its merits, the Commission may adjust the export price and the normal value to correct differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are also demonstrated to affect price comparability. An adjustment already made shall not be duplicated by the Commission.

In cases where the export price is constructed, the Commission shall also make adjustments to take into account the costs, including duties and taxes, incurred between the importation and sale of the product subject to investigation, and the profits accruing. In these cases, when price comparability has been affected, the Commission shall establish the normal value at a level of trade equivalent to the level of trade of the constructed export price, or shall make due allowance as warranted under this Article.

When, to be fair, a comparison requires a conversion of currencies, such conversion should be made using the rate of exchange on the date of sale, provided that when a sale of foreign currency on forward markets is directly linked to the export sale involved, the rate of exchange in the forward sale is used. Fluctuations in exchange rates shall be ignored and, during the course of the investigation, exporters shall be allowed at least 60 days to adjust their export prices to reflect sustained movements in exchange rates during the period of investigation.

In the case where products subject to investigation are not imported directly from the country of origin but are exported to Chile from an intermediate country, the price at which the products are sold from the country of export to Chile shall normally be compared with the comparable price in the country of export. However, the Commission may make the comparison with the price in the country of origin, if, for example, the products subject to investigation 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.

In the case of imports from a country which has a complete or substantially complete monopoly of its trade and where all domestic prices are fixed by the State, the Commission may calculate the normal value of the product subject to investigation on the basis of the comparable price, in the ordinary course of trade, at which the like product is sold in a country with a market economy that to this effect is determined by the Commission.

Article 46. Determination of the margin of dumping. The Commission shall normally determine the margin of dumping on the basis of a comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions or by a comparison of normal value and export prices on a transaction-to-transaction basis.

The existence of the margin of dumping may also be calculated by comparing the normal value established on a weighted average basis with prices of individual export transactions, i.e. on a transaction-to-transaction basis. For this, the Commission shall have found a pattern of export prices which differ significantly among different purchasers, regions or time-periods, and if an explanation is provided as to why such differences cannot be taken into account appropriately by the use of a weighted average-to-weighted average or transaction-to-transaction comparison.

§ 3. Subsidies

Article 47. Existence of a subsidy. A subsidy shall be deemed to exist:

- (a) if:
- (i) there is a financial contribution by the government of the country of origin or export of the product subject to investigation or by any public body within the territory of that government, i.e. where:
 - (A) a government practice involves a direct transfer of funds, such as grants, loans, or equity infusion. Also considered are potential direct transfers of funds or liabilities, such as loan guarantees;
 - (B) government revenue that is otherwise due is foregone or not collected;
 - (C) a government provides goods or services other than general infrastructure. Also considered are public sector purchases;
 - (D) a government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions illustrated in (A), (B) and (C) above; or
 - (ii) there is any form of income or price support in the sense of Article XVI of the GATT 1994; and
- (b) a benefit is thereby conferred on its recipient.

The application of a countervailing duty may be recommended if the Commission determines that the imports of the product subject to investigation are subsidized; that the subsidy is specific in accordance with the Article below; and that, as a result, it causes injury to the domestic industry.

Article 48. Specificity of a subsidy. A measure may be applied where the subsidy is specific to an enterprise or industry or group of enterprises or industries. To determine this, the Commission shall apply the following principles:

- (a) a subsidy shall be deemed specific where the granting authority, or the legislation pursuant to which the granting authority operates, explicitly limits access to a subsidy to certain enterprises;
- (b) where the granting authority, or the legislation pursuant to which the granting authority operates, establishes objective criteria or conditions governing the eligibility for, and the amount of, a subsidy, specificity shall not exist, provided that the eligibility is automatic and that such criteria and conditions are strictly adhered to. The criteria or conditions shall be clearly spelled out in a law, regulation, or other official document, so as to be capable of verification. For this purpose, objective criteria or conditions shall be understood to mean criteria or conditions which are neutral, which do not favour certain enterprises over others,

and which are economic in nature and horizontal in application, such as number of employees or size of enterprise; and

- (c) if, notwithstanding any appearance of non-specificity resulting from the application of the principles laid down in subparagraphs (a) and (b), there are reasons to believe that the subsidy may in fact be specific, the following factors may be considered: use of a subsidy programme by a limited number of certain enterprises, predominant use by certain enterprises, the granting of disproportionately large amounts of subsidy to certain enterprises, and the manner in which discretion has been exercised by the granting authority in the decision to grant a subsidy. In these cases account shall be taken of the extent of diversification of economic activities within the jurisdiction of the granting authority, as well as of the length of time during which the subsidy programme has been in operation.

