

**WORLD TRADE  
ORGANIZATION**

G/ADP/N/1/ECU/2  
G/SCM/N/1/ECU/2  
G/SG/N/1/ECU/3  
22 September 2000  
(00-3814)

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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

The attached communication, dated 26 May 2000, has been received from the Permanent Mission of Ecuador.

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I have the honour to transmit, for all relevant purposes, the text of Resolution No. 52 of the Foreign Trade and Investment Council (COMEXI), of 10 April 2000, which was published in the Official Register (*Registro Oficial*) No. 70, of 4 May 2000, under the title: "*Rules and Procedures 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.*"

As indicated in the final preambular paragraph of the attached Resolution, this amends Resolution No. 0003 of 1 April 1998, duly notified to the WTO.

## RESOLUTION NO. 52

### The Foreign Trade and Investment Council (COMEXI)

#### *CONSIDERING:*

That it is necessary to facilitate the implementation of international treaties and to adapt 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 dumping and subsidization, or a substantial increase in imports under conditions that affect domestic industry (safeguards);

That the Foreign Trade and Investment Law (LEXI), published in Official Register No. 82 of 8 July 1997, authorizes the Foreign Trade and Investment Council (COMEXI) to impose anti-dumping duties, countervailing duties and safeguard measures;

That it is essential to establish procedures for the exercise of COMEXI's responsibilities, with regard to preventing and remedying the adverse affects on domestic industry caused by unfair trade practices or anomalous situations concerning imports;

That under the terms of Executive Decree No. 1701, published in Official Register No. 378 of 7 August 1998, Executive Decree No. 2722-A of 30 September 1991 establishing regulations to prevent or remedy dumping or subsidy practice was repealed; and,

That Resolution N-0003 of 1 April 1998 issued the "Rules and procedures to be followed for the applications of measures to prevent and counteract the adverse effects of unfair trade practices or increased imports under the conditions such as to cause or threaten to cause serious injury to domestic industry", which in view of the suggestions of several Member countries of the World Trade Organization and the World Bank, need to be reformed in order to remain consistent with the terms of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994;

In the exercise of its powers,

#### **RESOLVES:**

**To issue the following "RULES AND PROCEDURES 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:

Apply 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 and the Agreement on Safeguards.

Determine the conditions for the application of anti-dumping 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 coming from WTO Member countries.

Establish the procedure to be followed in investigations concerning unfair practices and safeguards, to determine whether to impose anti-dumping duties, countervailing duties and safeguard measures.

The provisions of the present instrument shall apply insofar as they do not conflict with Ecuador's international commitments under the international conventions or treaties regulating the application of countervailing duties, anti-dumping duties or safeguard measures, the provisions of which shall prevail where they are inconsistent with those contained in this instrument.

Dumping, subsidy and safeguards investigations with respect to products originating in Member countries of the Andean Community shall be carried out in accordance with the procedures established in the rules issued by this Organization.

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

In the case of agricultural products designated for the use of special safeguards in the schedule of bindings under the WTO, the relevant provisions 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 2. Scope:** These rules shall apply in accordance with the relevant 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 agreements have been entered into.

For matters not covered by these rules, WTO and Andean regulations shall apply where appropriate, taking precedence over domestic legislation.

## **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:** Serious injury to a domestic industry that is clearly imminent which shall be determined on the basis of facts and not merely on allegation, conjecture or remote possibility.

**Investigating authority:** The Trade Directorate 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.

**Domestic consumers:** Persons buying for consumption either the imported product under investigation or like or directly competitive domestic products, and domestic products incorporating either the imported product under investigation or like or directly competitive domestic products.

**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.

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

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

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

**Countervailing duty:** An additional 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 level of trade, normally ex-factory.

**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, the depreciation of assets consumed in production and other relevant indirect costs.

**Massive imports:** Imports in large quantities of the product under investigation, or imports which have increased or could potentially increase in such quantities, in absolute terms or in relation to the domestic industry, or under such conditions as to cause or threaten to cause serious injury to the domestic industry producing like or directly competitive products.

**Initiation of an investigation:** The procedural action by which a country initially or formally commences an anti-dumping investigation.

