

**NOTIFICATIONS OF LAWS, REGULATIONS AND
ADMINISTRATIVE PROCEDURES RELATING
TO SAFEGUARD MEASURES**

COLOMBIA

The following communication, dated 1 May 1998, has been received from the Permanent Mission of Colombia.

On instruction from my Government, and pursuant to Article 12.6 of the Agreement on Safeguards, I am notifying herewith to the Committee on Safeguards Title I of Decree No. 152 of 1998, which establishes the procedures and criteria for the adoption of general safeguard measures. This Decree was published in Colombia's Official Gazette No. 43221.

MINISTRY OF FOREIGN TRADE

DECREES

DECREE NO. 152 OF 22 JANUARY 1998

Establishing procedures and criteria for the adoption of general safeguard measures, transitional safeguards for products covered by the Agreement on Textiles and Clothing and special safeguards for agricultural products.

The President of the Republic of Colombia, in exercise of his constitutional powers, and in particular those conferred on him by Article 189, paragraph 25 of the Political Constitution, in conformity with Law 7 of 1991 and pursuant to Law 170 of 1994, upon recommendation of the Higher Council for Foreign Trade,

CONSIDERING:

That pursuant to Law 170 of 1994 the Agreement Establishing the World Trade Organization has been incorporated into Colombia's legislation;

That the Agreement Establishing the World Trade Organization includes the Agreement on Safeguards for the application of Article XIX of the General Agreement on Tariffs and Trade – GATT 1994 - which constitutes the general safeguards regime;

That the Agreement on Textiles and Clothing forms part of the Agreement Establishing the World Trade Organization and provides for transitional safeguards for products covered by the said Agreement;

That the Agreement on Agriculture forms part of the Agreement Establishing the World Trade Organization and provides for special safeguards for products covered by the said Agreement;

That it is necessary to promote competition and the modernization of the domestic production sector so as to enhance the efficiency of the economy;

That circumstances may arise in which a domestic industry needs the adoption of safeguard measures to facilitate its adjustment to competition from exports,

DECREES:

TITLE I

GENERAL SAFEGUARDS

CHAPTER I

General Provisions

Article 1. *Scope of Application.* Without prejudice to the special provisions in economic integration agreements concluded by Colombia, the provisions in this Decree shall apply to imports of products from Member countries of the World Trade Organization.

Article 2. *General Safeguards.* A safeguard measure may be applied if it has been determined that a product is being imported in such quantities and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products.

Article 3. *Definitions.* The following definitions shall apply:

"Serious Injury". A significant overall impairment in the position of a domestic industry;

"Threat of Serious Injury". The clear imminence of serious injury.

"Domestic Industry". The producers as a whole of the like or directly competitive products operating in Colombia or those whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of these products.

"Major Proportion of Domestic Industry". For the purposes of submitting an application, the major proportion of domestic industry shall be taken to mean at least 25 per cent thereof in terms of the volume of production of the like or directly competitive products in comparison with the imported product. Nevertheless, for the purpose of initiating the investigation, the percentage shall be 50 per cent.

In the case of highly concentrated industries in which an exceptionally low number of producers represent 50 per cent or more of the domestic industry, for the purposes of submitting an application and initiating an investigation, the remaining producers may be deemed to constitute a major proportion of domestic industry.

In the case of fragmented industries involving an exceptionally large number of producers, for the purposes of submitting an application and initiating an investigation, INCOMEX may determine the major proportion by using statistically valid sampling techniques.

"Like Product". A product which is identical, i.e. alike in all respects to the imported product or another product which, although not alike in all respects, has characteristics closely resembling those of the product imported.

"Directly Competitive Product". A product whose physical characteristics and composition differ from those of the imported product but which fulfils the same functions, meets the same needs and is commercially substitutable.

"Adjustment Programme". The 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.

"Member". Any Member of the World Trade Organization.

"WTO". The World Trade Organization.

"Interested Parties". The applicant, other Colombian producers, trade or business associations a majority of the members of which are producers of the product under investigation, foreign producers, exporters, importers, governments of exporting or producing countries, consumers or their associations.

"INCOMEX". Colombian Foreign Trade Institute.

Article 4. *Non-discrimination*. Safeguard measures adopted pursuant to the provisions under this Title shall apply to all imports of the product under investigation irrespective of their origin.

Article 5. *Confidential documents*. Documents of a confidential nature provided by the authorities, the applicant or interested parties may only be consulted by INCOMEX.

Any modification deemed to be confidential shall, upon good cause shown, be treated as such by INCOMEX and may not be disclosed without the permission of the party submitting it. Any person providing confidential information shall furnish a non-confidential summary thereof or state the reasons why it is not susceptible of summary.

If INCOMEX finds that the request is not warranted and the interested party is either unwilling to make the information public or to authorize its disclosure in generalized or in summary form, INCOMEX may disregard such information unless it can be demonstrated satisfactorily from appropriate sources that the information is correct.

Notwithstanding the above, the confidential nature of a document cannot be adduced as grounds for refusing to provide it to the authorities requesting it in the proper exercise of their functions. In such cases, the requesting authority is responsible for ensuring the confidentiality of such documents.

CHAPTER II

Investigation Procedure

Article 6. *Submission of the application*. Upon written application submitted to the General-Directorate of INCOMEX or to its regional or branch offices by a major proportion of domestic industry or on its behalf through its representative association, INCOMEX shall initiate the procedure provided in this Title.

Article 7. *Application requirements.* The application shall refer to a single product and contain supporting evidence on increased imports, serious injury or threat thereof, and a causal link between the increased imports and the injury or threat thereof. For this purpose, the application shall contain the following information:

1. Indication of the type of safeguard to be imposed;
2. Identification of the applicant and proof that it represents a major proportion of domestic industry. For this purpose, the applicant may submit the domestic producer's certificate issued by INCOMEX or any other type of documentary evidence in which INCOMEX certifies its position and its share of the volume and/or value of total production. Where the application is made by an association on behalf of the domestic industry, the domestic producers belonging to the association shall be identified and the share of each producer in the total volume and value of domestic production of the like or directly competitive product shall be indicated;
3. Detailed description, technical specification and tariff classification of the imported product to allow a comparison with the domestic product;
4. Detailed description of the domestic product and proof that it is alike to or directly competes with the imported product;
5. Name, domicile and national identity number of the domestic importers and information available on the foreign producers and/or exporters;
6. Information on the increase in imports (volume, price and country of origin) of the product to be investigated, in absolute terms or relative to the domestic industry;
7. Information demonstrating and proving the existence of serious injury or threat thereof to the domestic industry.

For this purpose, the information shall include accounting and financial information relating to the production line for the product to be investigated. Where this is not possible, the information shall refer to the production of the narrowest group or range of products that includes the like or directly competitive domestic product.

The information may refer *inter alia* to output, utilization of installed capacity, productivity, inventories, sales and prices on the domestic market, share of the domestic market, profits, and employment.

General information on the enterprise, where relevant, shall also be provided.

The accounting and financial information shall be submitted in accordance with the legislation in force and shall be certified by a chartered accountant or the enterprise's internal auditor pursuant to the legal provisions. Information relating *inter alia* to production, sales and inventories expressed in terms of value shall be deemed accounting information and shall therefore be certified by a chartered accountant or the enterprise's internal auditor.