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

Any subsidy considered prohibited under Article 3 of the Agreement on Subsidies and Countervailing Measures shall be deemed specific.

Any determination of specificity under the provisions of this Article shall be clearly substantiated on the basis of positive evidence.

Article 49. Calculation of the amount of a subsidy in terms of the benefit to the recipient.

As well as determining the existence of a subsidy in respect of a product subject to investigation of a type that permits the application of countervailing duties, the Commission shall calculate its amount in terms of the benefit that it confers on its recipient.

The methodology used by the Commission to determine the amount of a subsidy shall be transparent, adequately explained in each investigation, and consistent with the following guidelines:

- (a) the provision of equity capital by the government of the country of origin or export shall not be considered as conferring a benefit, unless the investment decision can be regarded as inconsistent with the usual investment practice (including for the provision of risk capital) of private investors in Chilean territory;
- (b) a loan by the government of the country of origin or export shall not be considered as conferring a benefit, unless there is a difference between the amount that the firm receiving the loan pays on the government loan and the amount the firm would pay on a comparable commercial loan which the firm could actually obtain on the market. In this case the benefit shall be the difference between these two amounts;
- (c) a loan guarantee by the government of the country of origin or export shall not be considered as conferring a benefit, unless there is a difference between the amount that the firm receiving the guarantee pays on a loan guaranteed by the government and the amount that the firm would pay on a comparable commercial loan absent the government guarantee. In this case the benefit shall be the difference between these two amounts adjusted for any differences in fees; and
- (d) the provision of goods or services or purchase of goods by the government of the country of origin or export shall not be considered as conferring a benefit unless the provision is made for a less than adequate price, amount or remuneration, or the purchase is made for a more than adequate price, quantity or remuneration. The adequacy of the price, quantity or remuneration shall be determined in relation to prevailing market conditions for the good or service in question in the country of provision or purchase, including price, quality, availability, marketability, transportation and other conditions of purchase or sale.

§ 4. Injury and causal link

Article 50. Existence of material injury. Determination of material injury shall be based on positive evidence and involve an objective examination of:

- (a) the volume of the dumped or subsidized imports and the effect of the dumped or subsidized imports on prices in the domestic market for the like product; and
- (b) the consequent impact of these imports on domestic producers of such products.

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

With regard to the effect of the dumped or subsidized imports on prices, the Commission shall consider whether there has been a significant price undercutting by the dumped or subsidized imports as compared with the price of a like product in Chile, or whether the effect of such imports is otherwise to depress prices to a significant degree or to prevent price increases, which otherwise would have occurred, to a significant degree. No one or several of these factors can necessarily give decisive guidance.

The examination of the impact of the dumped or subsidized imports on the domestic industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including:

- (a) in the case of anti-dumping duty investigations, actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments; or
- (b) in the case of countervailing duty investigations, actual and potential decline in output, sales, market share, profits, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments and, in the case of agriculture, whether there has been an increased burden on government support programmes.

This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance from the Commission.

The effect of the dumped or subsidized imports shall be assessed in relation to the domestic production of the like product when available data permit the separate identification of that production on the basis of such criteria as the production process, producers' sales and profits. If such separate identification of that production is not possible, the effects of the dumped or subsidized imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided.

Article 51. Existence of threat of material injury. A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping or subsidy would cause material injury shall be clearly foreseen and imminent.

In making a determination regarding a threat of material injury, the Commission shall consider, *inter alia*, such factors as:

- (a) a significant rate of increase of dumped or subsidized imports into the domestic market indicating the likelihood of substantially increased importation;
- (b) sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped or subsidized exports to the domestic market, taking into account the availability of other export markets to absorb any additional exports;
- (c) whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports;
- (d) inventories of the product being investigated; and
- (e) with regard to countervailing duty investigations:
 - (i) nature of the subsidy or subsidies in question; and
 - (ii) the trade effects likely to arise therefrom.

No one of these factors by itself shall necessarily give decisive guidance from the Commission, but the totality of the factors considered are to lead to the conclusion that further dumped or subsidized exports are imminent and that, unless protective action is taken, material injury would occur.

Article 52. Causal link and non-attribution. For the Commission to recommend the application of a measure it shall be demonstrated that the dumped or subsidized imports are, through the effects of dumping or subsidies, causing injury to the industry concerned.