**LEXI:** Foreign Trade and Investment Law

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

**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:** The applicant, a producer of the like product in Ecuador, a trade or business association, the majority of whose members are producers of a like product in Ecuador, an importer, industrial user or consumer of the product under investigation, a foreign exporter or producer, the Government of the exporting country, a trade or business association in the exporting country whose members are exporters or producers of the product.

**Unfair trade practices:** Imports of goods under dumping conditions or goods which have been subsidized in their country of origin or provenance.

**Export price:** The price actually paid or payable for the product sold in the country of origin for export to Ecuador in the ordinary course of trade.

**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.

**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 imported product.

**Adjustment programme:** All actions taken by domestic producers to supplement safeguard measures, for the purpose of improving their competitiveness and adjusting their production activities to foreign competition.

**Domestic industry:** The producers as a whole of the like or directly competitive products operating in Ecuador, or those whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products.

**Safeguard:** Exceptional measure temporarily applied in the form of a tariff increase or quantitative restriction to imports of products into Ecuadorian territory which have increased or could potentially 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.

**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.

**Domestic industrial users:** Those who use for the production of their own products the imported product under investigation or like or directly competitive domestic products.

**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.

**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 shall be determined by the difference between the normal value and the export 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 total volume of the product exported during the period of investigation.

**ARTICLE 5. Determination of the normal value:** The normal value of an imported product shall be understood to mean 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.

Prices between associated parties or parties bound by a compensatory arrangement with each other can only be considered to be in the ordinary course of trade and be used to establish normal value if it is demonstrated that such prices are unaffected by the relationship, and are therefore comparable to those in trade between independent parties.

Sales of the like product destined for consumption in the domestic market of the exporting country shall be used, in the first instance, to determine normal value if such sales constitute 5 per cent or more of the sales of the product under consideration to the importing Member. However, a lower ratio shall be acceptable where the evidence demonstrates that domestic sales at such lower ratio are nonetheless of sufficient magnitude to provide for a proper comparison.

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 under investigation.

When there are no sales of the like product in the ordinary course of trade in the domestic market of the country of origin or of export or when, because of the particular market situation, such sales do not permit a proper determination of the normal value, such value shall be calculated using the prices of exports to an appropriate third country in the ordinary course of trade, provided that these prices are representative. It may also be calculated on the basis of 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 it is determined that such sales are made within a period of no less than six months in substantial quantities and are at prices which do not provide for the recovery of all costs within a reasonable period of time. For the purposes of the present paragraph, sales below per unit costs shall be considered to be made in substantial quantities when they represent not less than 20 per cent of the total volume of sales considered in calculating normal value.

In the case of imports originating in or coming from non-market economy countries, normal value shall be determined on the basis of the price or constructed value of a like product in a market economy third country at a comparable level of development, for domestic consumption or use, or on the basis of the price charged by such third country to other countries, including Ecuador, or where this is not possible, on any other reasonable basis, including the price actually paid or payable in the domestic market for the like product, duly adjusted where necessary to include a reasonable profit margin.

An appropriate market-economy third country shall be chosen on a reasonable basis, taking due account of any reliable information available at the time of selection. Time-limits shall also be taken into account and, where appropriate, a third country subject to the same investigation shall be used.

Immediately after the initiation of the investigation, the interested parties shall be informed of the market-economy third country selected and given a reasonable period of time in which to submit their comments.

Where products are not imported directly from the country of origin but from another country, the price at which the products are sold from the country of export shall normally be compared with the comparable price in the country of export. However, comparison may be made with the price in the country of origin, if, for example, the products are merely transshipped through the country of export, or such products are not produced in the country of export, or there is no comparable price for them in the country of export.

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.

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 general category of products;

- (b) the weighted average of the actual amounts incurred and realized by other exporters or producers subject to 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 does 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 6. Determination of the export price:** In cases where there is no export price or where it appears to be 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 investigating authority may determine.

When calculating the export price, the necessary adjustments shall be made to take into account all costs incurred between importation and resale, in order to establish a reliable export price.

These adjustments shall take into account, *inter alia*, transport costs, insurance, maintenance and unloading, import duties and other taxes payable after export from the country of origin, a reasonable margin of general, administrative and selling costs, a reasonable profit margin, and any commission usually paid.