8. If a threat of serious injury is claimed, information shall be provided on a possible increase in imports, evidenced *inter alia* by the existence of a supply contract, the award of a tender or an irrevocable offer, or as a consequence of export capacity in the country of origin evidenced by an increase or surplus in installed capacity or an increase in inventories of the like or directly competitive product, and the likelihood that the exports resulting from this increased potential capacity in the exporting country will be exported to the Colombian market.

9. A detailed explanation and evidence that the increase in imports is the cause of the serious injury or threat of serious injury to the domestic industry.
10. If the application of a provisional safeguard measure is requested, the existence of critical circumstances pursuant to Article 33 of this Decree must also be demonstrated.
11. Identification and justification of confidential information, and a non-confidential summary thereof. If it is indicated that the information is not susceptible of summary, a statement of the reasons why summarization is not possible shall be provided.
12. Offer to submit to the authorities any additional documents they might require, to facilitate verification of the information supplied and to cooperate in the investigation.
13. Submission of supporting evidence and request for the evidence deemed necessary.
14. Information on the specific objectives sought, for example, the adoption of modernization programmes to increase the competitiveness of enterprises and adapt them to the new competitive conditions in the market.
15. Two copies of the application shall be submitted, one to be placed in the public and the other in the confidential file.
16. The application shall be signed by the legal representative(s) or the attorney(s) of the applicant(s).

Paragraph. The information on injury and increased imports referred to in this Article shall concern the two (2) years prior to submission of the application and the current year. If the first half of the last year has not ended, the information shall concern the previous three (3) years and the period of the current year that has already elapsed. In the case of an increase in imports, the period shall correspond to the last three years for which statistical information is available.

Article 8. *Official receipt of the application.* Within five working days from the working day following the date of submission of the application, INCOMEX shall notify the applicant in writing that the application meets the requirements and contains the information specified in the previous Article.

Where information is lacking or is not clear, INCOMEX shall request the applicant in writing to provide this information. This request shall interrupt the period established in the preceding paragraph until the missing information is provided.

If after two months following the request the missing information has not been supplied, the applicant shall be considered to have withdrawn the application and an order will be issued for it to be filed, without prejudice to a further new application by the applicant.

Article 9. *Evaluation of the grounds for application.* INCOMEX shall have a period of twenty (20) working days from the working day following the date of dispatch of the official receipt to evaluate whether there are grounds for initiating an investigation.

Whether there are grounds for initiating an investigation shall depend on sufficient evidence of increased imports, injury or threat of injury to the domestic industry and a causal link between these two elements.

Where appropriate, INCOMEX may ex officio request and/or provide the additional information and evidence it deems necessary to establish the grounds. Such information, together

with the information attached to the application for the initiation of an investigation, shall constitute evidence during the procedure.

The technical evaluation of the grounds for initiating an investigation shall be furnished in writing.

Article 10. *Initiation of the investigation.* If the evaluation finds that there are grounds for initiating an investigation, INCOMEX shall initiate the investigation within the period laid down in the preceding Article. If no grounds are found, INCOMEX shall reject the application for an investigation and order that the case be filed. In both cases, INCOMEX shall adopt a reasoned resolution to be published in the INCOMEX chapter of the Ministry of Foreign Trade Gazette.

Within a period of five (5) working days from the working day following the date of publication of the resolution on initiation of an investigation, INCOMEX shall forward a copy of the resolution to known interested parties, the Ministry of Foreign Trade, and the Technical Secretariat of the Customs, Tariffs and Foreign Trade Committee.

The resolution shall contain the following:

- (a) A summary of the application;
- (b) a notice calling for the submission of any relevant information; and
- (c) explanation of the evidence found when evaluating the grounds.

Paragraph. Within 15 working days following the initiation of the investigation, the domestic industry shall submit information on the adjustment programme it intends to implement if a safeguard measure is imposed.

Article 11. *Notification to take part in the investigation.* Within the period provided in the second paragraph of the preceding Article, INCOMEX shall convene the interested parties by means of a public notice so that they can express their opinions, duly substantiated, and provide or request evidence that they consider relevant. The notice shall be published in two (2) national newspapers with broad circulation and the interested parties shall have a period of thirty (30) working days from the working day following the date of publication of the notice in which to respond. This period may be extended by one further period of up to eight working days for all interested parties subject to a duly substantiated request. Upon expiry of this period, only parties that have indicated their interest in taking part in the investigation shall be considered interested parties.

Article 12. *Dispatch and receipt of questionnaires by INCOMEX.* Within the period of five (5) days indicated in the second paragraph of Article 10 of this Decree, if it considers it necessary, INCOMEX shall send questionnaires to all known interested parties requesting additional information and evidence concerning the investigation.

The questionnaires duly completed shall be returned to INCOMEX within thirty (30) working days from the working day following the date of their dispatch. This period may be extended for up to eight working days for all interested parties subject to a duly substantiated request.

Replies to the questionnaires, together with the attached supporting documents and evidence, shall be submitted in Spanish, or be accompanied by an official translation. They shall be submitted in two copies, one to be placed in the public and the other in the confidential file.

Article 13. *Collection of evidence.* After the time-limit for receiving questionnaires and convening interested parties has expired, within twenty five (25) working days, INCOMEX shall

collect the evidence requested by the interested parties that it considers useful, necessary, relevant and valid for verifying the facts investigated.

INCOMEX may collect evidence ex officio from the time of dispatch of the official receipt until the end of the period provided in this Article.

Article 14. *Verification visits.* At any time during the investigation procedure and before expiry of the time-limit for collecting evidence, INCOMEX may carry out the verification visits it deems relevant. For this purpose, it shall send a written communication to the interested parties it wishes to visit indicating the date of the visit. The interested party, giving grounds and within five (5) working days following dispatch of the communication, may once only request in writing that the date be changed, proposing a new date which may not be later than five (5) working days from the date originally set.

Article 15. *Arguments.* Interested parties, once only and within fifteen (15) working days following the expiry of the period fixed in the first paragraph of Article 13 of this Decree, may submit their views on the investigation in writing and/or contest the evidence produced. They may also express their views on whether or not the application of a safeguard measure is in the public interest.

Article 16. *Joint hearings of interested parties.* As from the date of initiation of the investigation and until the expiry of the time-limit for collecting evidence, INCOMEX may be requested once only to hold a joint hearing of the interested parties representing different interests so that they may put forward their arguments and comments on the claims made by the parties during the investigation.

Hearings shall be held at the request of the interested party or ex officio. Within five (5) days following the end of the period fixed for putting forward arguments, INCOMEX shall convene a hearing by a notice published in two national newspapers with broad circulation. The hearing shall be held within ten days following publication of the notice in the place and at the time indicated therein.

Within three days following the hearing, the parties shall submit in writing all the arguments put forward orally during the hearing. In evaluating the hearing, INCOMEX shall only take into account arguments expressed in writing.

Article 17. *Conclusions of the investigation.* Within twenty-five (25) working days following expiry of the period given to the interested parties to put forward their arguments and after the hearing has been held, if necessary, INCOMEX, on the basis of the available evidence and information, shall draw up a technical report that shall terminate the investigation referred to in this Chapter. The report shall contain INCOMEX's findings and conclusions regarding relevant matters of fact and law and, if there is an affirmative recommendation, the form, duration and liberalization programme of the measure to be adopted.

Within the period indicated in the preceding paragraph, INCOMEX shall transmit the technical report and its conclusions and recommendations to the Technical Secretariat of the Customs, Tariffs and Foreign Trade Committee for matters within its competence.

