

WORLD TRADE ORGANIZATION

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

Original: Spanish

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

ECUADOR

Supplement

The attached communication, dated 8 June 1998, has been received from the Permanent Mission of Ecuador.

THE FOREIGN TRADE AND INVESTMENT COUNCIL

Considering:

That under the terms of Law No. 12 of 22 May 1997, published in Official Journal No. 82 of 9 June 1997, the Foreign Trade and Investment Law, "LEXI", entered into force in Ecuadorian territory and authorizes the Foreign Trade and Investment Council (COMEXI) to impose anti-dumping duties countervailing duties and safeguard measures;

That the Foreign Trade and Investment Law (LEXI) establishes that one of the elements of State policy regarding foreign trade and export and investment promotion is to ensure that domestic industry competes internationally in keeping with fair and equitable free trade practices;

That it is also an element of such State policies to prevent and counteract the adverse effects on domestic industry of the application of unfair trade practices;

That Article 8 of the Foreign Trade and Investment Law (LEXI) has established countervailing or anti-dumping duties and the application of safeguard measures on a temporary basis, as mechanisms to prevent unfair practices within the WTO framework, as appropriate;

That, under LEXI Article 11(a), COMEXI's duties and powers include the establishment of foreign trade policies in regard to goods, services and technology, integration and direct investment, in keeping with the principle of free trade, the world trade environment, the international commitments entered into by Ecuador in this connection, and other factors;

That LEXI Article 6 authorizes the implementation of remedial measures in regard to free competition, the development of foreign and domestic trade, the protection of goods and services "in the cases covered by the rules of the World Trade Organization (WTO)";

That COMEXI also has the authority under Article 11(j): "To impose on a temporary basis countervailing duties, anti-dumping duties or apply safeguard measures to remedy unfair practices and anomalous situations concerning imports that injure domestic industry, in observance of WTO rules and procedures";

That it is essential to establish clear, transparent procedures for the exercise of COMEXI's powers under the above paragraph;

That it is also essential for the development of domestic production to make it feasible to prevent and remedy the adverse affects caused by unfair trade practices;

That LEXI Article 13, last paragraph, authorizes COMEXI to regulate any internal matters it deems necessary for the purposes of its powers and functions;

That above-mentioned Law No. 12 stipulates in Article 15 that the Ministry of Foreign Trade, Industrialization and Fisheries is the executive body for foreign trade and investment policy;

That it is necessary to facilitate the implementation of international treaties by adapting domestic law to the commitments assumed in the World Trade Organization and the Andean Community, so as to avoid injury to domestic industry stemming or possibly stemming from unfair trade practices such as dumping and subsidization, or a substantial increase in imports under conditions that affect domestic industry (safeguards); and,

In the exercise of its powers,

Resolves:

To issue the following "RULES AND PROCEDURES TO BE FOLLOWED FOR THE APPLICATION OF MEASURES TO PREVENT AND COUNTERACT THE ADVERSE EFFECTS OF UNFAIR TRADE PRACTICES OR INCREASED IMPORTS UNDER CONDITIONS SUCH AS TO CAUSE OR THREATEN TO CAUSE SERIOUS INJURY TO DOMESTIC INDUSTRY".

TITLE I

OBJECT AND SCOPE

Article 1 - Object.

The object of the present instrument is to: Regulate the provisions of the following World Trade Organization Agreements: the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, the Agreement on Subsidies and Countervailing Measures, the Agreement on Safeguards and, where relevant, the Agreement on Agriculture.

Define the conditions for the application of anti-dumping duties and countervailing duties on imports in order to counteract unfair trade practices and remedy distortions created by such practices.

Determine the conditions for the application of safeguard measures to imports originating in and consigned from WTO Member countries;

Regulate the procedure to be followed in investigations of complaints concerning unfair practices and safeguards, to impose anti-dumping duties, countervailing duties and safeguard measures;

In cases in which Ecuador has signed international conventions or agreements regulating the application of countervailing duties, anti-dumping duties or safeguard measures, the provisions thereof shall prevail where they are inconsistent with those contained in this instrument. In matters not regulated by such international treaties or conventions, the provisions of the present instrument shall apply insofar as they do not conflict with international commitments entered into by Ecuador;

The above-mentioned measures shall be applied to products originating in member countries of the Andean Community, in accordance with the procedures established in the rules issued by the Andean integration bodies;

Safeguards in connection with textiles shall be applied pursuant to the provisions of Article 6 of the WTO Agreement on Textiles and Clothing.

Article 2 - Scope.

These rules shall apply in accordance with the provisions of the agreements of the World Trade Organization (WTO), other than the exceptions expressly set out herein for non-WTO Member countries in respect of which no international commitments have been entered into.

TITLE II

DEFINITIONS

Article 3 – Definitions.

Anti-dumping Agreement. Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994.

Threat of serious injury. Threat of a serious injury shall be understood to mean serious injury to a domestic industry that is clearly imminent, and it shall be based on facts and not merely on allegation, conjecture or remote possibility.

Threat of injury. Threat of injury is an imminent and clearly foreseen danger of injury to a domestic industry.

Investigating authority. The Trade Practices and Safeguards Division of the Ministry of Foreign Trade, Industrialization and Fisheries (MICIP), which is responsible for initiating and conducting dumping, subsidies and safeguard investigations.

COMEXI. The Foreign Trade and Investment Council.

Production cost. The production cost includes the cost of direct materials and components, indirect manufacturing costs, including general selling and administrative costs.

Direct costs and expenses. Those which are specific to the product under investigation.

Indirect costs and expenses. Those which are common to various products of the exporting enterprise, including the product under investigation.

Serious injury. A significant overall impairment in the position of a domestic industry.

Injury. A material loss or impairment or the deprivation of any lawful, normal gain which the domestic producers of the goods in question may suffer, or an impediment to the establishment of new industries.

Anti-dumping duty. A customs duty which is applied to goods imported under dumping conditions, intended to restore the conditions of competition distorted by the dumping.

Countervailing duty. A customs duty which is applied to subsidized goods imported into Ecuadorian territory, intended to restore the conditions of competition distorted by the subsidy.

Dumping. An import is considered as being at a dumped price if the export price is less than the normal value of a like product destined for consumption in the country of origin or of export in the ordinary course of trade, when compared at the same market level.

Centrally-planned economies. Economies in which the majority of enterprises are wholly or partly owned by the State and in which the operating criteria, including prices, production, investment programmes and levels of employment, are under the direct control of the Government.

Indirect manufacturing costs. These include the cost of indirect materials and components, the cost of indirect labour, the cost of energy, including electricity and fuel, depreciation of assets consumed in protection and other relevant indirect costs.

Massive imports. Imports in large quantities of the product under investigation, from the date of initiation of dumping investigations, from the date of the invitation to hold consultations in subsidy investigations, to the date of the imposition of provisional measures, whose volume and other circumstances such as the rapid accumulation of stocks, seriously impair the remedial effect of the definitive anti-dumping or countervailing duty.

LEXI. Foreign Trade and Investment Law.

Adjustment measures. All actions taken by domestic producers to supplement safeguard measures and adjust their production activities to foreign competition.

