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Committee on Safeguards

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

Colombia

The following communication, dated 15 March 1995, has been received from the Permanent Mission of Colombia, a Signatory of the Final Act eligible to become an original Member of the WTO.

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In accordance with the Agreement on Safeguards, I enclose the full text of Decree 809 of 21 April 1994, which contains the provisions relative to safeguard measures in Colombia, the authorities competent to initiate and conduct the investigations and the procedures governing said investigations.

MINISTRY OF FOREIGN TRADE

DECREE No. 809 OF 21 APRIL 1994

Regulating the application of safeguard measures

THE PRESIDENT OF THE REPUBLIC OF COLOMBIA

In exercise of his constitutional and lawful powers, especially those conferred on him by Article 189, paragraph 25, of the Political Constitution and subject to the principles, objectives and criteria set out in Law 49 of 1981 and Law 07 of 1991,

CONSIDERING:

That Article 189, paragraph 25, of the Political Constitution authorizes the National Government to regulate Colombia's foreign trade;

That Law 07 of 1991 establishes in Article 2 the general principles to be followed by the National Government in laying down the rules whereby international trade is regulated;

That it is necessary to regulate the instruments of Colombia's foreign trade policy for the purpose of harmonizing them with international trends and principles and with commitments undertaken through plurilateral organizations and agreements;

That the application of safeguard measures requires a set of rules to foster modernization and effective and fair competition in the domestic industry, as well as the effectiveness and transparency of our process of internationalizing the economy;

That the draft of the final text of this Decree was examined and adopted by the Higher Council for Foreign Trade at a meeting held on 8 February 1994, as shown by the record;

DECREES:

CHAPTER I

GENERAL

ARTICLE 1. Scope. The provisions of this Decree comply with the general system regulating the application of safeguard measures, without prejudice to the special rules contained in international agreements or conventions concluded with other countries and to legislation adopted to remedy the injurious effects of the unfair practices of dumping and subsidization.

ARTICLE 2. Definitions. For the purposes of this Decree, the following definitions shall apply:

Safeguard: A measure of an exceptional and temporary character applied to the importation of a product, when there is a substantial increase in imports of an identical, like or directly competitive product in such quantities as to cause serious injury to the domestic industry that produces identical, like or directly competitive products;

Provisional safeguard: A safeguard measure adopted temporarily in critical circumstances for the domestic industry, for the purpose of preventing irreparable injury thereto;

Serious injury: Significant material impairment in the position of a domestic industry;

Domestic industry: "Domestic industry" shall be understood to mean the producers as a significant whole of identical, like or directly competitive products or those whose collective output of identical, like or directly competitive products constitutes a major proportion of the total domestic production of those products;

Adjustment measures: A programme or set of actions adopted by domestic producers to supplement safeguard measures, for the purpose of improving their competitiveness and for orderly adjustment of their production activities to foreign competition.

## CHAPTER II

### PROCEDURE FOR THE APPLICATION OF SAFEGUARD MEASURES

#### SECTION I

##### Safeguards

ARTICLE 3. Application for the imposition of safeguard measures. Anyone applying for the adoption of a safeguard measure shall refer to the Colombian Foreign Trade Institute (INCOMEX) and demonstrate, at least, compliance with the following requirements:

1. That the applicant or applicants account for a considerable proportion of the domestic industry. The application may be submitted directly or through the producers' association;
2. That there has been a substantial increase in imports of the product and there is serious injury to the domestic industry producing the identical, like or directly competitive product;
3. That the increase in imports has been in such quantities as to constitute the substantial cause of the serious injury to the domestic industry.

ARTICLE 4. Submission of adjustment measures. At any time in the course of investigation, the applicants may submit to INCOMEX for its consideration the coordinated action or the programme that the domestic producers will adopt to achieve the adjustment to foreign competition, so as to supplement the safeguard measures. Similarly, INCOMEX and the authorities responsible for recommending and deciding on the imposition of safeguard measures may request such information from the interested parties.