Article 18. *Best available information.* Where the information requested by INCOMEX is not supplied in accordance with the provisions of this Title or when the investigation is significantly impeded, the conclusions may be adopted on the basis of the facts available. Likewise, where INCOMEX finds that an interested party has submitted incorrect or misleading information, this shall not be taken into account in its evaluation and findings.

Article 19. *Records.* All information provided by interested parties, together with the information collected by INCOMEX ex officio, shall be filed in chronological order in two separate files, one of which shall contain public and the other confidential information.

Any person may have access to the file containing public information and may request the permission of INCOMEX to photocopy it.

CHAPTER III

Serious Injury and Threat of Serious Injury

Article 20. *Determination of serious injury.* In determining whether imports of a product have increased in such volume or under such conditions as to cause serious injury to a domestic industry, INCOMEX shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry:

(a) Import trends:

INCOMEX shall examine the rate and amount of the increase in imports both in absolute terms and relative to the domestic industry as well as apparent domestic consumption (ADC). It shall also take into account the price of imports, the import conditions and the share of the domestic market taken by increased imports.

(b) Production trends:

INCOMEX shall take into account the trends in the following indicators and the behaviour that could reasonably have been expected from each in the light of the performance of the economy.

- Trend in output in absolute terms and relative to sales and domestic consumption;
- trend in sales on the domestic market (volume and price) and net sales income, as well as the relationship between the two;
- trend in the utilization of installed capacity;
- productivity trends;
- profit and loss accounts;
- employment.

(c) Price trends and impact of the imports:

INCOMEX shall examine the trend in selling prices for the product on the domestic market, as well as the performance that could reasonably have been expected in the light of fluctuations in the exchange rate and the performance of price indices in the economy, in order to determine whether the imports have depressed prices or have prevented price increases that otherwise would have occurred.

(d) The trend in the volume of inventories, in absolute terms and relative to sales and domestic production;

(e) Financial statements of the producing enterprise and for the production line of the product investigated. Where it is not possible to obtain information on the production line, the impact shall be

measured in relation to the production of the narrowest group or range of products that includes the like or directly competitive domestic product;

(h) Direct or indirect labour used on the production line or for the more restricted group or range, measured in terms of the number of workers and the amount of wages.

Paragraph. The absence of negative trends or the presence of positive trends in one or more of the factors referred to in this provision does not constitute a decisive criterion.

Article 21. *Threat of serious injury.* In determining a threat of serious injury caused by imports, the following shall be considered in addition to the imminent effects on the factors referred to in the preceding Article:

1. The possibility of an increase in imports due *inter alia* to the existence of a supply or sales contract, the award of a tender, an irrevocable offer or other similar contract.
2. An increase in the export capacity of the country of origin due to increased utilization of installed capacity for the product investigated or an increase in inventories.
3. The likelihood that the exports resulting from this increased potential capacity in the exporting country will be exported to the Colombian market.
4. The existence of letters of credit for the payment abroad of imports of the product investigated.

Paragraph. The absence of negative trends or the presence of positive trends in one or more of the factors referred to in this provision does not constitute a decisive criterion.

Article 22. *Period for the evaluation of serious injury or threat of serious injury.* The evaluation of the factors referred to in the preceding Articles shall include the period mentioned in the paragraph in Article 7 of this Decree.

Article 23. *Causal link.* A safeguard measure shall only be adopted where, on the basis of objective evidence, the investigation shows that there is a causal link between increased imports of the product concerned and the serious injury or threat thereof to the domestic industry.

Where factors other than those related to the imports are causing injury to the domestic industry, their impact shall not be attributed to increased imports.

CHAPTER IV

Procedure for the Adoption of Safeguard Measures

Article 24. *Adoption of safeguard measures.* After the investigation pursuant to Chapters II and III of this Decree has been terminated, the Customs, Tariffs and Foreign Trade Committee shall consider the technical report submitted by INCOMEX within fifteen (15) working days following the date of its receipt by the Technical Secretariat and shall make a recommendation to the Higher Council for Foreign Trade.

Where the Customs, Tariffs and Foreign Trade Committee considers that the criteria for the adoption of the measure have been met, it shall request the Ministry of Foreign Trade to hold the consultations referred to in this Decree. If it considers that the criteria have not been met, it shall recommend to the Higher Council for Foreign Trade that it should not adopt or recommend the measure, depending on the type of safeguard.

After the consultations referred to in the preceding paragraph have been held, the Ministry of Foreign Trade shall transmit the findings to the Higher Council for Foreign Trade, together with the recommendation of the Customs, Tariffs and Foreign Trade Committee, so that, subject to its evaluation, a quantitative safeguard may be adopted or a recommendation made to the Colombian Government to adopt a tariff safeguard.

Where the Higher Council for Foreign Trade disagrees with the negative recommendation by the Customs, Tariffs and Foreign Trade Committee, it shall request the Ministry of Foreign Trade to hold the consultations provided for in the second paragraph of this Article.

If the Higher Council for Foreign Trade decides not to apply a quantitative safeguard measure or to recommend to the Colombian Government the application of a tariff safeguard, it shall inform the interested parties accordingly in writing, through the Secretary of the Council, within five (5) working days following its decision.

Article 25. *Type of measure.* A safeguard measure shall be applied only to the extent necessary to prevent or remedy serious injury or threat of serious injury to the domestic industry and to facilitate adjustment.

The safeguard measure applied shall preferably be a tariff increase and a quantitative restriction shall be applied to the product investigated only if it is not possible to apply a tariff increase.

The measures adopted shall allow the level of concessions granted by Colombia under Article II of the GATT 1994 to be exceeded. The measures shall be such as to facilitate adjustment of the domestic industry concerned so that the economic and social benefits exceed the costs of the measure.

Article 26. *Quantitative restrictions.* Where the safeguard measure adopted is in the form of a quantitative restriction, the following obligations shall be taken into account:

(a) Quota volume. A quantitative restriction shall not reduce the volume of imports below the average level of imports over the last three years representative of trade flows for which statistics are available, unless it can be shown that a different level is necessary to prevent or remedy the serious injury;

(b) In cases in which a quota is allocated among supplying countries, the allocation of shares in the quota may be agreed with Members having a substantial interest in supplying the product concerned. In cases in which this method is not reasonably practicable, shares shall be allotted to supplying Members having a substantial interest in supplying the product based upon the proportions of the total quantity or value of imports of the product supplied by each Member during the representative period, due account being taken of any special factors which may have affected or may be affecting the trade in the product.

Exceptionally and subject to consultation with exporting Members that have a substantial interest, under the auspices of the WTO Committee on Safeguards, a different form of allotting shares may be used if it can be demonstrated that:

- (i) Imports from certain Members have increased in a disproportionate percentage in relation to the total increase of imports of the product investigated in the representative period;
- (ii) there are justified reasons for making an exception; and

- (iii) the conditions of distribution are equitable to all suppliers of the product investigated.

This exception may not be applied in cases of threat of serious injury.

Paragraph. The criteria for allotting import quotas regulated in this Article shall be established in the Decision on applying the measure.

Article 27. *Duration of the measure.* Safeguard measures shall only be applied for such period of time as may be necessary to prevent or remedy serious injury or threat thereof and to facilitate adjustment of the domestic industry concerned. The period shall not exceed four (4) years, including the period of application of any provisional measure, unless it is extended pursuant to the following Article.