**ARTICLE 7. Conditions for making comparisons and adjustments:** A fair comparison shall be made between the export price and the normal value, at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time.

Where the normal value and the export price as established are not on such a comparable basis, due allowance, in the form of adjustments, shall be made in each case, on its merits, for difference in factors which affect prices and price comparability. When the specified conditions are met, adjustments can be made for, *inter alia*, the product's physical characteristics; import charges and indirect taxes; discounts, rebates and quantities; transport, insurance, handling, loading and ancillary costs; packing; credit; after-sales costs; commissions and currency conversions.

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 8. Nature and amount of the subsidy:** The nature of subsidies, whether they are prohibited or permissible, and in the later 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 9. Deductions to determine the amount of the subsidy:** 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 10. Determination of injury:** A determination of injury shall be based on sufficient and positive evidence and involve an objective examination of the volume of imports at dumped or subsidized prices, the impact of those imports on prices of the like product in the Ecuadorian domestic market and the impact on the domestic industry.

With regard to the volume of the dumped or subsidized imports, consideration shall be given to whether there has been a significant increase in those imports, either in absolute terms or relative to domestic production or consumption.

With regard to the effect of the dumped or subsidized imports on prices, consideration shall be given to whether there has been a significant price undercutting as compared with the price of the domestically produced like product, or whether the effect of such imports is to depress prices to a significant degree or prevent price increases which otherwise would have occurred, to a significant degree.

The examination of the impact of the dumped or subsidized imports on the domestic industry concerned shall include an assessment of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; the magnitude of the margin of dumping or the subsidy as appropriate; actual and potential negative effects on cash flow, inventories, employment, wages, growth, and ability to raise capital or investments. This list is not exhaustive, and no one or several of these factors can necessarily give decisive guidance.

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

Where imports of a product from more than one country are subject to anti-dumping investigations, the investigating authority shall accumulatively assess such imports if the margin of dumping established in relation to the imports of each country is more than *de minimis* and the volume of imports from each country is not negligible.

**ARTICLE 11. 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.

**ARTICLE 12. Determination of a threat of injury:** A determination of a threat of material injury to a domestic industry shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping or subsidy would cause injury must be clearly foreseen and as imminent. In making a determination regarding the existence of a threat of material injury, the authorities should consider, *inter alia*, such factors as:

- The 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 exports to the importing Member's 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 would, to a significant degree, depress prices or prevent domestic price increases which otherwise would have occurred, and would probably 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.

Where imports of a product from more than one country are simultaneously subject to anti-dumping or subsidy investigations, the investigating authority may cumulatively assess the effects of such imports only if the margin of dumping or subsidization established in relation to the imports from each country is more than *de minimis* and the volume of imports from each country is not negligible, and provided that a cumulative assessment of the effects of the imports is appropriate taking account of the conditions of competition between the imported products and the like domestic product.

**ARTICLE 13. 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 12 months for which information is available.

**ARTICLE 14. Causal link:** In order to determine whether there is a causal link between the dumped imports and the injury to the domestic industry, the investigating authority shall also examine known factors other than the dumped imports, which at the same time are injuring or could injure the domestic industry. Factors which may be considered in this respect include the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of

consumption, restrictive trade practices of and competition between domestic and foreign producers, developments in technology, and the export performance and productivity of these domestic industry.

## **CHAPTER IV PROCEDURES**

### **SECTION I SUBMISSION AND ACCEPTANCE OF THE APPLICATION**

**ARTICLE 15. 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 16. Initiation ex officio:** The investigating authority may initiate an investigation ex officio when there is sufficient evidence to assume the existence of dumping or subsidization, of injury caused to the domestic industry by imports at dumped or subsidized prices, and of the causal link between the two.

**ARTICLE 17. Initiation upon an application made by or on behalf of the domestic industry:** Investigations to determine the existence, degree and impact of an alleged unfair international trade 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.

A major proportion of domestic production shall be taken to mean those domestic producers whose collective output constitutes at least 50 per cent of the total production of the like or directly competitive product.