Ordinary course of trade. Trade reflecting market conditions in the country of origin and carried out habitually or within a representative period between independent buyers and sellers.

Interested parties. Interested parties shall be understood to mean the applicant, a producer of the like product in Ecuador, a trade or business association the majority of the members of which are producers of the like product in Ecuador, an importer, industrial user and consumer of the product under investigation, a foreign exporter or producer, the government of the exporting country, a trade or business association the members of which are exporters or importers of the product.

Unfair trade practices. Unfair international trade practices are deemed to be imports of goods under dumping conditions or goods which have been subsidized in their country of origin or consignment.

Export price. The price actually paid or payable for the product sold for export to Ecuador.

Domestic industry. The term "domestic industry" shall be interpreted as referring to domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of these products.

Like product. A product which is alike in all respects to the product under investigation, or a product which, although not alike in all respects to the product under consideration, has characteristics which are similar to or closely resemble those of the comparable product and allow it to perform the same functions.

Provisional safeguard. A measure of a temporary character adopted in circumstances critical to a domestic industry, in order to avert serious injury.

Safeguard. An exceptional measure temporarily applied to imports of products into Ecuadorian territory which have increased or will increase in such quantities, in absolute terms or relative to domestic production, or under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products. Safeguard measures shall be applied to the imported product, irrespective of the source and type.

Subsidies. An import is considered as having been subsidized when the production, manufacture, marketing, transport or export of the imported product or of its raw materials and inputs have received directly or indirectly any bounty, aid, premium, stimulus or incentive from the Government of the country of origin or of export or from its public or semi-public agencies, conferring on the recipient a benefit which strengthens its international competitive position, except in the case of internationally accepted practices.

Normal value. The normal value of a product exported to Ecuador is the price actually paid or payable for a like product when sold for consumption or use in the domestic market of the country of origin or of export in the ordinary course of trade.

In the absence of such ordinary course of trade, as in the case of centrally-planned economies, the point of reference shall be the normal value of a market economy country with characteristics similar to the country with a centrally planned economy that is under investigation.

TITLE III – ANTI-DUMPING DUTIES AND COUNTERVAILING DUTIES

CHAPTER I

DETERMINATION OF THE MARGIN OF DUMPING, THE EXPORT PRICE AND THE NORMAL VALUE

Article 4 - Determination of the margin of dumping.

The margin of dumping is defined as the difference between the normal value and the export price, calculated with reference to the latter price. The margin shall be calculated per unit of the product imported into Ecuadorian territory at the dumped price.

Where the product under investigation consists of goods which are not physically identical with each other, the margin of dumping shall be estimated according to the type of good, in such a way that the normal value and the export price involved in each calculation correspond to comparable goods. When the margin of dumping is calculated by the type of good, the margin for the product under investigation shall be determined as the weighted average of all the individual margins which have been estimated. The weighting shall be calculated according to the proportion of each type of good relative to the total volume of the product exported during the period of investigation.

Article 5 - Determination of the normal value.

The following shall be taken into account for the purposes of determining the normal value:

When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation or the low volume of the sales in the domestic market of the exporting country, such sales do not permit a proper comparison, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to an appropriate third country, provided that this price is representative, or with the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits.

Sales of the like product in the domestic market of the exporting country or sales to a third country at prices below per unit (fixed and variable) costs of production plus administrative, selling and general costs may be treated as not being in the ordinary course of trade by reason of price and may be disregarded in determining normal value only if the authorities determine that such sales are made within an extended period of time in substantial quantities and are at prices which do not provide for the recovery of all costs within a reasonable period of time. If prices which are below per unit price at the time of sale are above weighted average per unit costs for the period of investigation, such prices shall be considered to provide for recovery of costs within a reasonable period of time.

Costs shall normally be calculated on the basis of records kept by the exporter or producer under investigation, provided that such records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the

production and sale of the product under consideration. Authorities shall consider all available evidence on the proper allocation of costs, including that which is made available by the exporter or producer, in particular in relation to establishing appropriate amortization and depreciation periods and allowances for capital expenditures and other development costs. Unless already reflected in the cost allocations under this paragraph, costs shall be adjusted appropriately for those non-recurring items of cost which benefit future and/or current production, or for circumstances in which costs during the period of investigation are affected by start-up operations.

Article 6 - Adjustments of the normal value.

The amounts for administrative, selling and general costs and for profits shall be based on actual data pertaining to production and sales in the ordinary course of trade of the like product by the exporter or producer under investigation. When such amounts cannot be determined on this basis, the amounts may be determined on the basis of:

- (a) The actual amounts incurred and realized by the exporter or producer in question in respect of production and sales in the domestic market of the country of origin of the same or general category of products;
- (b) the weighted average of the actual amounts incurred and realized by other exporters or producers subject investigation in respect of production and sales of the like product in the domestic market of the country of origin;
- (c) any other reasonable method, provided that the amount for profit so established shall not exceed the profit normally realized by other exporters or producers on sales of products of the same general category in the domestic market of the country of origin.

Article 7 - Determination of the export price.

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

Article 8 - Adjustments to the export price.

In making a fair comparison between the normal value and the export price, the following, *inter alia*, shall be deducted in the form of adjustments to the export price:

- (a) The amounts directly connected with the costs incurred by the exporter, taking into account conditions agreed with the buyer for delivery of the product (f.o.b., c.i.f., etc);
- (b) the amounts for direct costs in providing guarantees, technical assistance and other after-sales services;
- (c) the costs of commission paid in connection with the sales under consideration;
- (d) wages paid to full-time sales personnel.

The investigating authority may consider other reasonable adjustments, for which purpose it shall consider the terms and conditions of sale, differences in quantities, physical differences and differences in taxation.

Article 9 - Conditions for making comparisons and adjustments.

The export price and the normal value shall be examined on a comparable basis, taking into account the agreed conditions for the delivery of the goods, preferably at the ex-factory level and in respect of sales made at as nearly as possible the same time.

The amount of the adjustments to the normal value and the export price shall be calculated on the basis of relevant information for the period of investigation of the practice or in the light of the data for the latest financial year available. When an interested party asks for a particular adjustment to be taken into consideration, it shall provide the corresponding evidence.

CHAPTER II

DETERMINATION OF THE NATURE AND AMOUNT OF THE SUBSIDY

Article 10 - Nature and amount of the subsidy.

The nature of subsidies, whether they are prohibited or permissible, and in the latter case actionable or non-actionable, as well as the amount of the subsidy and the benefit to the recipient, shall be determined in accordance with the WTO Agreement on Subsidies and Countervailing Measures.

Article 11 - Deductions to determine the amount of the subsidies.

The amount of the subsidy shall be established by deducting the following elements from the total subsidy.

Any expenditure that has necessarily been incurred in order to be entitled to the subsidy or to benefit therefrom.

Export taxes, duties and other levies to which the export of the product to Ecuador has been subject and which are specifically intended to offset the subsidy. When a participant in an investigation applies for such a deduction, it shall supply evidence substantiating the application.

CHAPTER III

INJURY, THREAT OF INJURY AND RETARDATION OF THE ESTABLISHMENT OF A DOMESTIC INDUSTRY

Article 12 - Determination of injury.