In any event, the total period of application of a safeguard measure including the period of application of any provisional measure, the period of initial application and any extension thereof shall not exceed eight (8) years.

Article 28. *Requirements for extending the measure.* At the request of a significant proportion of the domestic industry affected, the period of application of a safeguard measure may be extended provided that another investigation is held according to the procedure laid down in this Title, that there are grounds for continuing to impose the safeguard measure in order to prevent or remedy the serious injury or threat thereof, and that there is evidence that the domestic industry is adjusting.

A request for extension shall be submitted six months before the expiry of the term of the safeguard measure being applied and the relevant provisions of this Decree concerning the level of concessions, notifications and consultations shall be observed.

Any safeguard measure extended may not be more restrictive than the measure applied at the end of the initial period and shall continue to be liberalized in accordance with Article 32 of this Decree.

Article 29. *Period of non-application of a measure.* A safeguard measure may be applied to import of a product which has been subject to such a measure only after the expiry of a period corresponding to that during which such measure had been previously applied, provided that this is at least two (2) years.

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

- (a) One year has elapsed since the date of introduction of the measure; and
- (b) 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 30. *Mid-term review.* When a safeguard measure is adopted for an initial period exceeding three years, half way through the period of application of the measure, INCOMEX shall ex officio review the situation, including trends in the factors that determined the serious injury or threat thereof, in order to establish whether it is necessary to maintain the measure, withdraw it or increase the pace of liberalization.

For this purpose, within the 30 working days prior to the mid-term of the safeguard measure, INCOMEX shall request the producers identified in the initial application to submit *inter alia* the following information:

- (a) Import trends over the last three years (volume, price and country of origin) for which information is available;
- (b) information on production levels, utilization of installed capacity, inventories, productivity, sales and prices on the domestic market, domestic market share, profit and loss accounts, and employment for the previous three calendar years and the quarters of the current year completed one month before the request for information;
- (c) detailed information on the adjustment or modernization programme adopted or being implemented by each producer.

Depending on the circumstances, INCOMEX may request additional relevant information in order to establish whether it is necessary to maintain the safeguard, withdraw it or increase the pace of liberalization.

Within the following 30 working days, the enterprises concerned shall submit the information requested and the supporting evidence and shall request the information and evidence they deem necessary. They shall also identify the information they consider confidential, giving their reasons for doing so.

Where it deems necessary, INCOMEX shall hold a hearing or shall visit the facilities of the domestic producers it considers relevant, notifying its intention and purpose at least 15 calendar days before the hearing or visit.

Within 45 working days following receipt of the information or the conduct of the hearing or visit mentioned in the preceding paragraph, as appropriate, INCOMEX shall carry out its evaluation in order to determine whether or not the measure should be maintained or withdrawn or the pace of liberalization increased.

The findings of the evaluation, together with the corresponding recommendation, shall be transmitted to the Customs, Tariffs and Foreign Trade Committee. Where the Committee considers that the measure should be withdrawn or modified to increase the pace of liberalization, it shall make a recommendation to the Higher Council for Foreign Trade which, if it deems it relevant, shall apply the measure, in the case of a quantitative safeguard, or recommend its adoption to the Colombian Government, in the case of a tariff safeguard.

Article 31. *Evaluation of the adjustment programme.* During the investigation or the mid-term review, INCOMEX and the Ministry responsible for the product in question, where appropriate with the support of experts in competition, shall evaluate the adjustment programme submitted pursuant to the paragraph in Article 10 of this Decree, and may propose amendments thereto.

Verification of compliance with the adjustment programme proposed by the applicant shall be a necessary requirement for extension of the measure applied.

Article 32. *Gradual liberalization of the measure.* In order to facilitate adjustment in a situation where the expected duration of a safeguard measure is over one year, the measure shall be progressively liberalized at regular intervals during the period of application.

The pace of liberalization of measures shall be specified in the administrative act adopting them, taking into account the period necessary to prevent or remedy the serious injury and facilitate adjustment, as well as the possibilities of extending the measure.

CHAPTER V

Provisional Safeguard Measure

Article 33. *Application requirements.* In critical circumstances where delay would cause injury which the domestic industry producing the like or directly competitive product would find it difficult to repair, a provisional safeguard measure may be adopted pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury.

A preliminary determination of critical circumstances shall be based on clear evidence that there has been a substantial increase in imports over the last six (6) months for which statistics are available, taking into account their volume and whether or not there has been a rapid accumulation of inventories of the domestic product and a reduction in sales and profit margins.

Article 34. *Adoption of the measure.* Within a period of fifteen (15) working days from the date of official receipt of the application, INCOMEX shall submit a technical report to the Customs, Tariffs and Foreign Trade Committee describing the circumstances specified in the preceding Article and making the relevant recommendation.

The Customs, Tariffs and Foreign Trade Committee shall consider the technical report submitted by INCOMEX within ten (10) working days following its receipt by the Technical Secretariat and shall make a recommendation to the Higher Council for Foreign Trade on adoption of the measure.

After having received the recommendation of the Customs, Tariffs and Foreign Trade Committee, the Higher Council for Foreign Trade, after review, shall decide whether or not to recommend the adoption of a tariff safeguard to the Colombian Government.

If the Higher Council for Foreign Trade decides not to recommend the application of a measure to the Colombian Government, it shall inform the interested parties accordingly in writing through the Secretary of the Council within five (5) working days following its decision.

Article 35. *Type of measure.* Provisional safeguard measures shall be in tariff form.

Article 36. *Duration.* A provisional safeguard measure shall remain in effect until a definitive safeguard measure is adopted or it is decided not to impose one. Its duration shall not in any case exceed 200 calendar days. During this period, the investigation shall continue as provided in this Title in order to decide whether or not a definitive safeguard measure should be imposed.

The duration of a provisional safeguard measure shall be added to the initial period of application of the definitive measure.

Article 37. *Deposit of security.* If it is decided to adopt a provisional safeguard measure, importers when making their import declaration may decide to pay the customs duties applied under the measure or deposit security with the National Customs and Excise Directorate (DIAN) to guarantee payment. The security shall be for the period indicated in the decision adopting the measure and shall be in accordance with the provisions of the relevant customs regulations.

At the end of the investigation, if it is decided not to adopt a definitive safeguard measure, the National Customs and Excise Directorate shall order the discharge of the security or the return of the customs duties paid when the provisional safeguard measure was applied, pursuant to Title III of Decree 1909 of 1992 or the regulations which replace, amend or revise them.

CHAPTER VI

Level of Concessions and Consultations

Article 38 *Level of concessions and other obligations.* If the Government proposes to apply a safeguard measure, it shall endeavour to maintain a substantially equivalent level of concessions and other obligations to that existing under GATT 1994 with the exporting Members which would be affected by such a measure. To achieve this objective, the Government may, through the Ministry of Foreign Trade, reach agreement with the Members concerned on any adequate means of trade compensation for the adverse effects of the measure on their trade.

Article 39. *Consultations.* Without prejudice to the consultations referred to in Article 26 of this Decree, if the Customs, Tariffs and Foreign Trade Committee recommends the application or extension of a safeguard measure, the Ministry of Foreign Trade shall have a period of thirty (30) days in which to hold consultations with the exporting Members that have a substantial interest in order to consider the evidence of serious injury or threat thereof, to exchange views on the measure and to seek an understanding on ways of concluding the trade compensation agreements referred to in the preceding Article.