An investigation shall not be initiated unless the investigating authority has 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 be 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 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 all or almost all 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 18. Application requirements:** The application must be submitted in writing and shall contain such information as is reasonably available to the applicant on the following:

1. The 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 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 and the export price to Ecuador (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 at 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 examination of 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 utilization of capacity; factors affecting domestic prices; the magnitude of the margin of dumping or subsidization; actual and potential negative effects on cash flow, inventories, employment, wages, growth, and 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, in accordance with Articles 10 and 14 above;
15. the investigating authority shall require the interested parties making available confidential information to provide non-confidential summaries thereof;
16. place and date of submission of the application.

## SECTION II

### EVALUATION OF THE APPLICATION AND INITIATION OF THE INVESTIGATION

**ARTICLE 19. Submission of the application:** The application shall be submitted to the Trade Directorate of the Ministry of Foreign Trade, Integration and Fisheries, in the original and with a copy.

**ARTICLE 20. Receipt and evaluation of the application:** Within a non-extendable period of eight working days from the date of submission of the application, the investigating authority may:

- (a) Accept the application, or
- (b) Allow the applicant 15 working days in which to submit the duly completed forms with the relevant documents demonstrating that the information is suitable, as well as the other requirements stipulated in Article 18 above. This period shall be calculated from the day following the corresponding request and may be extended, on request, for a further 15 working days.

Once the forms have been submitted and the other requirements have been met, the investigating authority shall have a period of 15 working days in which to take a decision.

This request shall interrupt the period established in Article 27, which shall recommence when the applicant provides the information requested.

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 working days following the date of issue. Appeals against such a resolution may be lodged with the corresponding court of law.

**ARTICLE 21. Withdrawal of the application:** If, after a period of 30 working 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, the application shall be shelved and the applicant so notified.

**ARTICLE 22. Initiation of the investigation:** An anti-dumping or subsidies investigation shall be initiated, provided:

- It is established that the application was submitted on behalf of a major proportion of the domestic industry, in accordance with Article 17 above;
- the information, documents and study submitted are sufficient to presume or to determine the existence of an unfair practice, injury to the domestic industry and a causal link between the unfair practice and the injury.

The MICIP Under-Secretary for Foreign Trade and Integration shall declare that it is appropriate to initiate an anti-dumping or subsidization investigation, in a resolution that indicates the *de facto* and *de jure* reasons for the decision. Where the investigating authority does not submit the draft resolution within the stipulated period, the Under-Secretary for Foreign Trade shall issue the resolution to initiate a dumping investigation of its own accord, within a period of no more than three working days.

An investigation shall not be initiated in cases where the volume of dumped or subsidized imports is negligible, where the margin of dumping or the 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 35 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. Such resolution may be appealed in a court of law.

**ARTICLE 23. 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 interested parties, namely, the government authorities and the exporters of the exporting country, the importers and domestic producers of the product in question, and domestic industrial users and consumers, 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 Investigating Authority may arrange consultations throughout the period of the investigation, but this shall not suspend or prevent continuation of the investigation.

**ARTICLE 24. Publication and notification:** Both for dumping and for subsidization, once the application has been accepted, before initiating the investigation the Investigating Authority shall notify the government of the exporting country concerned. If it is appropriate to initiate an investigation, the investigating authority shall publish the resolution initiating the dumping or subsidizing investigation in the Official Register, expressly indicating the dates of initiation and completion of the investigation, the name of the exporting country or countries and the product concerned, the basis of the dumping allegation made in the application, a summary of the factors on which the injury allegation is based, an address for the interested parties to contact and the time-period in which the interested parties may submit their views. 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, and to the interested parties.

The same procedure shall be followed when the investigating authority orders provisional and definitive measures to prevent and remedy 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 the purposes of publication and notification, the investigating authority shall have a period of ten working days from the date of the resolution ordering the initiation of the investigation and the application of definitive or provisional 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 25. 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 26. Procedure:** 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 examination and decision. COMEXI shall have a maximum of 15 working days from receipt of the report to take a decision, for which purpose, where applicable, it shall hold a special meeting.

Provisional measures shall not be applied during the 60 days following the initiation of the investigation.