ARTICLE 5. Requisite information. When the application is submitted, the applicant shall supply the following information:

1. Technical description of the imported product or products concerned, with the tariff headings;
2. Country or countries of origin or of exports;

3. Name, domicile and taxation number (NIT) of the importers in question, if known. Name and domicile of the exporters in question, if known;
4. Explanation of the serious injury affecting the domestic industry, as well as identification and justification of the circumstances warranting application of the safeguard measure;
5. Statement and submission of the supporting evidence.

ARTICLE 6. Determination of serious injury. For the purpose of demonstrating serious injury, the applicant shall submit objective, quantifiable and sufficiently proven facts and shall include at least an analysis of the following factors:

1. Information on the relevant production, considered globally and individually;
2. Rate of growth and volume of imports of the product concerned, in particular to determine whether they have increased significantly, in both absolute and relative terms and in relation to Colombia's total output and apparent domestic consumption;
3. Price behaviour of the imported product and effects of the imports on prices of the like or directly competitive product in the domestic market;
4. Effects of the imports on domestic production of the like or directly competitive product with regard to such factors as production itself, utilization of installed capacity, inventories, sales, profits, employment, wages, and where appropriate, justification of the substitutability of the products covered by the application;
5. Effects on the position of the domestic industry caused by factors other than the import-related factors;
6. In determining serious injury in the case of agricultural and fisheries products, it shall be possible to regard as important circumstances the fact that the levels of domestic output of such products and existing inventories in Colombia are sufficiently high to guarantee domestic consumption and to produce surpluses until the next harvest, as well as the seasonal character of imports in relation to the seasonal character of crops.

No one of these parameters by itself shall constitute decisive guidance on the matter.

ARTICLE 7. Provisional safeguard. If the applicant considers that there are grounds for the imposition of a provisional safeguard, he shall demonstrate, in addition to the matters stipulated in the previous Articles, that critical circumstances justify such a course, under the terms of Article 14 of this Decree.

ARTICLE 8. Official receipt. If from an examination of the application INCOMEX establishes that the requirements of this Decree have been met, it shall so inform the applicant within fifteen (15) days following the date of receipt of the application.

If the information and documents provided by the interested party in submitting his application are inadequate, the terms of Article 12 of the Administrative Litigation Code shall apply.

ARTICLE 9. Evaluation of the grounds for the application. INCOMEX shall have a period of fifteen (15) days following dispatch of the communication acknowledging receipt of the application to evaluate the application and determine whether there are grounds for initiating an investigation.

ARTICLE 10. Initiation of the investigation. Within the time-limit referred to in the previous Article, INCOMEX shall, in a reasoned resolution to be published in the Ministry of Foreign Trade Gazette, decide whether to initiate the investigation and, if so, convene the interested parties in order for them to express their opinions, duly substantiated, and provide any evidence and documents that they consider relevant, stipulating for that purpose a period of twenty (20) days following the date of the notice of meeting.

INCOMEX shall forward a copy of the resolution referred to in this Article to the members of the Customs, Tariffs and Foreign Trade Committee.

During the investigation phase, INCOMEX may collect, *ex officio*, or request from the interested parties, the evidence it considers necessary to determine whether the measure under consideration is appropriate.

ARTICLE 11. Conclusion of the investigation. Within a maximum period of 60 days following the date of initiation of the investigation, INCOMEX shall conclude the investigation and forward the findings, together with any recommendations, to the Customs, Tariffs and Foreign Trade Committee.

ARTICLE 12. Modalities of the safeguard measure applicable. As a general rule, the safeguard measure applicable shall consist of a customs duty on the imported product determined as causing the injury. In exceptional circumstances, a quantitative restriction may be imposed on importation of the product, as a necessary measure to counteract serious injury to the domestic industry.