If a provisional safeguard measure is adopted, the consultations shall commence immediately following its adoption.

When the time-limit for holding consultations has expired, the Government, after having heard the views of the Higher Council for Foreign Trade, may adopt the safeguard measure it deems appropriate even if there is no agreement with the exporting Members.

CHAPTER VI

Notification to the World Trade Organization

Article 40. *Notification to the Committee on Safeguards.* The Ministry of Foreign Trade shall notify the following to the WTO Committee on Safeguards:

- (a) The initiation of an investigation;
- (b) A finding of serious injury or threat thereof;
- (c) The Colombian Government's decision to apply or extend a safeguard measure. Within five (5) working days following publication of the relevant decision, the Ministry of Foreign Trade shall transmit a copy of the administrative act adopting or extending the safeguard measure, together with additional information containing evidence of the serious injury or threat thereof caused by increased imports; the proposed measure, the date of its introduction, its planned duration and the timetable for its progressive liberalization. In the case of an extension, it shall also furnish evidence that the domestic industry is adjusting.
- (d) A decision by the Colombian Government to impose a provisional measure shall be notified prior to its adoption;
- (e) The outcome of the consultations referred to in Articles 26 and 39 of this Decree and, where appropriate, the agreed compensation or the suspension of concessions or other obligations.

Article 41. *Notification to the Council for Trade in Goods.* The Ministry of Foreign Trade shall notify the following to the Council for Trade in Goods, through the WTO Committee on Safeguards:

1. The outcome of the consultations referred to in Article 39 of this Decree;
2. trade compensation agreements;
3. suspension of concessions and other obligations.

Article 42. *Prohibition on disclosing confidential information.* The notifications referred to in this Chapter shall not oblige the competent authority to disclose confidential information.

TITLE II

TRANSITIONAL SAFEGUARDS FOR PRODUCTS COVERED BY THE AGREEMENT ON TEXTILES AND CLOTHING

CHAPTER I

General Principles

Article 43. *Scope of application.* Transitional safeguards shall apply to the products identified in Annex 1 to the WTO Agreement on Textiles and Clothing that have not been integrated into GATT 1994 through notification by the Government to the WTO Textiles Monitoring Body.

Article 44. *Definitions.* For the purposes of this Title, the following definitions shall apply:

"Serious damage". A significant overall impairment in the position of a domestic industry;

"Threat of serious damage". The clear imminence of serious damage.

"Domestic industry". The producers as a whole of the like or directly competitive products operating in Colombia or those whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of these products;

"Major proportion of domestic industry". For the purposes of submitting an application, the major proportion of domestic industry shall be taken to mean at least 25 per cent thereof in terms of the volume of production of the like or directly competitive products in comparison with the imported product. Nevertheless, for the purpose of initiating the investigation, the percentage shall be 50 per cent.

In the case of highly concentrated industries in which an exceptionally low number of producers represent 50 per cent or more of the domestic industry, for the purposes of submitting an application and initiating an investigation, the remaining producers may be deemed to constitute a major proportion of domestic industry.

In the case of fragmented industries involving an exceptionally large number of producers, for the purposes of submitting an application and initiating an investigation, INCOMEX may determine the major proportion by using statistically valid sampling techniques.

"Like product". A product which is identical, i.e. alike in all respects to the imported product or another product which, although not alike in all respects, has characteristics closely resembling those of the product imported.

"Directly competitive product". A product whose physical characteristics and composition differ from those of the imported product but which fulfils the same functions, meets the same needs and is commercially substitutable.

"Member". Any Member of the World Trade Organization.

"WTO". The World Trade Organization.

"Interested parties". The applicant, other Colombian producers, trade or business associations a majority of the members of which are producers of the product under investigation, foreign producers, exporters, importers, governments of exporting or producing countries, consumers or their associations.

"INCOMEX". Colombian Foreign Trade Institute.

Article 45. Article 5 of this Decree shall apply to the transitional safeguards referred to in this Title.

Article 46. *Requirements for application of transitional safeguard measures.* A transitional safeguard measure may be adopted when it is demonstrated that a particular product is being imported in such quantities as to cause serious damage or threat thereof to the domestic industry producing like and/or directly competitive products. Serious damage or threat thereof must demonstrably be caused by such increased quantities in total imports of that product and not by such other factors as technological changes or changes in consumer preference.

Paragraph. The transitional safeguard shall be applied as sparingly as possible, consistently with the provisions of this Title.

Article 47. *Discriminatory nature of the measure.* A transitional safeguard shall only be applied to imports from the Member or Members to which the serious damage or threat thereof may be attributed.

Article 48. *Interests of exporting Members.* Pursuant to Article 6 of the WTO Agreement on Textiles and Clothing, the application of a transitional safeguard shall take into account the interests of exporting Members as set out below:

- (a) Least-developed country Members shall be accorded treatment significantly more favourable than that provided to the other groups of Members referred to in this Article, preferably in all its elements but, at least, on overall terms;
- (b) Members whose total volume of textile and clothing exports is small in comparison with the total volume of exports of other Members and who account for only a small percentage of total imports of that product into the importing Member shall be accorded differential and more favourable treatment in the fixing of the conditions for quantitative restrictions. For those suppliers, due account will be taken of the future possibilities for the development of their trade and the need to allow commercial quantities of imports from them;
- (c) With respect to wool products from wool-producing developing countries whose economy and textiles and clothing trade are dependent on the wool sector, whose

total textile and clothing exports consist almost exclusively of wool products, and whose volume of textiles and clothing trade is comparatively small in the markets of the importing Members, special consideration shall be given to the export needs of such Members when considering quota levels, growth rates and flexibility;

- (d) More favourable treatment shall be accorded to re-imports by a Member of textile and clothing products which that Member has exported to another Member for processing and subsequent re-importation, when these products are imported from a Member for which this type of trade represents a significant proportion of its total exports of textiles and clothing.

The more favourable treatment referred to in this Article may consist of the adoption of a measure for a shorter period than that applied to other parties on which it is imposed, or in the case of quantitative restrictions a volume higher than that provided in the third paragraph of Article 69 of this Decree, or any other appropriate method.

CHAPTER II

Investigation Procedure

Article 49. *Initiation of the procedure.* At the request of a major proportion of domestic industry or on its behalf through its representative association, subject to fulfilment of the requirements listed in the following Article, INCOMEX shall carry out the relevant investigation. The application shall be submitted to the General-Directorate of INCOMEX or to its regional or branch offices.

Article 50. *Application requirements.* The application referred to in the preceding Article shall be submitted in writing and shall contain the following information:

- (a) Identification of the applicant;
- (b) Proof that it represents a major proportion of the domestic industry concerned;
- (c) Detailed description of the domestic product and the imported product showing their tariff classification;
- (d) Proof that an imported product is alike to or directly competes with the domestic product;
- (e) Detailed information (volume, price and country of origin) on import trends over the previous three years up until the two months immediately prior to the month in which the application is submitted. Import statistics shall be based on the information provided by the DIAN and, if these are not available, on the import registers kept by INCOMEX or any other similar evidence appropriate to the circumstances. These data should be based on the statistical information available;
- (f) Information on output, utilization of installed capacity, inventories, market share, sales, domestic prices, exports, profits, investment, employment and wages during the period referred to in subparagraph (e) of this Article. Financial statements shall be drawn up in accordance with the national accounting standards applicable;
- (g) Elements which show the causal link between the increase in imports and the serious damage to the domestic industry or threat thereof;

- (h) If a threat of serious damage is claimed, information shall be provided on a possible increase in imports due, for example, to the existence of a supply contract, the award of a tender or an irrevocable offer, or as a consequence of export capacity in the country of origin, i.e. an increase in or surplus of installed capacity or an increase in inventories of the like or directly competitive product and the likelihood that the exports resulting from this increased potential capacity in the exporting country will be exported to the Colombian market;
- (i) Submission of supporting evidence and request for the collection of evidence deemed necessary;
- (j) Offer to submit to the authorities any additional documents they might require, to facilitate verification of the information supplied and to cooperate in the investigation;
- (k) Identification and justification of confidential information, and a non-confidential summary thereof.