A determination of injury shall be based on sufficient evidence and involve an objective examination of the following factors.

The volume of imports at dumped or subsidized prices, particularly to determine whether there has been a significant increase, in absolute terms or relative to total production or consumption in Ecuador of the product concerned.

The impact which the importation of dumped or subsidized goods has or may have on the prices of like products in the Ecuadorian domestic market. Consideration shall be given in this respect to whether the imported product is sold in the domestic market at a price significantly lower than that of like products or whether the effect of such imports is to depress prices to a significant extent or to prevent a reasonable price rise which would otherwise have taken place.

The impact which dumped or subsidized imports have on the domestic producers affected, taking account of the impact on output, utilization of installed capacity, inventories, sales, market share, growth, profits, return on investments, cash flow, capitalization, employment and wages, among other factors.

Article 13 - Determination of a threat of injury.

A determination of a threat of injury to domestic industry shall be based on facts and not merely allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the subsidy would cause injury must be clearly foreseen and imminent. In making a determination regarding the existence of a threat of material injury, the authorities should consider, *inter alia*, such factors as:

- Nature of the practice in question and the trade effects likely to arise from the dumping and the subsidization;
- a significant rate of increase of dumped or subsidized imports into the domestic market indicating the likelihood of substantially increased importation;
- sufficient freely disposable, or an imminent substantial increase in, capacity of the exporter indicating the likelihood of substantially increased subsidized exports to the Ecuadorian market in unfair conditions, taking into account the availability of other export markets to absorb any additional exports;
- whether the imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and
- inventories of the product being investigated.

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

With respect to cases where injury is threatened by dumped or subsidized imports, the application of anti-dumping or countervailing measures shall be considered and decided with special care.

Article 14 - Examination of material retardation of the establishment of an industry.

For the purposes of determining material retardation of the establishment of an industry in Ecuador, the investigating authority shall examine, *inter alia*, feasibility studies, loans negotiated and contracts for procurement of machinery related to new investment projects or the expansion of existing plant.

Article 15 - Period of review of injury or threat thereof.

The review of the injury or threat of injury shall comprise a period covering imports of the like product in the last twelve (12) months for which information is available. The investigating authority may modify such period or extend it to cover imports made before and/or after the initiation of the investigation.

Article 16 - Evidence of injury.

If the investigation relates to products originating in or consigned from countries in respect of which there are no applicable international obligations, consideration shall be given to whether the country of export or of origin would provide evidence of injury to Ecuadorian exports.

If such evidence is not provided, Ecuador may impose anti-dumping or countervailing duties simply on a finding of dumping or subsidization.

CHAPTER IV

PROCEDURES

SECTION I - SUBMISSION AND ACCEPTANCE OF THE APPLICATION

Article 17 - Initiation of the proceeding.

Proceedings to investigate unfair international trade practices shall be initiated ex officio or at the request of a major proportion of the domestic industry.

Article 18 - Initiation ex officio.

The investigating authority may initiate an investigation ex officio, when there is sufficient evidence to assume that injury has been caused by dumped or subsidized imports.

Article 19 - Initiation at the request of a major proportion of the domestic industry.

Investigations to determine the existence, degree and effect of any alleged unfair practice shall be initiated upon a written application by or on behalf of the domestic industry. The application may also be made by an association of producers which, for the purposes of the application, represents a major proportion of domestic production.

An investigation shall not be initiated unless the authorities have determined, on the basis of an examination of the degree of support for, or opposition to, the application, expressed by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry. The application shall be considered to have been made "by or on behalf of the domestic industry" if it is supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the like product produced by the part of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25 per cent of the total production of the like product produced by the domestic industry.

When domestic producers are related to the exporters or importers of the allegedly dumped or subsidized product, the term "domestic industry" may be interpreted as referring to the rest of the producers. The word "related" shall be within the meaning of Article 4.1(i) of the Anti-Dumping Agreement.

In exceptional circumstances, in the case of regional markets, domestic industry may be divided into two or more separate markets. The producers within each market may be regarded as a separate domestic industry if they sell most of their production of the product in question in that market and if the demand in that market is not to any substantial degree supplied by the producers of the product in question located elsewhere in the country. In such circumstances, injury or threat of injury may be found to exist even where a major portion of the total domestic industry is not injured, provided there is a concentration of dumped or subsidized imports into that regional market and they cause or threaten to cause injury to the producers of all or almost all the production within such market.

Article 20 - Application requirements.

The application must be submitted in writing, using the forms prepared for the purpose and issued to the interested party by the investigating authority, and the requisite documents shall be attached. The application shall contain the information reasonably available to the applicant on the following:

1. Identity of the applicant, name or business name and domicile of the applicant, and where appropriate, his agent; activity in which he is engaged and documents in support thereof.
2. Description of the volume and value of the domestic production of the like product, indicating the specifications and characteristics, the tariff heading and other identifying data.
3. Where a written application is made on behalf of the domestic industry, the application shall identify the industry on behalf of which the application is being made by a list of all known domestic producers of the domestic product (or associations of domestic producers of the like product) and, to the extent possible, a description of the volume and value of domestic production of the like product represented by such producers.
4. The names of the country or countries of origin or export in question.
5. The identity of each known foreign exporter or producer.
6. A list of known persons importing the product in question.
7. Information on prices at which the product in question is sold when destined for consumption in the domestic markets of the country or countries of origin or export (or, where appropriate, information on the prices at which the product is sold from the country or countries of origin or export to a third country or countries, or on the constructed value of the product) and information on export prices or, where appropriate, on the prices which the product is first resold to an independent buyer in the territory of the importing Member.
8. Information on the evolution of the value and volume of the imports of the allegedly dumped or subsidized product.
9. The effect of the imports on the prices of the like product in the domestic market.
10. The impact of the imports on the domestic industry, as demonstrated by relevant factors and indices having a bearing on the state of the domestic industry, such as

actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilisation of capacity; factors affecting domestic prices; the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments.

11. In the case of a subsidy, the application must identify the encouragement, incentive, premium, subsidy or help of any kind provided to the imported good or its raw materials and inputs in the country of origin or of export, the authority or agency providing such support, indicating where appropriate the applicable law and, where possible, the value or amount thereof and its impact on the price of the imported product.
12. Determination of the injury, threat of injury or material retardation of the establishment of a productive activity in Ecuador, caused by the imports at dumped or subsidized prices.
13. Evidence and documents to verify the information provided and arguments in support of the need to apply anti-dumping duties or countervailing duties.
14. Elements to determine the causal relationship between the practice and the injury.
15. The investigating authority shall require interested parties making available confidential information to provide non-confidential summaries thereof.
16. Other relevant information deemed necessary.
17. Place and date of submission of the application.
18. A study justifying the presumption of injury to domestic production caused by the unfair practice.

All the information on volumes and values submitted to the investigating authority by the applicant enterprise shall pertain to the previous four years and to the part of the current year of the investigation that has elapsed so far.

SECTION II - EVALUATION OF THE APPLICATION AND INITIATION OF THE INVESTIGATION

Article 21 - Submission of the application.

The application shall be submitted to the Trade Practices and Safeguards Division of the Ministry of Foreign Trade, Industrialization and Fisheries, in the original and with two copies.