ARTICLE 13. Imposition of safeguard measures. The Customs, Tariffs and Foreign Trade Committee shall consider the report submitted by INCOMEX and submit the corresponding recommendation to the Higher Council for Foreign Trade. The Higher Council for Foreign Trade shall evaluate it and first submit its opinion to the Government, for the adoption of any changes in customs tariffs pursuant to relevant legal provisions. In the case of quantitative restrictions, the Higher Council shall adopt the relevant decision.

## SECTION II

### Provisional Safeguards

ARTICLE 14. Critical circumstances for the application of provisional safeguard measures. For the purposes of recommending and adopting a provisional safeguard measure, there must be sufficient evidence of critical circumstances for the domestic industry where delay would cause injury difficult to repair.

ARTICLE 15. Recommendation and application of provisional safeguards. At any time following receipt of the application and within a maximum of 30 days, when in the opinion of the investigating authority the critical circumstances referred to in the previous Article arise, INCOMEX shall submit an analysis of the situation and recommendation to the Customs, Tariffs and Foreign Trade Committee, in order for the Committee to submit to the Higher Council for Foreign Trade a recommendation proposing to the Government the adoption of a provisional safeguard measure, and the corresponding decision shall be adopted within a maximum period of 20 days following the recommendation by the Higher Council for Foreign Trade.

ARTICLE 16. Modalities. The provisional safeguard measure applicable shall consist exclusively of a customs duty.

## CHAPTER III

### Agricultural Safeguards on Grounds of Threat of Injury

ARTICLE 17. Definitions. Without prejudice to Article 2 of this Decree, the following definitions shall apply:

Agricultural safeguards on grounds of threat of injury: A measure of an exceptional and temporary character which may be applied to the importation of agricultural or fisheries products, in the event of a threat of serious injury to the situation of agricultural or fisheries production;

Threat of serious injury: A fall in international prices of an agricultural or fisheries product, below domestic production costs, that threatens significant material impairment of the situation in agricultural or fisheries production.

ARTICLE 18. Scope. Agricultural safeguards on grounds of threat of injury may be applied to agricultural and fisheries products under the following tariff headings:

Chapters 1 to 24, inclusive.

29.05.43

29.05.44

33.01

35.01 to 35.05

38.09.10

38.23.60

41.01 to 41.03

43.01

50.01 to 50.03

51.01 to 51.03

52.01 to 52.03

53.01

53.02

PARAGRAPH. Agricultural safeguards on grounds of threat of injury may not be applied to products defined in this Article that are included in the variable tariffs system.

ARTICLE 19. An agricultural safeguard measure on the grounds of threat of injury shall consist of a customs duty.

## CHAPTER IV

### PROVISIONS APPLICABLE TO SAFEGUARDS

ARTICLE 20. Non-discriminatory character of the measure. Safeguard measures shall apply on a non-discriminatory basis to imports of the product causing serious injury to the domestic industry.

ARTICLE 21. Notification and process of consultations. When an affirmative recommendation is made by the Customs, Tariffs and Foreign Trade Committee to apply definitive safeguards in accordance with the provisions of Article 13 of this Decree, the corresponding notification shall be sent to the bodies of the General Agreement on Tariffs and Trade (GATT) and the consultations provided for in that Agreement shall be held with any countries that may be affected.

In the case of provisional safeguards, consultations may be notified and held immediately after the measure has been imposed.

PARAGRAPH. The procedure provided for in this Article shall not apply when the measure adopted is a customs duty affecting a product in respect of which the country has not granted concessions at the multilateral level, or when the duty levied is less than such concessions.

ARTICLE 22. Scope of the measures. The scope of any safeguard measures applied shall be the scope necessary to redress the serious injury to the domestic industry or to remedy the special situation that gave rise to them.

The application of a quantitative restriction shall not reduce the volume of imports below the average annual level of imports over the past three years, unless it can be demonstrated that it is more appropriate to take a different level. For the purposes of determining such level, the period in which the product concerned was subject to a prior licensing system shall be disregarded.