Article 51. *Submission of the application.* The application shall be submitted in two (2) copies signed by the legal representative(s) or the attorney(s) of the applicant(s).

One copy of the application shall be placed in the public and the other in the confidential file.

Article 52. *Receipt of the application.* Within five (5) working days from the date of submission of the application, INCOMEX shall notify the applicants of the official receipt of the application, indicating that it meets the requirements set out in the preceding Articles.

Where INCOMEX finds that information listed in the preceding Article is lacking, it shall request the applicant to provide this information. This request shall be made in writing and shall interrupt the period established in the preceding paragraph until the missing information is provided.

If after (2) two months following the request the additional information has not been supplied, the applicant shall be considered to have withdrawn the application and an order will be issued for it to be filed, without prejudice to the submission of a new application.

Article 53. *Conclusions of the investigation.* Within forty (40) working days following the official receipt of the application, INCOMEX shall terminate the investigation, drawing up a report containing its findings regarding the existence of serious damage or threat thereof and its attribution to a particular Member or Members of the WTO. For these purposes, INCOMEX may carry out verification visits in order to verify the information on which the report's findings are based.

Within fifteen (15) working days following the date of its receipt by the Technical Secretariat, the Customs, Tariffs and Foreign Trade Committee shall examine the technical report submitted by INCOMEX in order to determine whether the imports have caused or threaten to cause serious damage to the domestic industry producing like or directly competitive products.

Where the Customs, Tariffs and Foreign Trade Committee considers that the criteria for the adoption of the measure have been met, it shall request the Ministry of Foreign Trade to hold the consultations referred to in Articles 63 and 64 of this Decree and shall recommend the adoption of the measure to the Higher Council for Foreign Trade. If it considers that the criteria have not been met, it shall recommend to the Council that it should not adopt the measure.

Where the Higher Council for Foreign Trade disagrees with a negative recommendation by the Customs, Tariffs and Foreign Trade Committee, it shall request the Ministry of Foreign Trade to hold the consultations provided in the third paragraph of this Article.

If the Higher Council for Foreign Trade decides not to apply a quantitative safeguard measure, it shall inform the interested parties accordingly in writing, through the Secretary of the Council, within five (5) working days following its decision.

CHAPTER III

Determination of Serious Damage or Threat of Serious Damage

Article 54. *Import trends.* INCOMEX shall examine the rate of growth and the volume of imports both in absolute terms and relative to the domestic industry and apparent domestic consumption. It shall also take into account the price of imports and the share of the domestic market taken by increased imports.

Article 55. *Determination of serious damage.* In determining whether imports of a product have increased in such volume or under such conditions as to cause serious damage to the domestic industry, INCOMEX shall evaluate the effect of those imports on the state of the domestic industry taking into account the following economic variables:

- (a) Trend in output in absolute terms and relative to sales and domestic consumption;
- (b) productivity trends;
- (c) trend in the utilization of installed capacity;
- (d) trend in sales on the domestic market;
- (e) trend in domestic prices;
- (f) share of the domestic market;
- (g) trend in inventories;
- (h) profit and loss accounts;
- (i) trend in investment;
- (j) trend in employment;
- (k) trend in wages.

Paragraph. The absence of negative trends or the presence of positive trends in one or more of the factors referred to in this provision does not constitute a decisive criterion.

Article 56. *Determination of the threat of serious damage.* In determining a threat of serious damage caused by imports, the following shall be considered in addition to the imminent effects on the factors referred to in the preceding Article:

- (a) The possibility of an increase in imports due to the existence of a supply contract, the award of a tender, an irrevocable offer or the existence of a sales contract; and

- (b) the export capacity in the country of origin, i.e. whether there has been an increase or surplus in installed or utilized capacity or an increase in inventories of the like or directly competitive product, and the likelihood that the exports resulting from this increased potential capacity in the exporting country will be exported to the Colombian market.

Paragraph. The absence of negative trends or the presence of positive trends in one or more of the factors referred to in this provision does not constitute a decisive criterion.

Article 57. *Period for the evaluation of serious damage or threat of serious damage.* The factors indicated in Articles 54, 55 and 56 of this Decree shall be evaluated taking into account the period mentioned in the paragraph in Article 7 of this Decree.

Article 58. *Causal link.* A safeguard measure shall only be adopted where the investigation shows that there is a causal link between the increase in total imports of the product concerned and the serious damage to the domestic industry or threat thereof and that this damage is not attributable to other factors such as technological change or changes in consumer preference.

Article 59. *Attribution of damage.* Damage or threat thereof referred to in Articles 55 and 56 of this Decree shall be attributed on the basis of a sharp and substantial increase in imports, actual or imminent, from each exporting Member individually, on the basis of the level of imports as compared with imports from other sources, market share, and import and domestic prices at a comparable stage of commercial transaction.

The imminent increase shall be measurable and shall not be determined on the basis of allegation, conjecture or remote possibility resulting, for example, from the production capacity existing in the exporting Members.

CHAPTER IV

Provisional Safeguard Measures

Article 60. *Application Requirements.* In critical circumstances where delay would cause damage which the domestic industry producing the like or directly competitive product would find it difficult to repair, a provisional safeguard measure may be adopted pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious damage.

A preliminary determination of critical circumstances shall be based on clear evidence that there has been a substantial increase in imports over the last six (6) months for which statistics are available, taking into account their volume and whether or not there has been a rapid accumulation of inventories of the domestic product and a reduction in sales and profit margins.

Article 61. *Adoption of the measure.* Within a period of fifteen (15) working days from the date of official receipt of the application, INCOMEX shall submit a technical report to the Customs, Tariffs and Foreign Trade Committee describing the circumstances specified in the preceding Article and making the relevant recommendation.

The Customs, Tariffs and Foreign Trade Committee shall consider the technical report submitted by INCOMEX within fifteen (15) working days following its receipt by the Technical Secretariat in order to verify the circumstances referred to in the preceding Article and consequently to decide on the recommendation to be made to the Higher Council for Foreign Trade concerning the adoption of the measure.

After having received the recommendation of the Customs, Tariffs and Foreign Trade Committee, the Higher Council for Foreign Trade, after review, shall decide whether or not to recommend the adoption of a quantitative safeguard measure.

If the Higher Council for Foreign Trade decides not to adopt a quantitative safeguard measure, it shall inform the interested parties accordingly in writing, through the Secretary of the Council, within five (5) working days following its decision.

Article 62. *Duration.* A provisional safeguard measure shall remain in effect until a definitive safeguard measure is adopted or it is decided not to impose one.