Article 22 - Receipt and evaluation of the application.

On receipt of the application to impose anti-dumping or countervailing duties, the investigating authority shall have thirty (30) days from the date of receipt to evaluate and review compliance with the requirements and shall inform the applicant whether the application is accepted or not.

When, in the opinion of the investigating authority, there is good reason to do so, the above period may be extended by up to fifteen (15) working days.

If, within that period, the investigating authority finds it necessary to request further information for the purposes of acceptance of the application, it shall do so from the applicant. Such request shall interrupt the period established in the above paragraph, which shall recommence when the applicant provides the information requested. Once the information has been obtained, the investigating authority shall, within the above-mentioned period, proceed to accept the application.

Article 23 - Acceptance of the application and initiation of the investigation.

The application shall be accepted and a dumping or subsidies investigation shall be initiated, provided:

- It is established that the application is submitted on behalf of a major proportion of the domestic industry;
- the information, documents and the study submitted are sufficient to presume or to determine the existence of an unfair practice, injury to the domestic industry and the causal relationship between the unfair practice and the injury.

The MICIP Under-Secretary for Foreign Trade and Integration shall declare that it is appropriate to initiate a dumping or subsidization investigation, in a resolution that indicates the *de facto* and *de jure* reasons for the decision.

An investigation shall not be initiated in cases where the volume of dumped or subsidized imports is negligible, or where the margin of dumping or global level of subsidization is *de minimis* or where the injury caused by the imports in question is negligible. For such purposes, the criteria set out in Article 36 [sic] of this Resolution shall apply.

Where it is not appropriate to initiate an investigation, this shall be so stated in a reasoned resolution, which shall be notified to the applicant within five (5) working days following the date of issue. The permissible legal remedies against such a resolution shall apply.

Article 24 - Consultations.

When the application is accepted, in the course of the investigation into dumping or subsidization practices the investigating authority shall hold consultations with the parties concerned, namely, the government authorities and the exporters of the exporting country, and the importers and domestic producers of the product in question, in order to find a mutually agreed solution.

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

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

Article 25 - Publication and notification.

Both for dumping and for subsidization, once the application has been accepted and it is appropriate to initiate an investigation, the investigating authority shall proceed to publish the resolution initiating the dumping or subsidization investigation in the Official Journal, expressly indicating the dates of initiation and completion of the investigation. The resolution shall be notified

to the Committee on Anti-Dumping Practices and the Committee on Subsidies and Countervailing Measures of the World Trade Organization when the country concerned is a member of the Organization, to the Government of the exporting country and to the interested parties.

The same procedure shall be followed when the investigating authority orders provisional and definitive measures to prevent and remedy the unfair trade practices.

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

For publication, notification and communication purposes, the investigating authority shall have a period of ten (10) working days from the date of the resolution ordering the initiation of investigation and to the application of provisional or definitive measures.

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

The WTO Committee on Anti-Dumping Practices and the Committee on Subsidies and Countervailing Measures, as appropriate, shall be notified before the measure is published.

Article 26 - Forms.

The investigating authority shall prepare three types of forms to be issued to domestic producers and importers and to foreign exporters of the product under investigation, in the following order:

- (a) To domestic producers before the application is submitted or after the application has been submitted without attaching the respective forms;
- (b) to domestic importers and to foreign exporters once the application has been accepted and the resolution to initiate an investigation has been issued.

The forms, duly completed and with the relevant documents demonstrating that the information is suitable, shall be transmitted to the investigating authority within thirty (30) days from the date of issue.

The period for returning the forms may, at the request of the interested party, be extended by the investigating authority for thirty (30) days, provided there is good reason.

Article 27 - Withdrawal of the application.

If, after a period of 45 days from the request for further information such information has not been sent in its entirety, the applicant will be deemed to have withdrawn the application, which shall be shelved.

Article 28 - Preparation of the file.

When the investigation is initiated, the investigating authority shall prepare a file containing all the information pertaining to the case. The file shall include a separate section containing information of a confidential nature.

SECTION III - DETERMINATION AND IMPOSITION OF PROVISIONAL MEASURES

Article 29

Within sixty (60) days of the initiation of a dumping or subsidies investigation, MICIP, through the investigating authority, shall prepare a technical report determining, where appropriate, the level of any provisional anti-dumping or countervailing measures and shall submit it to COMEXI for approval.

Provisional measures may be applied if:

- (a) An investigation has been initiated in accordance with Articles 17 and 18 of this Resolution, a public notice has been given to that effect and interested parties have been given adequate opportunities to submit information and make comments;
- (b) a preliminary affirmative determination has been made of dumping or subsidies and consequent injury to a domestic industry; and
- (c) the competent authority judges such measures necessary to prevent injury being caused during the investigation.

The period allowed for the preliminary determination may be extended by up to five (5) working days, ex officio or upon application by an interested party, provided there is good cause.

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

To continue the investigation without the application of provisional duties, to continue the investigation with the application of provisional duties, or to terminate the investigation.

When a dumping or subsidies investigation is carried out for products originating in or consigned from countries not Members of the World Trade Organization (WTO) or countries with which no relevant treaties or agreements have been signed, COMEXI, on the basis of the technical report of MICIP's investigating authority, may impose provisional measures.

The decision to impose preliminary measures shall be adopted through a COMEXI resolution, on the basis of MICIP's technical report, and shall include the factual and legal grounds for the decision.

In the case of dumping, the provisional measures may take the form of a provisional duty or a security – by cash deposit or bond – equal to the amount of the anti-dumping duty provisionally estimated.

In the case of subsidies, the provisional measures may take the form of provisional countervailing duties guaranteed by cash deposits or bonds equal to the amount of the provisionally calculated amount of subsidization.

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

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

The application of provisional measures shall be limited to as short a period as possible, not exceeding four months or, on decision of the authorities concerned, at the request of exporters representing a significant percentage of the trade involved, to a period not exceeding six months.

When the investigating authority, in the course of an investigation, examines whether a duty lower than the margin of dumping would be sufficient to remove injury, these periods may be six or nine months, respectively.

The resolution determining the provisional measure shall be notified to the Customs Technical Committee by the Ministry of Foreign Trade, Industrialization and Fisheries, for information and implementation.

An investigation shall be terminated if the investigating authority determines that the volume of dumped or subsidized imports is negligible or if the margin of dumping or the global level of subsidization is *de minimis*, or if the injury caused by the imports in question is negligible. For such purposes, the criteria set out in Article 36 [sic] of this Resolution shall apply.

SECTION IV - INVESTIGATION PERIOD AND EVIDENTIARY ASPECTS

Article 30 – Investigation period.

The investigating authority shall have a maximum of twelve (12) months from the submission of the application to carry out a dumping or subsidies investigation and to submit a report, containing its conclusions and recommendations, to COMEXI.

Exceptionally, by decision of the investigating authority, this period may be extended by six (6) months.

Article 31 - Access to the file.

From the initiation of the investigation, any interested party or anyone who establishes an interest in the investigation shall have access to the non-confidential documents which make up the file and may request the issue of photocopies at his expense.