The demonstration of a causal link between the dumped or subsidized imports and the injury shall be based on an examination of all relevant evidence before the Commission.

The Commission shall also examine any known factors other than the dumped or subsidized imports which at the same time are injuring the respective domestic industry, and the injuries caused by these other factors must not be attributed to the dumped or subsidized imports. Factors which may be relevant in this respect include, *inter alia*, the volume and prices of imports not sold at dumping prices or of non-subsidized imports of the product subject to investigation, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.

Article 53. Cumulative assessment of the injury. Where imports of a product from more than one country are simultaneously subject to an anti-dumping investigation, or where imports of a product from more than one country are simultaneously subject to a countervailing duty investigation, the Commission may cumulatively assess the effects of such imports, in each case, only if it determines that:

- (a) the margin of dumping or the amount of the subsidy established in relation to the imports from each country is more than *de minimis*, as defined in Article 60 of these Regulations, and the volume of imports from each country is not negligible; and
- (b) a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between the imported products and the like domestic product.

§ 5. Conduct of investigations

Article 54. Information provided to exporters or foreign producers. Within five days following the initiation of the investigation, the Technical Secretariat shall transmit the following information to exporters or foreign producers related to the product(s) subject to investigation:

- (a) a copy of the application for the investigation submitted by the petitioner or applicant, taking into account the care and protection of any confidential information; and
- (b) a copy of the resolution ordering the initiation of the investigation.

Article 55. Questionnaires. Within 20 days following the initiation of the investigation, the Secretariat shall send the questionnaire(s) that the Commission has established for the purpose of requesting information on the case, in order to request information and background materials on the case, to exporters, foreign producers and any other person indicated by the Commission that is related to the product(s) subject to investigation.

The parties to which questionnaires have been sent shall have 30 calendar days from the date of receipt to return them to the Secretariat, duly completed and accompanied by any supporting information and evidence.

Questionnaires shall be deemed to have been received on the third day after their receipt by the relevant post office. In the case of exporters of the product subject to investigation, questionnaires shall be deemed to have been received one week after the date on which they were sent to the respondent or transmitted to the appropriate diplomatic representative of the exporting country.

Interested parties may, before its expiry, request an extension to the deadline for submitting their replies and information, indicating the number of additional days needed and the reasons for the extension. Where feasible, the Commission shall grant the extension when the reasons for requesting it are well founded.

When returning these questionnaires, interested parties may indicate the evidentiary procedures that they request be conducted by the Commission during the course of the investigation.

All the information submitted to the Commission by interested parties shall be in Spanish. Such information may also be accompanied by original language versions.

Article 56. Submission of evidence and information. During the investigation, interested parties shall be given ample opportunity to submit all the evidence and information that they consider relevant. Such evidence and information may be submitted from the start of the investigation until the date set for the public hearing, in accordance with Article 59 of these Regulations. Without prejudice to the foregoing, the Commission may order and execute any evidentiary and investigative procedure that it considers relevant to the investigation from the start of the investigation until before it makes its final determination.

Article 57. Best information available. The Commission shall, during the course of an investigation, satisfy itself, using every means at its disposal, as to the accuracy of the information supplied by interested parties upon which its findings and determinations are based.

In cases where an interested party refuses access to necessary information, or otherwise does not provide it within a reasonable period or significantly impedes the investigation, the Commission may make preliminary and final determinations, affirmative or negative, on the basis of the facts available.

For this purpose, and in the case of investigations relating to the application of anti-dumping duties, the Commission shall take into account the provisions of Annex II of the Agreement on Implementation of Article VI of the GATT 1994.

Article 58. Verification visits in foreign territory or on-the-spot investigations. In order to verify information provided or to obtain further details, the Commission may carry out investigations in the territory of other countries as required.

For this purpose, the Commission shall always, as a pre-condition, have the agreement or consent of the firms concerned or subject to the visit and have notified this to the representatives of the government of the corresponding country, and this country shall not have expressed its opposition to an **on-the-spot** investigation. Where recommended by the Commission, non-governmental experts may be included in the investigating team, and the firms and the authorities of the

exporting country should be so informed. Non-governmental experts shall undertake the commitment to ensure the care and protection of confidential information established by the Commission to this effect.

On-the-spot investigations and visits shall comply with the principles and guidelines set forth in Annex I of the Agreement on Implementation of Article VI of the GATT 1994 and Annex VI of the Agreement on Subsidies and Countervailing Measures.