The duration of a provisional safeguard measure shall be added to the initial period of application of the definitive measure.

CHAPTER V

Consultations and Notification

Article 63. *Request for consultations.* Where it is determined according to the procedure specified in this Title that there is serious damage or threat thereof, within ten (10) working days following the recommendation by the Customs, Tariffs and Foreign Trade Committee, the Ministry of Foreign Trade shall request consultations with exporting Members liable to be affected by the measure. Where a provisional safeguard measure is adopted, consultations with exporting Members shall be requested within five (5) days following adoption of the measure.

The request for consultations shall be accompanied by the following information:

- (a) The effects of the imports on the domestic industry in relation to output, productivity, utilization of installed capacity, inventories, market share, exports, wages, employment, profits and investment;
- (b) the basis for attributing the damage notified to the Member, in particular, the increase in imports from such Member, compared with the trend in imports from other sources, market share and import prices; and
- (c) the measure proposed, indicating the level of the restriction, the duration and the annual increase.

Article 64. *Consultations.* Within sixty (60) days following the request for consultations by the Customs, Tariffs and Foreign Trade Committee, the Ministry of Foreign Trade, together with INCOMEX, shall hold bilateral consultations with the exporting Members affected by the measure so as to review the situation and set an appropriate level of restrictions.

If, in the consultations, there is mutual understanding that the situation calls for restraint on imports from a particular exporting Member, the level of such restraint shall be fixed at a level not lower than the actual level of exports or imports from the Member concerned during the 12-month period terminating two months preceding the month in which the request for consultation was made.

Article 65. *Adoption of the measure.* Following the consultations referred to in this Chapter, the Ministry of Foreign Trade shall transmit its findings to the Higher Council for Foreign Trade, together with the recommendation by the Customs, Tariffs and Foreign Trade Committee, so that after review, the Council may determine whether or not to apply a transitional safeguard.

In any event, the period of validity of any determination of the existence of serious damage or actual threat thereof, for the purposes of applying a transitional safeguard measure shall expire 90 days after the date of the request for consultations referred to in Article 63 of this Decree.

Article 66. *Notification of the measures.* The Ministry of Foreign Trade shall notify the following to the Textiles Monitoring Body of the WTO:

- (a) The request for consultations, together with the information referred to in Article 63 of this Decree, within five (5) days following its submission;
- (b) The agreement with one or more exporting Members on the measure to be adopted, within sixty (60) calendar days following the date of application of the measure or within any reasonable period agreed with the exporting Member;
- (c) If no agreement is reached, the measure shall be notified within sixty (60) calendar days following the date of its application. The Textiles Monitoring Body shall conduct an examination of the matter and make appropriate recommendations within 30 days;
- (d) The provisional measure within five (5) days following its adoption. In this case, the notification shall include the measure adopted and the request for consultations, together with the information referred to in Article 63 of this Decree;
- (e) The agreement reached as a result of the consultations held on the adoption of a provisional safeguard measure, within ninety (90) days following the date of its application. The Textiles Monitoring Body may make such recommendations as it deems appropriate.

CHAPTER VI

Transitional Safeguard Measures

Article 67. *Type of safeguard measure.* A transitional measure shall be in the form of a quantitative restriction.

Article 68. *Duration.* A safeguard measure may be adopted for up to three years without extension. The measure shall no longer apply if the product is integrated into GATT 1994 if this occurs before the expiry of the period for which it was adopted.

Article 69. *Level of the quantitative restriction.* A quantitative restriction shall not be lower than the volume of imports during the 12-month period terminating two months preceding the month in which the request for consultation referred to in Article 63 of this Decree was made.

Should the restraint measure remain in force for a period exceeding one year, the level for subsequent years shall be the level specified for the first year increased by a growth rate of not less than 6 per cent per annum, unless otherwise justified to the Textiles Monitoring Body. The restraint level for the product concerned may be exceeded in either year of any two subsequent years by carry-forward and/or carry-over of 10 per cent of which carry-forward shall not represent more than five per cent. No quantitative limits shall be placed on the combined use of carry-over, carry-forward and the provision in the following paragraph.

When the measure covers more than one product from another Member of the WTO, the level of restraint agreed for each of these products may be exceeded by 7 per cent, provided that the total

exports subject to restraint do not exceed the total of the levels for all products so restrained on the basis of agreed common units. Where the periods of application of restraints of these products do not coincide with each other, this provision should be applied to any overlapping period on a *pro rata* basis.

For the purposes of this Article, the provisions on preferential treatment under Article 48 of this Decree shall be taken into account.

TITLE III

Special Safeguards for Agricultural Products

Article 70. *Special safeguards.* Special safeguards for agricultural products are an additional duty applied pursuant to the provisions of Article 5 of the Agreement on Agriculture in Law 170 of 1994, which allows the tariff duties bound in the first part of the Schedule of Concessions annexed to GATT 1994 to be exceeded.

Article 71. *Requirements for applying a special safeguard measure.* Import of an agricultural product listed in the first part of the Schedule of Concessions annexed to GATT 1994 and designated in the Schedule with the symbol "SSG" as being the subject of a concession in respect of which the provisions of Article 5 of the Agreement on Agriculture annexed to the Agreement Establishing the WTO, approved by Law 170 of 1994, may be invoked, may only be the subject of additional duties in the following cases:

1. If the volume of imports of this product entering Colombian customs territory during any year exceeds a trigger level which relates to the existing market access opportunities pursuant to Article 74 of this Decree, or, but not concurrently;
2. if the price at which imports of this product may enter Colombian customs territory, determined on the basis of the c.i.f. import price of the shipment concerned expressed in terms of its domestic currency, falls below a trigger price equal to the average 1986-1988 reference price for the product concerned.

Paragraph 1. The reference price used to invoke the provisions of this Article shall, in general, be the average c.i.f. unit value of the product concerned, or otherwise shall be an appropriate price in terms of the quality of the product and its stage of processing.

It shall, following its initial use, be publicly specified and available to the extent necessary to allow other Members of the WTO to assess the additional duty that may be levied.

Paragraph 2. Where measures are taken in conformity with Article 5 of the Agreement on Agriculture, annexed to the Agreement Establishing the WTO, approved by Law 170 of 1994, there shall be no recourse in respect of such measures to the provisions of paragraphs 1(a) and 3 of Article XIX of GATT 1994 or paragraph 2 of Article 8 of the Agreement on Safeguards.

Article 72. *Imports under access commitments.* Imports under current and minimum access commitments established as part of a concession referred to in the first paragraph of the preceding Article shall be counted for the purpose of determining the volume of imports required for invoking the provisions of paragraph 1 of Article 71 and Article 74, but shall not be affected by any additional duty imposed under either the aforementioned provisions or those set out in paragraph 2 of Article 71 and in Article 75 of this Decree.

Article 73. *Future imports.* Any supplies of the product subject to the safeguard measure which were *en route* on the basis of a contract settled before the additional duty is imposed under

paragraph 1 of Article 71 and Article 74 of this Decree shall be exempted from any such additional duty. Notwithstanding the foregoing, they may be counted in the volume of imports of the product in question during the following year for the purposes of triggering the provisions of paragraph 1 of Article 71 of this Decree in that year.