Sixty (60) days after the closure of the investigation, the file, apart from the confidential information, shall become public, so that anyone may have access thereto. In any event, the public notice mentioned in Article 12 of the Anti-dumping Agreement of the World Trade Organization (GATT 94) shall be given.

Article 32 - Evidence and information requested or provided during the investigation.

During the investigation period, the investigating authority may request, gather and provide the evidence it considers pertinent.

The investigating authority may request any kind of information, including technical advice, from the various departments of government, which shall respond as rapidly as possible. It may also request any opinion it considers relevant and any action conducive to the ascertainment of the facts. Interested parties may comment on the information.

Likewise, interested parties and all those who demonstrate a legitimate interest in participating in the investigation may furnish pertinent evidence, reports and documents, up to ten (10) working days before the day on which the investigating authority concludes the investigation.

All documents, forms and other papers introduced must be submitted in Spanish or with an official Spanish translation. If these requirements are not satisfied, the documents submitted may be rejected as evidence by the investigating authority.

If it considers it necessary, the investigating authority may request additional information and documents at any stage of the investigation.

Article 33 - Confidential information.

Information shall be considered confidential if its disclosure or publication might injure the competitive position of the enterprise concerned. A separate file, which may be inspected only by the competent authorities, shall be opened for confidential information provided by the applicant, other interested parties or the authorities.

When confidential information is introduced into the investigation, it must be accompanied by a non-confidential summary.

If the investigating authority considers that the documentation introduced as confidential does not warrant that description, it shall request the provider of the information to waive confidentiality. If the provider refuses to waive the confidentiality of the information without good cause, the investigating authority may disregard such information for the purposes of the investigation, just as when confidential information is provided without a non-confidential summary.

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

Article 34 - Technical information meeting.

Within five (5) working days of the day following the publication of the preliminary and final resolutions in the Official Journal, interested parties may request the holding of technical information meetings whose purpose shall be to explain the methods used for determining the margins of dumping and calculating the subsidies, as well as the determination of injury or threat of injury and the arguments concerning causality.

Article 35 - Clarificatory hearings.

At any stage of the investigation, the investigating authority, ex officio or upon application by an interested party, may request the holding of public hearings attended by representatives of the different interests, for the purpose of clarifying doubtful, obscure or controversial points.

Once convened, a hearing must be held within the next eight (8) days, but the fact that it is being held shall not interrupt or suspend the course of the investigation or the periods specified for its various stages.

Once a hearing has been opened, a representative of the investigating authority shall put forward for discussion the items he considers necessary, together with the evidence submitted by the applicant. Subsequently, he shall act as moderator and give the floor to the importers, foreign exporters, domestic producers, industrial users of the product investigated and the consumers or their

delegates, in that order. Each party shall have the floor in turn, twice with respect to the evidence submitted by the other parties.

At these hearings the rules of confidentiality laid down in this Decree must be respected.

The conclusions of the hearing shall be recorded in minutes which shall be signed by the Head of the Trade Practices and Safeguards Division and by the parties involved.

Article 36 - On-the-spot investigations.

The investigating authority is authorized to visit offices or premises where information relating to the case is to be found and to check and verify the contents of the documentation and the evidence submitted in the course of the investigation.

These visits shall include trips to domestic producers and importers of the products subject to investigation and to producers and exporters of the country of origin or exportation, for the purpose of verifying the content and truthfulness of the information furnished by the parties, provided that the enterprises investigated or the interested parties agree thereto. The enterprises of the exporting country concerned shall be given sufficient notice of the visit, together with details of the information to be verified. If agreement cannot be obtained, the investigating authority shall take its decisions on the basis of the best information available.

The results of the on-the-spot investigation must be recorded, in summary form, in minutes signed by the parties concerned.

Article 37 - Best information available.

In the course of the investigation all decisions shall be taken on the basis of the best information available. When the investigating authority requires the participation of the applicant or an interested party in order to verify information provided for the investigation in good time and in proper form, it shall inform him thereof in advance. If he does not agree to verification, the information provided by the other party shall be deemed to be correct, unless there is evidence to the contrary.

During the investigation period any interested party may submit its arguments, together with evidence which, in its opinion, supports those arguments.

Article 38 - Negligible imports and *de minimis* conditions.

For the purposes of Articles 21 and 27, the following criteria shall be taken into account:

1. In the case of dumped imports, the following shall be considered negligible:

The volume of dumped imports from a particular country accounting for less than 3 per cent of imports of that product.

The volume of dumped imports from countries which individually account for less than 3 per cent of the imports of the like product and collectively represent less than 7 per cent of those imports.

2. In the case of subsidized imports, the following shall be considered negligible:

The volume of subsidized imports from a particular developed country accounting for less than 3 per cent of total imports of that product.

The volume of subsidized imports from developed countries which individually account for less than 3 per cent of imports of the like product and collectively represent less than 7 per cent of those imports.

The volume of subsidized imports from a particular developing country accounting for less than 4 per cent of total imports of that product.

The volume of imports from developing countries which individually account for less than 4 per cent of imports of the like product and collectively represent less than 9 per cent of those imports.

3. A margin of dumping of less than 2 per cent, expressed as a percentage of the export price, shall be considered *de minimis*.
4. Subsidies granted to the investigated product shall be considered *de minimis* if their global level calculated on a per unit basis is less than:
 - 1 per cent of the value of the product in the case of imports originating in developed countries;
 - 2 per cent in the case of imports originating in developing countries;
 - 3 per cent in the case of imports originating in the developing countries referred to in Article 27.11 of the Agreement on Subsidies and Countervailing Measures of the World Trade Organization.

SECTION V - MUTUALLY AGREED SOLUTIONS

Article 39 - Price undertakings.

The competent authorities of the country of origin or export or the producers or exporters may express, through the investigating authority, their intention to eliminate or limit the subsidy, revise the export prices or cease exports to Ecuador, as appropriate, so that the injury caused to the domestic producers is removed.

The investigating authority may also propose to the interested parties that they submit statements of intent.

Price undertakings shall not be sought or accepted unless the investigating authority has made a preliminary affirmative determination of dumping or subsidization and of injury caused by such practices. In the case of subsidies, the consent of the authorities of the exporting country shall be required with respect to undertakings from exporters.

Article 40 - Content of statements of intent.

The statements of intent must provide the necessary information and expressly authorize the investigating authority to carry out on-the-spot investigations to verify that the undertakings are being respected.

Article 41 – Procedure with respect to statements of intent.

When statements of intent are submitted, the investigating authority shall inform the interested parties of their contents.

To this end, the investigating authority shall make available to the parties the documents containing the proposals submitted for a period of five (5) working days from the date of notification. When this period has expired, the parties shall have an equal period to submit their comments in writing.

At the end of this period, COMEXI, on the basis of the technical report submitted by MICIP, shall accept or reject the offers, in accordance with the country's best interests.

If a statement of intent is accepted, COMEXI shall issue a reasoned resolution empowering the investigating authority, in the event of non-fulfilment, immediately to re-establish the collection of provisional duties, where appropriate, and to continue the investigation proceeding.

The resolution accepting a statement of intent shall be published in the Official Journal and notified to the interested parties.