Provisional measures may be applied if:

- (a) An investigation has been initiated in accordance with Articles 15,16 and 17 of this resolution, a public notice has been given to that effect and the 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 deems such measures necessary to prevent injury being caused during the investigation.

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 alternatives:

- 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 coming from countries that are not Members of the World Trade Organization (WTO), or with which Ecuador has signed no relevant treaties or agreements, COMEXI, within a period of 15 working days from the receipt of the technical report of MICIP's investigating authority, shall reach its decision.

The decision to impose preliminary measures shall be adopted through a COMEXI resolution, on the basis of the MICIP technical report.

The resolution should contain:

- (a) The issues of fact and law on which the decision was based;
- (b) the names of the suppliers, or when this is impracticable the supplying countries involved;
- (c) a description of the product concerned by the measure;
- (d) considerations relevant to the injury determination; and,
- (e) the duration of the provisional measure.

In the case of dumping, any 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 provisionally calculated amount of subsidization.

Duties 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, following a fully substantiated decision from the competent authority, to a period of no more than six months.

When a decision is made to adopt a definitive anti-dumping or countervailing measure, the period of the application of a provisional measure shall be counted as part of the total duration of the measure.

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 and nine months, respectively.



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

Duties shall not be imposed 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 35 of this resolution shall apply.

#### **SECTION IV INVESTIGATION PERIOD AND EVIDENTIARY ASPECTS**

**ARTICLE 27. Investigation period:** The investigating authority shall have a maximum of three months from the initiation of the dumping or subsidies investigation to complete the investigation and to submit a report, containing its conclusions and recommendations, to COMEXI.

**ARTICLE 28. Access to the file:** From the initiation of the investigation, any interested party or person demonstrating a legitimate 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 working 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 WTO (GATT 94) shall be given.

**ARTICLE 29. Evidence and information requested or provided during the investigation:** During the investigation period, the investigating authority may request and gather such evidence as 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.

This request shall interrupt the period established in Article 27, which shall recommence when the applicant provides the information requested.

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 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 with an official Spanish translation. If these requirements are not satisfied, the documents submitted may be rejected as evidence by the investigating authority.

**ARTICLE 30. Confidential information:** Information shall be considered confidential if its disclosure or publication might injure the competitive position of the enterprise concerned or have a significantly adverse effect upon the person supplying the information or if it is provided on a confidential basis. 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 in sufficient detail to permit a reasonable understanding of the information submitted in confidence.

If the authorities find that a request for confidentiality is not warranted and if the supplier of the information is either unwilling to make the information public or to authorise its disclosure in generalized or summary form, the authorities may disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.

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 31. Technical information meetings:** Within 15 working days of the day following the publication of the preliminary and final resolutions in the Official Register, interested parties may request the holding of technical information meetings, the purpose of which 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 thereof and the arguments concerning causality.

**ARTICLE 32. 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 or controversial points within the investigation, and explaining the methods used for determining the margins of dumping and calculating the subsidies, the determination of injury or threat thereof and arguments concerning causality, as well as the effects on domestic industrial users and consumers. There shall be no obligation on any party to attend a hearing, and failure to do so shall not be prejudicial to that party's case.

Once convened, the hearing must be held within the next eight 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 resolution must be respected.

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

**ARTICLE 33. On-the-spot investigations:** The investigating authority is authorized to visit offices or premises where information relating to the case is to be found 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, and in cases identified by COMEXI, to producers and exporters from the country of origin or export of the products under

investigation, 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 no less than 20 working days 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 34. Best information available:** If an interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, all decisions in the course of the proceeding shall be taken on the basis of the best information available. When the investigating authority requires the participation of the applicant or any interested party in order to verify information provided for the investigation in good time and 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 35. Negligible imports and *de minimis* conditions:** For the purposes of Articles 22 and 26, the following criteria shall be taken into account:

1. In the case of dumped imports, the volume shall be regarded as negligible if:

The volume of dumped imports from a particular country accounts for less than 3 per cent of total 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 collectively represents less than 7 per cent of those imports.