Article 59. Essential facts and hearing with the interested parties. Before making its final determination, the Commission shall inform all interested parties in the investigation of the essential facts that form the basis for its determination, i.e. its decision whether or not to recommend the application of definitive measures.

The essential facts shall be transmitted to each interested party in a copy of the record containing these facts and the reasons or grounds taken into account by the Commission. Together with the essential facts, the Commission shall also provide information on the place, day and time of the hearing that it shall hold with the interested parties at which they shall be given the opportunity to express their opinions and their views on the essential facts and the information and evidence submitted by other parties and discuss anything they consider relevant. The hearing shall take place at least 15 days after the essential facts have been communicated.

Interested parties in the investigation may participate in the hearing when they have requested to do so in writing at least three working days before it is due to be held. The Chairperson, with the agreement of the Commission, shall determine the duration of the hearing.

Parties that have given an oral presentation at the hearing shall provide a written version thereof within the following five days, otherwise it shall not be taken into account when the Commission makes its final determination.

Article 60. Early termination of the investigation. The Commission shall terminate an investigation immediately, by issuing a reasoned resolution to this effect, where it determines that:

- (a) in an anti-dumping investigation, the margin of dumping is *de minimis*, or that the volume of dumped imports, actual or potential, or the injury, is negligible. The margin of dumping shall be considered to be *de minimis* if it is less than 2%, expressed as a percentage of the export price. The volume of the dumped imports subject to investigation shall normally be regarded as negligible if the volume of dumped imports from a particular country is found to account for less than 3% of imports of the like product, unless countries which individually account for less than 3% of the imports of the like product collectively account for more than 7% of those imports; or
- (b) in a subsidy investigation, the amount of a subsidy is *de minimis*, or where the volume of subsidized imports, actual or potential, or the injury, is negligible. For the purpose of this paragraph, the amount of the subsidy shall be considered to be *de minimis* if the subsidy is less than 1% *ad valorem*.

The decision to terminate an investigation early shall be notified to the country or countries the products of which have been subject to investigation and to other known interested parties. The notification shall be made by sending them a copy of the record(s) containing the Commission's decision. The Commission shall also transmit its decision to the Ministry of Finance so that a summary may be published in the Official Journal.

Article 61. Duration of investigations. Investigations relating to anti-dumping and countervailing measures shall be concluded within nine months of their initiation at the latest.

§ 6. Application of measures

Article 62. Provisional measures. The Commission may make a preliminary determination on the results of an investigation 60 calendar days after its initiation. Where the Commission's preliminary determination is affirmative in relation to the existence of dumping or a subsidy and the consequent injury, it shall record this and may recommend to the President of the Republic, through the Ministry of Finance, that provisional anti-dumping or countervailing measures be applied.

The Commission's decision shall be based on a determination that the application of a provisional measure is necessary to prevent injury being caused during the investigation and when interested parties have been given adequate opportunity to submit information and make comments. The resolution recommending the application of a provisional measure shall be submitted for the consideration of the President of the Republic, who shall rule on the proposed measure and its amount and formalize its application through a Ministry of Finance decree published in the Official Journal.

Article 63. Duration of provisional measures. The application of provisional anti-dumping or countervailing measures shall be limited to as short a period as possible, as long as the conditions justifying their adoption persist, and in no circumstances may exceed four months.

In the case of provisional anti-dumping measures, at the request of exporters representing a significant percentage of the trade involved, and upon the recommendation of the Commission, the measure may be applied for a period not exceeding six months. Where the Commission, in the course of an investigation, considers or examines whether a duty lower than the margin of dumping would be sufficient to remove injury, the above-mentioned maximum periods of four or six months may be extended to six and nine months, respectively.

The Commission may, at any stage of the investigation, whether ex officio or at the request of an interested party, recommend to the President of the Republic, through the Ministry of Finance, that the provisional measures be modified or annulled.

The application of provisional measures shall be subject to the rules governing the application of definitive measures, where relevant.

Article 64. Application of definitive measures. Where, at the end of an investigation, the available information leads the Commission to determine that the requirements for the application of a definitive anti-dumping or countervailing measure have been met, it shall issue a reasoned resolution to this effect, in which it not only sets forth this final determination but recommends the application of the measure.