Statements of intent submitted more than twenty (20) working days after the date of the preliminary determination shall not be accepted.

The investigating authority may periodically review the undertakings given, either ex officio or upon application by a party.

Article 42 - Conciliation meetings.

Up to fifteen (15) working days before the expiration of the period for completing the investigation, the interested parties may request the investigating authority to hold a public hearing at which formulas for settling the dispute and terminating the investigation may be proposed. If the formulas proposed are acceptable, the investigating authority shall adopt them by means of a resolution and terminate the investigation.

The corresponding resolution shall be published in the Official Journal and notified to the interested parties.

Requests for conciliation meetings received more than twenty (20) working days from the date of the preliminary determination shall not be considered.

SECTION VI - CLOSURE OF THE INVESTIGATION AND
IMPOSITION OF DEFINITIVE DUTIES

Article 43 - Concluding arguments.

Up to ten (10) working days before the expiration of the period for the investigating authority to terminate the investigation, the interested parties may submit written arguments that support their case.

Once this period has expired, no further documents, reports or evidence may be introduced.

Article 44 - Termination of the investigation.

Once the period for concluding arguments has expired and before the expiration of the investigation period, the investigating authority, on the basis of the evidence and information in the file, shall draw up the conclusions of the investigation and submit them to COMEXI for decision.

The definitive decision adopted by COMEXI shall consist in:

- The imposition of anti-dumping or countervailing measures and the determination of their amount;
- the withdrawal of the provisional measures; and/or
- the termination of the investigation without the imposition of anti-dumping or countervailing measures.

COMEXI shall have a maximum of fifteen (15) working days from the receipt of the report to adopt a definitive decision.

Article 45 - Implementation of the COMEXI resolution.

The decision adopted by COMEXI shall be notified by the Ministry of Foreign Trade, Industrialization and Fisheries to the Customs Technical Committee, for information and implementation.

The resolution must contain the factual and legal basis for the decision and shall be published in the Official Journal and notified to the interested parties within five (5) working days of publication.

CHAPTER V

DEFINITIVE DUTIES

Article 46. If, once the investigation has been completed, it is determined that definitive anti-dumping or countervailing duties should be imposed, the corresponding decisions shall specify their amount, whether equal to or less than the margin of dumping or the subsidy, according to what is necessary or sufficient to remove the injury or threat thereof.

The duties shall be assessed in monetary units or *ad valorem* percentages.

Article 47 - Retroactive application of duties.

The retroactive application of definitive duties may be ordered in the following cases:

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

- In the case of massive imports envisaged in the previous paragraph, countervailing duties may be imposed only on products which receive subsidies paid or granted in a manner inconsistent with the provisions of the WTO Agreement on Subsidies and Countervailing Measures. Similarly, anti-dumping duties on massive imports may be imposed when the investigating authority determines for the dumped product in question that there is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practiced dumping and that such dumping would cause injury.
- On imports entered during the ninety (90) days preceding the establishment of provisional duties, in the case of non-fulfilment of undertakings given in connection with statements of intent. The period of application shall not exceed the duration of the period of non-fulfilment.

Article 48 - Application and duration of anti-dumping and countervailing duties.

An anti-dumping or countervailing duty shall be automatically eliminated five (5) years after its imposition, unless the reasons for imposing it still exist.

The customs shall apply the duties in accordance with the resolution imposing them, taking into account the provisions relating to the collection and the procedures applicable to the levying of customs duties.

In any event, an anti-dumping or countervailing duty shall remain in force only as long as and to the extent necessary to counteract the dumping or subsidy which is causing injury.

Article 49 - Review of duties.

After the first year of imposition of definitive duties, the investigating authority may, ex officio or upon application by an interested party, order the investigation to be reopened in order to review the duties, if it considers that the conditions which led to their being imposed have changed.

The resolution ordering the investigation to be reopened shall be equivalent to that adopting the preliminary decision. The period between the resolution on reopening and the resolution adopting a new termination of the investigation shall not exceed five (5) months. Any anti-dumping or countervailing duties that have been imposed shall be applied in full until the investigation is terminated.

Article 50 - Margin of anti-dumping or countervailing duties.

In submitting its conclusions, the investigating authority shall be responsible for recommending the amount of the anti-dumping or countervailing duties applicable, taking into account the difference between the normal value and the export price of the product or the amount of the subsidy, as the case may be, and the level of injury caused to the domestic industry.

In no case may the anti-dumping or countervailing duties be greater than the margin of dumping or the amount of the subsidy.

It is desirable that the amount of the duty be less than the full margin of dumping or the total amount of the subsidy if such lesser duty would be adequate to remove the injury to the domestic industry, and that the imposition be permissive in the territory of all members.

Article 51 - Excess amounts and refunds.

The whole amount paid or the overpayment shall be refunded to the importer, as promptly as possible, or the security shall be returned or only partially collected when:

Upon the termination of the investigation it is concluded that there are no grounds for levying definitive anti-dumping or countervailing duties, or when it is concluded that the margin of the definitive anti-dumping or countervailing duties should be less than the amount of the provisional duties.

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

If the definitive anti-dumping or countervailing duty is greater than the provisional duty paid or payable or the amount estimated for the purpose of determining the security, the importer shall not be required to pay the difference.

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

Article 52 - Importation.

The application of anti-dumping or countervailing duties shall not prevent the importation of the goods concerned into Ecuadorian territory.

Article 53 - Anti-avoidance measures.

Parts or components of a product like to that on which definitive duties are imposed, intended for assembly or finishing operations in Ecuador, may be subjected to the payment of provisional or definitive duties.

TITLE IV - SAFEGUARD MEASURES

CHAPTER I

CONDITIONS

Article 54

The investigating authority may apply a safeguard measure to a product only if it has determined that the product is being imported into its territory in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products.

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

DETERMINATION OF SERIOUS INJURY OR THREAT THEREOF

Article 55

In the investigation to determine whether increased imports have caused or are threatening to cause serious injury to a domestic industry, the investigative authority shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry, in particular, the rate and amount of the increase in imports of the product concerned, in absolute and relative terms, the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilisation, inventories, prices, profits and losses, cash flow and employment.

A determination of serious injury or threat of serious injury to the domestic industry shall not be made unless the investigation demonstrates, on the basis of objective evidence, the existence of a causal link between increased imports of the product concerned and serious injury or threat thereof. When factors other than increased imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports.

Article 56 - Period of review of serious injury or threat thereof.

The review of serious injury or threat thereof shall comprise a period covering imports of the like product in the last twelve (12) months for which information is available. The investigating authority may modify such period or extend it to cover imports entered after the initiation of the investigation.

CHAPTER II

PROCEDURES

SECTION I - INITIATION OF THE PROCEEDING

Article 57 - Initiation of the proceeding.

Safeguard investigation proceedings shall be initiated ex officio or upon application by a party.

Article 58 - Initiation ex officio.

The investigating authority may initiate an investigation ex officio if there is evidence to justify a presumption of injury to the domestic industry or threat thereof through an increase or possible increase in imports.

Article 59 - Initiation at the request of a major proportion of the domestic industry.

The investigating authority may initiate a proceeding if so requested by domestic producers representing a major proportion of domestic production. The application may also be made by an association of producers which, for the purposes of the application, represents a major proportion of domestic production.