2. In the case of subsidized imports, the volume shall be regarded as negligible if:

The volume of subsidized imports from a particular developed country accounts for less than 3 per cent of the 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 collectively represents less than 7 per cent of those imports;

The volume of subsidized imports from a particular developing country accounts 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 a like product collectively represents 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 regarded as *de minimis*.

4. Subsidies granted to the investigated product shall be regarded as *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 36. 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 cannot force exporters to enter into price undertakings.

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

The exporters shall submit periodically information relevant to the fulfilment of undertakings accepted.

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 37. 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 38. 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 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 Register and notified to the interested parties.

Statements of intent submitted more than 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 of a party.

**Article 39. Conciliation meetings:** Up to 15 working days before the expiry of the period for completing the investigation, the interested parties may request the investigating authority to hold a conciliation meeting at which formulas for settling the dispute 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 Register and notified to the interested parties.

Requests for conciliation meetings received more than 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 40. Concluding arguments:** Up to ten working days before the expiry of the period determined in Article 27 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 reports, documents or evidence may be introduced.

The investigating authority shall give the interested parties ten working days' notice of the expiry of the period for the submission of arguments.

**ARTICLE 41. Termination of the investigation:** Once the period for concluding arguments has expired and before the expiry 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 of:

- 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 15 working days from the receipt of the report to adopt a definitive decision.

**ARTICLE 42. Implementation of the COMEXI resolution:** The decision adopted by COMEXI shall be notified by the Ministry of Foreign Trade, Industrialization and Fisheries to the Ecuadorian Customs Corporation, for information and implementation.

The investigating authority shall provide opportunities for industrial users of the product under investigation, and for representative consumer organizations in cases where the product is commonly sold at retail level, to provide any information which is relevant to the investigation regarding dumping, injury and causality. The authorities shall take due account of any difficulties experienced by interested parties, in particular small companies, in supplying the information requested, and shall provide any assistance practicable.

The resolution should contain:

- (a) The issues of fact and law on which the decision was based;
- (b) the names of the suppliers, or when this is impracticable, the supplying countries involved;
- (c) a description of the product concerned by the measure;
- (d) the margins of dumping established and a full explanation of the reasons for the methodology used in the establishment and comparison of the export price and the normal value;
- (e) considerations relevant to the injury determination; and,
- (f) the duration of the definitive measure.

Where a decision is made to adopt a definitive measure, the period of application of any provisional measure shall be counted as part of the total duration of the measure.

The resolution shall be published in the Official Register and notified to the interested parties within five working days of publication.

## **CHAPTER V DEFINITIVE DUTIES**

**ARTICLE 43. Amount:** If, once the investigation has been completed, it is determined that definitive anti-dumping or countervailing duties should be imposed, the corresponding decision 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 44. 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 90 working 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 a 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 practised dumping and that such dumping would cause injury.

On imports entered during the 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 45. Application and duration of anti-dumping and countervailing duties:** An anti-dumping or countervailing duty shall be automatically eliminated five years after its imposition, unless, as determined by periodic assessments, the reasons for imposing it still exist. The public shall be notified of the maintenance or elimination of the duties through a resolution.

The Ecuadorian Customs Corporation 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 through a resolution.

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 46. 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 re-opened 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 which initiated the investigation.

Once the investigation has been reopened by means of a resolution, it shall be completed within a period not exceeding five months.

Such anti-dumping or countervailing duties as have been imposed shall be applied in full until the investigation is terminated.

**ARTICLE 47. 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.

The decision whether or not to impose an anti-dumping duty in cases where all requirements for the imposition have been fulfilled, and the decision whether the amount of the anti-dumping duty to be imposed shall be the full margin of dumping or less, are decisions to be made by the authorities of the importing Member. It is desirable that the imposition be permissive in the territory of all Members, and that the duty be less than the margin if such lesser duty would be adequate to remove the injury to the domestic industry.

**ARTICLE 48. 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 it is concluded that the margin of the definitive anti-dumping or countervailing duties should be less than the amount of the provisional duties applied.

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

**ARTICLE 50. Anti-circumvention:** Parts or components intended for assembly or finishing in Ecuador of a product like to that on which definitive duties are imposed may be subjected to the payment of provisional or definitive duties if it is shown that this is a form of circumvention of the duties imposed on the product.