CHAPTER II

Application of Safeguard Measures

Article 74. *Application of a special safeguard measure by volume.* Any additional duty imposed under paragraph 1 of Article 71 of this Decree may only be levied at a level which shall not exceed one third of the level of the ordinary customs duty in effect in the year in which the action is taken. The trigger level shall be set according to the following schedule based on market access opportunities defined as imports as a percentage of the corresponding domestic consumption during the three preceding years for which data are available:

1. Where such market access opportunities for a product are less than or equal to 10 per cent, the base trigger level shall equal 125 per cent.
2. Where such market access opportunities for a product are greater than 10 per cent but less than or equal to 30 per cent, the base trigger level shall equal 110 per cent.
3. Where such market access opportunities for a product are greater than 30 per cent, the base trigger level shall equal 105 per cent.

In all cases the additional duty may be imposed in any year where the absolute volume of imports of the product concerned entering Colombian customs territory exceeds the sum of (x) the base trigger level set out in this Article multiplied by the average quantity of imports during the three preceding years for which data are available and (y) the absolute volume change in domestic consumption of the product concerned in the most recent year for which data are available compared to the preceding year, provided that the trigger level shall not be less than 105 per cent of the average quantity of imports in (x) above.

Paragraph. Where domestic consumption is not taken into account, the base trigger level under paragraph 1 of this Article shall apply.

Article 75. *Application of a special safeguard by price.* The additional duty imposed under paragraph 2 of Article 71 of this Decree shall be set according to the following schedule:

1. If the difference between the c.i.f. import price of the shipment expressed in terms of the domestic currency (hereinafter referred to as the "import price") and the trigger price as defined under that paragraph is less than or equal to 10 per cent of the trigger price, no additional duty shall be imposed.
2. If the difference between the import price and the trigger price (hereinafter referred to as the "difference") is greater than 10 per cent but less than or equal to 40 per cent of the trigger price, the additional duty shall equal 30 per cent of the amount by which the difference exceeds 10 per cent.
3. If the difference is greater than 40 per cent but less than or equal to 60 per cent of the trigger price, the additional duty shall equal 50 per cent of the amount by which the difference exceeds 40 per cent, plus the additional duty allowed under paragraph 2.

4. If the difference is greater than 60 per cent but less than or equal to 75 per cent, the additional duty shall equal 70 per cent of the amount by which the difference exceeds 60 per cent of the trigger price, plus the additional duties allowed under paragraphs 2 and 3.
5. If the difference is greater than 75 per cent of the trigger price, the additional duty shall equal 90 per cent of the amount by which the difference exceeds 75 per cent, plus the additional duties allowed under paragraphs 2, 3 and 4.

Article 76. *Perishable products.* For perishable and seasonal products, the conditions set out in Articles 74 and 75 shall be applied in such a manner as to take account of the specific characteristics of such products. In particular, shorter time periods under paragraph 1 of Article 71 and Article 74 may be used in reference to the corresponding periods in the base period and different reference prices for different periods may be used under paragraph 2 of Article 71.

CHAPTER III

Duration of Special Safeguard Measures

Article 77. *Duration of special safeguard measures.* Any additional duty imposed under paragraph 1 of Article 71 of this Decree shall only be maintained until the end of the year in which it has been imposed.

CHAPTER IV

Notification and Consultations

Article 78. *Notification of the special safeguard.* The adoption of a special safeguard measure by volume under paragraph 1 of Article 71 of this Decree shall be notified by the Ministry of Foreign Trade in writing, including the relevant data, to the Committee on Agriculture of the WTO as far in advance as may be practicable and in any event within ten days following application of the measure.

In cases where changes in consumption volumes must be allocated to individual tariff lines subject to measures adopted under Article 74 of this Decree, relevant data shall include the information and methods used to allocate these changes.

The adoption of any measure by price under paragraph 2 of Article 71 of this Decree shall be notified in writing by the Ministry of Foreign Trade, including relevant data, to the Committee on Agriculture of the WTO within ten days of the application of the first such measure or, for perishable and seasonal products, the first measure in any period.

Article 79. *Consultations prior to application of a special safeguard measure.* In adopting safeguard measures under Article 71 of this Decree, interested Members shall be afforded the opportunity to hold consultations with Colombia in respect of the conditions of application of such measures.

The adoption of any special safeguard measures by price, shall be notified in writing by the Ministry of Foreign Trade including relevant data to the Committee on Agriculture of the WTO within ten days of the application of the first such measure or, for perishable and seasonal products, the first measure in any period.

CHAPTER V

Procedure and Competence

Article 80. *Procedure.* A WTO special safeguard measure for agricultural products referred to in this Title shall be applied immediately subject to compliance with the requirements laid down in the preceding Articles.

Article 81. *Request for and consideration of special safeguard measures.* The adoption of a special safeguard measure for agricultural products may be requested by interested private natural or legal persons or by the Ministry of Agriculture and Rural Development.

Following submission of the application, INCOMEX, together with the Ministry of Agriculture, shall examine it within a maximum period of 15 working days from the date of official receipt. If a safeguard measure is requested by interested parties, the application shall show that the conditions laid down in Articles 71, 74 and 75 of this Decree for application of a special safeguard have been met.

Article 82. *Adoption of measures.* Within the period mentioned above, INCOMEX, together with the Ministry of Agriculture and Rural Development, shall make the relevant recommendation to the Customs, Tariffs and Foreign Trade Committee for its consideration.

The Customs, Tariffs and Foreign Trade Committee, after having considered the requirements set out in this Title for the adoption of a measure, shall make a recommendation to the Higher Council for Foreign Trade within the following ten working days so that the Council may consider it and make a relevant recommendation to the Colombian Government.

If the request is made by the Ministry of Agriculture and Rural Development, it shall be transmitted directly to the Customs, Tariffs and Foreign Trade Committee the purposes provided in the preceding paragraph.

If the Higher Council for Foreign Trade decides not to recommend the application of a tariff safeguard to the Government, it shall inform the interested parties accordingly in writing, through the Secretary of the Council, within five (5) working days following the date of its decision.

TITLE IV

Dispute Settlement

Article 83. *Dispute settlement.* The provisions of Articles 23 and 24 of GATT 1994 and the WTO Dispute Settlement Understanding shall apply to consultations and the settlement of disputes arising under the Agreement on Safeguards.

TITLE V

Final Provisions

Article 84. *Exclusive application of safeguard measures.* An application to apply one of the general or transitional safeguard measures for products covered by the Agreement on Textiles and Clothing or a special safeguard measure for agricultural products, as provided in this Decree, shall automatically exclude the possibility of requesting application of any other form of safeguard provided in this Decree.

Article 85. *Publication and disclosure of decisions.* Decisions taken in application of this Decree shall be published in the INCOMEX chapter of the Ministry of Foreign Trade Gazette, and Decrees in the Official Gazette.

INCOMEX shall transmit copies of the administrative acts referred to in the preceding paragraphs to known interested parties.

Article 86. *Repeal clause.* This Decree repeals Decree 809 of 1994 as far as the Member countries of the World Trade Organization are concerned, as well as any other provisions that are inconsistent.

Article 87. *Entry into force.* This Decree shall enter into force on the date of publication.

For publication and implementation.

Done at Santa Fe de Bogotá on 22 January 1998.

Carlos Lemos Simmonds

Deputy Minister for Finance and Public Credit, responsible for the functioning of the Office of the Minister for Finance and Public Credit.

Eduardo Fernández Delgado

Minister for Agriculture and Rural Development

Antonio Gómez Merlano

Minister for Foreign Trade

Carlos Ronderos Torres