Representatives of the domestic industry injured by the imports which it is requested should be investigated and those of the producers' associations likewise affected shall be entitled to apply for the initiation of an investigation.

For the submission of an application a major proportion of domestic production shall be considered to be at least 25 per cent of the production of the like or directly competitive product.

Article 60 - Application requirements.

The application must be submitted in writing, using the forms prepared for the purpose and issued to the interested party by the investigating authority, and the requisite documents shall be attached. The application for the initiation of an investigation and the imposition of a safeguard measure shall contain at least the following particulars:

- Designation of the investigating authority to which the application is submitted;
- the identity of the applicant, name or business name and domicile of the applicant and, where appropriate, his agent;
- the activity in which the producers concerned are engaged;
- a description of the product imported, indicating the specifications and characteristics permitting comparison with the domestic product, and its tariff heading;
- the volume and value of imports showing whether there has been a significant increase in imports in absolute terms or a relative increase in terms of domestic production or consumption;
- the import prices, in particular whether there is significant underpricing as compared with the prices of the like or directly competitive domestic product;
- the countries of origin or export;
- the name and domicile of known importers and exporters;
- the determination of serious injury to production or threat thereof caused by a substantial increase in imports of the product concerned;
- the evidence it is intended to adduce and arguments in support of the need to apply a safeguard measure;
- identification of the confidential documentation and summary or non-confidential version of such documentation;
- a study justifying the presumption of injury to the domestic industry due to importation of the goods subject to investigation under conditions such that they cause or threaten to cause injury to the like domestic product;
- the place for receiving notifications;
- the place and date of submission of the application;
- the signature of the applicant or legal representative of the domestic industry or of the association concerned.

All the information on volumes and values submitted to the investigating authority by the applicant enterprise shall pertain to the previous four years and to the part of the current year of the investigation that has elapsed so far.

Article 61 - Submission, acceptance and withdrawal of the application.

For these purposes, the provisions of Articles 19, 20, 21 and 25 of this instrument shall be applied, as appropriate.

SECTION II - EVALUATION OF THE APPLICATION AND INITIATION OF THE INVESTIGATION

Article 62 - Evaluation of the application for imposition of safeguards.

The investigating authority shall have thirty (30) working days from acceptance of an application for the imposition of safeguard measures to evaluate the application and establish whether an investigation should be initiated.

When, in the opinion of the investigating authority, there is good reason to do so, the above period may be extended by up to fifteen (15) working days.

Article 63 - Appropriateness of the initiation of an investigation.

It shall be appropriate to order the initiation of an investigation for the application of safeguards, if:

- It is established that the application is submitted on behalf of a major proportion of the domestic industry;
- there is evidence of a substantial increase or possible increase in imports, serious injury to the domestic industry or threat thereof, and a causal link between the injury and the increased imports.

Article 64 - Initiation of the investigation.

For this purpose, the provisions of Articles 21 to 26 of this instrument shall apply, as appropriate.

The investigating authority shall also immediately communicate the text of the resolution, together with the related documentation, except for the confidential information, to the Committee on Safeguards of the WTO.

SECTION III - INVESTIGATION PERIOD AND EVIDENTIARY ASPECTS

Article 65 - Investigation period and evidentiary aspects.

For these purposes, the provisions of Articles 28 to 35 of this instrument shall apply, as appropriate.

SECTION IV - CLOSURE OF THE INVESTIGATION AND IMPOSITION OF A DEFINITIVE SAFEGUARD

Article 66 - Arguments, termination of the investigation and final decision.

For these purposes, Articles 41 to 43 of this instrument shall apply, as appropriate. In this case, the definitive decision shall consist in:

- The imposition of a safeguard;
- the withdrawal of the provisional safeguard; and/or
- the termination of the investigation without the imposition of a safeguard measure.

Article 67 - Notification and consultation procedure.

If COMEXI decides to impose a definitive safeguard, it shall immediately be notified to the Committee on Safeguards of the WTO when the country concerned is a member of the organization, to the government of the exporting country and to the interested parties.

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

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

For publication, notification and communication purposes and for holding the consultations provided for in the Agreement on Safeguards, the investigating authority shall have a period of ten (10) days from the date of issue of the resolution.

The same procedures shall be followed where a provisional safeguard measure is concerned.

In this case, the Committee on Safeguards of the WTO shall be notified before the publication of the measure and the consultations shall be initiated as soon as it is applied.

SECTION V - APPLICATION OF PROVISIONAL MEASURES

Article 68 - Provisional measures and their duration.

During the investigation and in critical circumstances where delay would cause serious injury, the investigating authority, ex officio or upon application by a party, may recommend to COMEXI that a provisional safeguard measure be applied, on the basis of evidence showing that increased imports have caused or are threatening to cause serious injury to the domestic industry.

In this case, the provisional measure must be adopted by resolution within twenty (20) working days of the date on which the investigating authority submits its recommendation to COMEXI .

The provisional measure shall consist in the application of a tariff increase.

COMEXI shall issue a resolution concerning the imposition of provisional measures, indicating the factual and legal basis for the decision, which shall be notified to the applicant and

communicated to the other interested parties. The Committee on Safeguards of the WTO shall be notified before the measure is applied.

The Ministry of Foreign Trade, Industrialization and Fisheries shall notify the decision to the Customs Technical Committee, for implementation of the measure.

Once the measure has been applied, the consultation procedure shall be initiated in accordance with the provisions of Article 12.4 of the WTO Agreement on Safeguards.

In the resolution it shall be indicated that the duration of the provisional measure shall not exceed two hundred (200) days.

If as a result of the investigation it is determined that there is no reason to impose definitive safeguard measures, the sums paid by the importers under any provisional measure which may have been adopted shall be immediately reimbursed.

SECTION VI - DEFINITIVE MEASURES

Article 69 - Definitive safeguard.

If on the basis of the investigation it is determined that a definitive safeguard should be imposed, the corresponding decision shall specify the type of measure to be adopted.

The measures may consist of a quantitative restriction or in the application of a tariff increase.

If the measure takes the form of a quantitative restriction, imports shall be guaranteed in an amount equivalent to the average for the least three (3) years.

Safeguard measures shall not be applied against a product originating in a developing country Member of the WTO as long as its share of imports of the product concerned in Ecuador does not exceed 3 per cent, provided that developing country Members of the WTO with less than 3 per cent import share collectively account for not more than 9 per cent of total imports of the product concerned.

Article 70 - Application and duration of the measures.

If the measure consists of a tariff increase, the Customs Technical Committee, after notifying the Ministry of Foreign Trade, Industrialization and Fisheries, shall apply the duties in accordance with the COMEXI resolution, taking into account the provisions relating to the collection and the procedures applicable to the levying of customs tariffs.

If the measure consists of a quantitative restriction, it shall be applied and administered by the entity or organ designated for that purpose, according to the nature of the product, as notified by the Ministry of Foreign Trade, Industrialization and Fisheries.

The measures shall be temporary and shall be applied for as long as necessary to prevent or remedy the threat or serious injury. The period of application shall not exceed four (4) years, subject to extension.