The resolution shall set forth the Commission's findings and reasoned conclusions regarding the following aspects:

- (a) the identity of the applicant(s) requesting the measure;
- (b) the identity of the imported product(s) subject to the dumping or subsidy investigation and the corresponding tariff classification;
- (c) the identity of the country or countries of origin or export, of the producers, exporters or importers of the product(s) subject to investigation, and of other parties that have participated in the investigation;
- (d) the identity of the product(s) subject to the anti-dumping or countervailing duty;
- (e) the likeness between the imported product(s) subject to the recommended definitive measure and the product(s) produced by the domestic industry concerned;
- (f) in the case of an anti-dumping measure, the manner in which the existence of dumping and the margin of dumping were established, with special focus on the establishment of the normal value and the export price and the fair comparison thereof;

- (g) in the case of a countervailing measure, the manner in which the existence of the subsidy and the amount thereof were established, with special focus on its specificity and on the calculation of the benefit derived from the subsidy and how this distorts the import price of the product(s) subject to investigation;
- (h) the reasons why the existence of dumping or of a subsidy in relation to imports causes or threatens to cause injury, including the existence of a causal link between the dumping or the subsidy and such injury; and
- (i) the amount of the anti-dumping or countervailing duty and the reasons justifying this amount.

The Commission's resolution, together with the information and conclusions of the investigation, shall be transmitted, through the Ministry of Finance, to the President of the Republic, who shall rule on the proposed measure and its duration and amount, and formalize its application through a Ministry of Finance decree published in the Official Journal.

Article 65. Rejection of measures. Where, at the end of an investigation, the Commission concludes that the available information does not permit the establishment of a definitive anti-dumping or countervailing measure, it shall issue the relevant resolution terminating the investigation and shall transmit this decision to the Ministry of Finance so that a summary may be published in the Official Journal.

The Commission shall also terminate an investigation without recommending the application of a definitive measure when the available information determines that the margin of dumping or the amount of the subsidy is *de minimis* or that the volume of dumped or subsidized imports, actual or potential, or the injury, is negligible.

Article 66. Application and collection of definitive anti-dumping and countervailing duties. Provisional and definitive anti-dumping and countervailing duties shall be applied to imports of products subject to such measures which are effected from the date of entry into force of the measures, as established in the respective supreme decree.

The amount of an anti-dumping duty shall not exceed the margin of dumping. Nor is it possible to apply countervailing duties in excess of the amount of the subsidy, calculated in terms of subsidization per unit of the subsidized and exported product.

Article 67. Massive imports. Without prejudice to the provisions of the Article above, definitive anti-dumping or countervailing duties may be applied in relation to products subject to these definitive measures which have been imported within the 90 days prior to the date of entry into force of a provisional measure, when the Commission determines that:

- (a) with regard to anti-dumping duties:
 - (i) in relation to the product subject to the measure there is a history of dumping which caused injury or the importer was, or should have been, aware that the exporter practises dumping and that such dumping would cause injury; and
 - (ii) the injury is caused by massive imports of the said product in a relatively short time; and
- (b) with regard to countervailing duties:
 - (i) there are critical circumstances;
 - (ii) in relation to the subsidized product concerned there is injury which is difficult to repair caused by massive imports in a relatively short period of a product benefiting from subsidies paid or bestowed inconsistently with the provisions of the GATT and the Agreement on Subsidies and Countervailing Measures; and

- (iii) the retroactive application of definitive countervailing duties is necessary to preclude the recurrence of such injury.

Article 68. Retroactive application of definitive anti-dumping and countervailing duties.

Without prejudice to the provisions of Article 73 of these Regulations, definitive anti-dumping or countervailing duties may be applied retroactively for the period for which provisional measures have been applied, when the Commission's final determination with regard to injury is that:

- (a) the imports subject to investigation have caused material injury; or
- (b) the imports subject to investigation have caused a threat of material injury in circumstances where, in the absence of a provisional measure, that determination would have been of material injury.

Where the definitive anti-dumping or countervailing duties applied retroactively are higher than the duties paid in respect of the provisional measure, the difference shall not be collected. Where they are less, the difference shall be refunded.

Article 69. Concurrent application of anti-dumping and countervailing duties. No imported product shall be subject to both anti-dumping and countervailing duties to compensate for the same situation of dumping or subsidization.

Article 70. Duration of definitive measures. The duration of definitive anti-dumping and countervailing duties shall not extend beyond one year and they shall enter into force upon publication in the Official Journal.

Such measures shall remain in force only as long as and to the extent necessary to counteract the dumping or subsidization which is causing or threatening to cause injury.