## TITLE IV SAFEGUARD MEASURES

### CHAPTER 1 THE INVESTIGATION

#### SECTION 1 CONDITIONS OF APPLICATION

**ARTICLE 51. Application:** The investigating authority may apply a provisional or definitive safeguard measure to a product or group of products only if it has determined, as a result of an investigation, that the product or group of products is being imported into national 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.

## **SECTION II APPLICATION TO INITIATE AN INVESTIGATION**

**ARTICLE 52. Application requirements:** The application for the imposition of safeguard measures shall contain the following requirements:

1. A description of the like or directly competitive product.
2. The names and addresses of the companies or bodies represented in the application.
3. The proportion of domestic production of the like or directly competitive product represented by those companies and the grounds for their representative status on behalf of the domestic industry.
4. Import data for the previous three calendar years or another period adequately justified as representative for the industry, which show the increase in the imports under investigation in absolute terms or relative to domestic production. Such information shall as far as possible be submitted on a monthly basis.
5. Data on the volume and value of domestic production of the like or directly competitive product for the previous three calendar years or another period adequately justified as representative for the industry. Such information shall as far as possible be submitted on a monthly basis.
6. Quantitative data indicating the degree of serious injury or threat thereof to the domestic industry for the period referred to in the previous paragraph, including the following:
  - (a) With regard to serious injury:
    - (i) A significant idling of installed production capacity in the domestic industry, including data on the closure of plants or the under utilisation of production capacity;
    - (ii) The inability of a significant number of domestic firms to carry out production activities at a reasonable level of profit;
    - (iii) Level of unemployment actually or potentially generated; and
    - (iv) Changes in the level of prices, production, productivity and sales.
  - (b) With regard to the threat of serious injury:
    - (i) Evidence of an increase or imminent increase in imports in such quantities and under such conditions as to threaten to cause serious injury to the domestic industry;

- (ii) A decline in sales or market share, a higher and growing inventory (whether maintained by domestic producers, importers, wholesales or retailers), and a downward trend in production, profits, wages, productivity or employment (or growing under-employment) in the domestic industry;
- (iii) The extent to which firms in the domestic industry are unable to generate adequate capital to finance the modernization of their domestic plants and equipment, or are unable to maintain existing levels of expenditure for research and development;
- (iv) The extent to which imports are being diverted to the Ecuadorian market owing to restraints in the markets of third countries or seasonal surpluses at source or points of origin.

7. Causal link: An explanation and description of the presumed causes of the injury or threat thereof and the extent to which such injury is attributable to the imports under investigation, based on the relevant data, and an explanation demonstrating that the injury or threat thereof cannot be attributed to causes other than imports.

8. Presentation of an economic report which quantifies the impact of the measure requested on the final and intermediate consumers of the product concerned, and on the public interest.

9. If critical circumstances are alleged, data on the following factors:

- (a) The factual grounds which serve to demonstrate that the increased imports of the product under investigation are causing or threatening to cause serious injury, and that any delay in taking measures would cause damage to the industry, which it would be difficult to repair.
- (b) A declaration specifying the level of the provisional measure requested and the underlying justification for that remedy.

## **CHAPTER TWO PROCEDURE**

### **SECTION I INITIATION OF THE PROCEEDING**

**ARTICLE 53. Investigation proceedings:** Safeguard investigation proceedings shall be initiated ex officio or upon application by a party.

**ARTICLE 54. Initiation on receipt of an application made by or on behalf of the domestic industry:** Except for the case provided for in the following Article, investigations to determine the existence of an increase in imports in such quantities and under such conditions as to cause or to threaten to cause serious injury to domestic industry, shall be initiated upon a written application addressed in the original and one copy to the Trade Directorate of the Ministry of Foreign Trade, Industrialization and Fisheries by a company or group of companies which represent a major proportion of the total domestic production of the product under investigation, in accordance with the provisions of the chapter on definitions of these Rules and Procedures.

**ARTICLE 55. Initiation ex officio:** In exceptional circumstances, the investigating authority may initiate the investigation ex officio, provided that it is in the national interest and subject to the requirement of evidence that the domestic industry affected is unable to submit the necessary application. In such cases there must be adequate evidence that increased imports, in absolute or relative terms, are causing or threatening to cause serious injury to the domestic industry.