ARTICLE 23. Duration of the measures. Safeguard measures shall apply only for such period of time as is deemed necessary to remedy the serious injury to the domestic industry and shall in no case exceed one year.

The period stipulated in this Article may be extended for a further year, provided it has been established by the Higher Council for Foreign Trade that the conditions which gave rise to application of the measure continue to exist.

In extending or modifying safeguard measures, allowance shall be made for adjustment action by domestic producers and the effectiveness thereof in restoring the competitiveness of the domestic industry.

A measure adopted when invoking a provisional agricultural safeguard shall be operative until such time as a decision has been taken to adopt or reject a definitive safeguard. In any event, it shall be in force for a maximum period of 90 days.

A measure adopted by invoking an agricultural safeguard on the grounds of threat of injury, in accordance with Articles 17 and 18, shall be operative until such time as the circumstances which gave rise to its application have disappeared. The maximum period for which an agricultural safeguard may be in force shall be subject to the terms of this Article.

ARTICLE 24. Application of safeguards to the same product. No safeguard measure shall be applied again to the importation of a product which has been subject to such a measure, for a period of time equal to that during which such measure had been previously applied, provided that the period of non-application is at least one year.

ARTICLE 25. Advisability of the safeguard. Before recommending the imposition of a safeguard measure, the Customs, Tariffs and Foreign Trade Committee and the Higher Council for Foreign Trade shall evaluate the impact that it may have on the national economy and whether it is consonant with the aims of economic policy and with opening up and internationalizing the economy.

ARTICLE 26. *Ex officio* investigation. INCOMEX may only carry out the investigation *ex officio*, on its own initiative or at the request of the Ministry of the sector to which the product or products relate, when it has sufficient evidence of serious injury to the domestic industry, or of a threat of serious injury in the agricultural sector. In the case of investigations initiated *ex officio*, the same procedure as for investigations applied for by private individuals shall be followed, where appropriate.

ARTICLE 27. Evaluation of adjustment measures. At the request of persons representing the domestic industry affected, the Ministry of Development, on its own account or in coordination with other interested bodies, may cooperate in evaluating the substance and possible effectiveness of adjustment measures that the industry intends to adopt to supplement safeguard measures. The same request may be made after a safeguard measure has been adopted, for the purpose of evaluating the results of the adjustment programme and its impact on restoring competitiveness.

## CHAPTER V

### Final Provisions

ARTICLE 28. Guarantees. In cases where a provisional tariff safeguard measure is adopted, payment of the resulting duties may be guaranteed by lodging a security with the corresponding customs authority, within the time-limit indicated in the decree whereby the measure was adopted. Securities shall be governed by the provisions of the Customs legislation.

ARTICLE 29. Confidentiality. The investigating authority shall guarantee the confidentiality of any document which, pursuant to the provisions in force, is submitted as confidential and shall require the person providing it to supply a non-confidential summary of the document.

In any case, the person providing the document may, voluntarily and in writing, waive confidentiality.

ARTICLE 30. Reports. INCOMEX shall submit to the Customs, Tariffs and Foreign Trade Committee and to the Higher Council for Foreign Trade a quarterly report evaluating the effects of the application of safeguard measures, for the purpose of adopting appropriate decisions on extending or modifying the measures. In the case of provisional safeguard measures, reports shall be submitted monthly, for the same purpose.

ARTICLE 31. Entry into force. This Decree shall enter into force as from the date of publication.

FOR PUBLICATION AND IMPLEMENTATION.

Done in Santa Fe de Bogotá, D.C., on 21 April 1994,

(Signed) RUDOLF HOMMES R.  
MINISTER OF FINANCE AND PUBLIC CREDIT

(Signed) JUAN MANUEL SANTOS C.  
MINISTER OF FOREIGN TRADE