Article 71. Modification or annulment of existing anti-dumping and countervailing duties.

The Commission may, at any time, and when in possession of sufficient information to justify doing so, recommend to the President of the Republic, through the Ministry of Finance, that the application of definitive anti-dumping or countervailing duties be terminated or that their amount or duration be modified.

Before making such a recommendation, the Commission shall first have heard the interested parties' views on the information which, in its opinion, makes it necessary to modify or annul the measure adopted. Interested parties shall be deemed to have been heard 20 days after being sent a communication to that effect by the Commission, whether or not they have made comments on the information brought to their attention.

Article 72. Notifications and consultations. Once the Commission has decided to initiate a dumping or subsidy investigation and before publishing the notice of initiation in the Official Journal, it shall communicate this decision immediately to the Ministry of Foreign Affairs, so that the Ministry may, in accordance with its legal powers, notify the decision to the government of the interested exporting country.

In the case of the initiation of a subsidy investigation, the Ministry of Foreign Affairs, in its notification to the governments of exporting countries, shall, in accordance with its legal powers, invite them to hold consultations, in conformity with the provisions of Article 13 of the WTO Agreement on Subsidies and Countervailing Measures.

Article 73. Refund and payment of duties. Where the Commission terminates an investigation without recommending the application of a definitive anti-dumping or countervailing measure, any duties paid as a provisional measure shall be refunded. Unless the definitive duties are applied retroactively in accordance with Article 67(b)(ii) of these Regulations, any amount paid in relation to the application of a provisional measure shall also be refunded where the Commission, in its final determination, establishes the existence of the threat of material injury or of the material retardation of the establishment of a domestic industry.

Current interest shall be paid on the sums refunded. The right to request a refund shall be exercised within 90 days from the date on which the refund became payable, otherwise the refund shall be forfeited.

Payment due as a result of the application of an anti-dumping or countervailing measure shall be made by payment of an amount equivalent to the applicable percentage in the relevant customs declaration, and the calculations shall be made by applying the percentage of the tariff surcharge to the customs value of the corresponding item.

Where duties resulting from the application of an anti-dumping or countervailing measure, whether provisional or definitive, are to be refunded, the importer claiming the refund shall submit an application in writing to the Regional Director or Administrator of Customs before whom the respective import declaration was processed.

TITLE III Final provision

Article 74. Supreme Decree No. 575 of 1993 adopting regulations under Article 11 of Law No. 18.525 and Supreme Decree No. 909 of 1999 adopting regulations for the application of safeguard measures in conformity with the Marrakesh Agreement, both of the Ministry of Finance, are hereby repealed.

Single transitional article. Despite the repeal provided for in the Article above, investigations already under way on the date of entry into force of these Regulations shall continue to be substantiated in accordance with the rules set forth in Ministry of Finance Supreme Decree No. 575 of 1993 adopting regulations under Article 11 of Law No. 18.525.

For this purpose, investigations already under way shall be taken to mean those in which the Technical Secretariat has certified that the particulars specified in the form have been satisfactorily provided, in accordance with Article 11 of Ministry of Finance Supreme Decree No. 575 of 1993 adopting regulations under Article 11 of Law No. 18.525.

To be recorded, registered and published.- SEBASTIÁN PIÑERA ECHENIQUE, President of the Republic.- Felipe Larrain Bascuñán, Minister of Finance. Transcribed for your information.- Julio Dittborn Cordua, Under-Secretary for Finance.

THE COMPTROLLER GENERAL OF THE REPUBLIC
Legal Division

Endorses with further comment Ministry of Finance Decree No. 1.314 of 2012

No. 17.217.- Santiago, 18 March 2013.

This supervisory body has endorsed the text adopting anti-distortion regulations on account of it being in conformity with the law, but wishes to make clear that the reference to the Ministry of Finance in Articles 23 and 62 of the instrument under review shall be understood to mean the Minister of Finance, as the sixth paragraph of Article 9 of Ministry of Finance Decree having Force of Law No. 31 of 2004 approving the revised, coordinated and consolidated text of Law No. 18.525 establishing rules on the importation of goods into Chile, stipulates that through that authority the Commission established under its first paragraph may request the President of the Republic to apply the provisional measures referred to in Articles 23 and 62.

With this further comment, the above administrative act has been acknowledged as legal and constitutional.

Ramiro Mendoza Zúñiga, Comptroller General of the Republic.

To the Minister of Finance