The period of four years mentioned in the previous paragraph may be extended provided that the investigating authority has determined, in conformity with the procedures established for the imposition of the initial safeguard, that the safeguard measure continues to be necessary to prevent or

remedy serious injury and that there is evidence that the industry is adjusting, and provided that the relevant provisions of the Agreement on Safeguards of the WTO are observed.

If the definitive safeguard measure is applied for over one (1) year, a formula for its progressive liberalization, at regular intervals, during the period of application must be taken into account.

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 years.

No safeguard measure shall be applied again to the import 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 2 years.

Notwithstanding the provisions of the previous paragraph, a safeguard measure with a duration of 180 days or less may be applied again to the import of a product in the following circumstances:

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

Article 71 - Review of measures.

The investigating authority, ex officio or upon application by an interested party, may reopen the investigation in order to review the definitive measures, if it considers that the conditions which led to their being imposed have changed.

When an investigation has been reopened, the procedures concerning investigations and the adoption of measures laid down in this instrument shall be followed.

Article 72 - In the case of agricultural products designated for the use of special safeguards in the schedule of bindings in the WTO, the provisions of Article 5 of the WTO Agreement on Agriculture shall be taken into account, subject to the application of the provisions of this resolution relating to safeguards.

Article 73 - In any stage of the investigation process, the investigating authority may set up interinstitutional working parties with the participation of representatives of the public and private sectors, as required and according to the nature of the product investigated.

Article 74 - All public sector entities shall supply, in good time, any information or documentation requested by the investigating authority for the purpose of acquiring data needed to conduct an unfair practices or safeguard investigation.

TITLE V

APPLICATIONS TO THE ANDEAN COMMUNITY

Article 75 - Applications submitted in accordance with the arrangements of the Andean Community.

Any application to be submitted to the General Secretariat of the Andean Community for the initiation of an investigation and the application of anti-dumping duties, countervailing duties or safeguard measures to a product originating in the Andean subregion must be channelled through the investigating authority of Ecuador, subject to compliance with all the formal requirements established, for each case, in this resolution.

Article 76 - Acceptance for processing.

Within fifteen (15) working days of receiving the corresponding documentation, the investigating authority shall verify compliance with the application requirements and, if these have all been met, shall immediately transmit the file to the General Secretariat of the Andean Community. If the application does not meet the requirements, it shall be returned to the applicant for revision.

Article 77 - Implementation of the measure.

Once the final result of the investigation by the General Secretariat of the Andean Community is known, the Ministry of Foreign Trade shall notify the Customs Technical Committee for implementation of the measure, if the General Secretariat has so determined.

TITLE VI - FINAL PROVISIONS

CHAPTER I

ASSISTANCE FOR INTERESTED PARTIES IN DUMPING, SUBSIDIES AND SAFEGUARD INVESTIGATIONS

Article 78 - Assistance for interested parties.

The various departments of government shall provide interested parties, especially small businesses, with any collaboration and assistance that might be useful for the purposes of the investigation.

CHAPTER II

ASSISTANCE FOR PRODUCERS AND EXPORTERS

Article 79 - Investigations of Ecuadorian exports for dumping, subsidies or safeguards.

When an Ecuadorian producer or exporter is aware that an investigation of his products for dumping, subsidies or safeguards has been initiated abroad, he may call upon the investigating authority of the Ministry of Foreign Trade, Industrialization and Fisheries for technical and legal assistance in defending his interests.

The technical and legal assistance shall include guidance and collaboration in obtaining information, advice on the completion of forms and questionnaires, assistance in the event of

on-the-spot investigations by foreign authorities and, in general, any help which the Ministry of Foreign Trade, Industrialization and Fisheries, through its investigating authority, is able to provide.

Article 80 - Report to COMEXI.

If investigations of Ecuadorian products for dumping, subsidies or safeguards are initiated abroad, the investigating authority shall prepare reports on the substantive elements of the investigations, the measures adopted, the producers or exporters, the results obtained and the current situation. COMEXI shall take the appropriate decisions on the basis of these reports.

The investigating authority may set up committees to monitor investigations of Ecuadorian products for dumping, subsidies or safeguards initiated abroad.

The committees shall consist of representatives of the chambers or associations of the industry to which the producer or exporter investigated belongs and of the investigating authority. The committees shall regularly submit reports and recommendations to COMEXI.

CHAPTER III

JUDICIAL REVIEW

Article 81 - Judicial review.

Appropriate legal action may be taken in the competent administrative courts against definitive decisions determining whether or not anti-dumping or countervailing duties should be applied.

CHAPTER IV

POWERS

Article 82. For the application of this instrument, the following powers shall be taken into account:

- (a) Department responsible for the administration of unfair trade practices and safeguards:
- Conduct investigations of unfair international trade practices and safeguards;
 - accept or reject applications for dumping, subsidies or safeguard investigations;
 - evaluate applications for dumping, subsidies or safeguard investigations and decide on the initiation of investigations;
 - carry out preliminary evaluations in investigations for dumping, subsidies or safeguards and propose the application of provisional countervailing duties, where appropriate;
 - communicate, publish and notify all of the decisions and resolutions issued in the course of dumping, subsidies and safeguard investigations or in connection therewith;

- prepare technical studies for consideration by COMEXI;
 - prepare official forms containing questionnaires;
 - gather evidence, make on-the-spot investigations and take other appropriate action in its capacity as investigating authority.
- (b) Head of the Trade Practices and Safeguards Division:
- Advise on the implementation and development of dumping, subsidies and safeguard investigations;
 - submit to COMEXI technical reports on the results of dumping, subsidies or safeguard investigations.
- (c) Foreign Trade and Investment Council - COMEXI:
- Impose provisional or definitive countervailing or anti-dumping duties and safeguard measures; and
 - rule on conciliation formulas proposed by the parties.
- (d) Minister of Foreign Trade, Industrialization and Fisheries;
- Accept or reject offers made in statements of intent;
 - notify to the Customs Technical Committee the resolutions adopted by COMEXI in connection with the application of anti-dumping or countervailing duties and the application of provisional or definitive safeguards, for appropriate implementation.
- (e) Organ competent for customs matters:
- Apply anti-dumping or countervailing duties and safeguard measures at importation, in compliance with the resolutions adopted by COMEXI, subject to notification of the Ministry of Foreign Trade.

Final provisions

- If the text of this instrument requires any clarification, recourse shall be had to the corresponding agreements of the World Trade Organization;
- these rules shall take precedence over any other previous rule on the subject, of equal or lower rank, and shall enter into force upon promulgation in the Official Journal, publication being ordered.

(signed) Werner Moeller Freile
Chairman, COMEXI

(signed) Carlos Bañomera B.
Secretary, COMEXI.

I certify that these rules and procedures to be followed for the application of measures to prevent and counteract the adverse effects of unfair trade practices or increased imports under conditions such as to cause or threaten to cause serious injury to domestic industry were unanimously approved by the Foreign Trade and Investment Council in ordinary session on Tuesday, 17 March 1998.

Quito, 18 March 1998.

(Signed) Dumany Sánchez Neira
Under-Secretary of Foreign Trade and Integration (E),
Secretary, COMEXI.