## **SECTION II EVALUATION OF THE APPLICATION AND INITIATION OF THE INVESTIGATION**

**ARTICLE 56. Receipt and evaluation of the application:** Within a non-extendable period of 15 working days from the date of submission of the application, the investigating authority may:

- (a) Accept the application and decide to initiate the investigation, by means of a corresponding resolution, or
- (b) Allow the applicant fifteen (15) working days in which to submit the duly completed forms with the relevant documents demonstrating that the information is suitable, as well as the other requirements stipulated in Article 52 above. This period shall be calculated from the day following the corresponding request and may be extended, at the request of a party, for a further 15 working days.

Once the forms have been submitted and the other requirements have been met, the investigating authority shall have a period of 15 working days in which to take a decision.

This request shall interrupt the period established in Article 61, which shall recommence when the applicant provides the information requested.

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 working days following the date of issue. Appeals against such a resolution may be lodged with the corresponding court of law.

- (c) If, after a period of 45 days from the request for further information, the forms have not been submitted and the other requirements have not been met in their entirety, the investigating authority shall deem the applicant to have withdrawn the application, the application shall be shelved, and the applicant so notified.

**ARTICLE 57. Acceptance of the application and initiation of the investigation:** Immediately after an investigation has been initiated, the investigating authority shall notify the governments of the countries whose exports could be affected by the application of a possible safeguard measure so that they may submit evidence and state their opinions.

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

Nevertheless, the investigating authority may apply provisional safeguard measures, in accordance with the provisions of the WTO Agreement on Safeguards and these Rules and Procedures.

**ARTICLE 58. Content:** The resolution initiating the investigation shall contain at least the following:

- (a) The identity of the applicant;
- (b) a detailed description of the imported product or products under investigation, indicating the tariff subheading;
- (c) a description of the domestic like or directly competitive product;
- (d) the period under investigation;
- (e) the time-limits for the determination or submission of documents; and,
- (f) the name(s) of the exporting country or countries and the necessary information to ensure accurate identification of the product concerned and its origin.

**ARTICLE 59. Information:** The investigating authority may request the data it deems relevant for the fulfilment of its task directly from the interested parties, the Central Bank of Ecuador, the Ecuadorian Customs Corporation, inspection and other public or private sector companies and bodies, which must provide the information concerned within the time-limits granted for the purpose.

When the information requested by the investigating authority is not provided within the time-limits laid down in these rules and procedures, or when the investigation is seriously impeded, findings may be made on the basis of the available data. If the investigating authority finds that an interested party has supplied it with false or misleading information, it shall disregard such information and may use the data available.

Information received pursuant to the regulations which follow may be used only for the purpose for which it was requested.

**ARTICLE 60. The investigation period:** The investigating authority shall have a period of three months to conclude the investigation. This period shall be non-extendable and shall be calculated from the date of publication of the resolution to initiate the investigation in the Official Register.

### **SECTION III CONFIDENTIALITY**

**ARTICLE 61. Confidential Information:** Any confidential information submitted by the parties in an investigation concerning the application of safeguard measures shall be treated as such by the investigating authority, upon cause being shown, and shall not be disclosed without the express consent of the party submitting it.

Information shall be considered confidential if its disclosure or publication might injure the competitive position of the enterprise concerned or have a significantly adverse effect upon the person supplying the information or if it is provided on a confidential basis. A separate file, which may be

inspected only by the investigating authority, shall be opened for confidential information provided by the applicant or other interested parties.

When confidential information is introduced into the investigation, the investigating authority shall invite the parties which have supplied that information to provide non-confidential summaries thereof in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence or, if they state that the information in question cannot be summarized, to explain the reasons why this is impossible.

**ARTICLE 62. Access to information:** If the authorities find that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the authorities may disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.

The interested parties identified as such by the investigating authority and the representatives of exporting countries may have access to any information gathered during the investigation, except that of a confidential nature.

#### **SECTION IV ANALYSIS OF INJURY**

**ARTICLE 63. Factors:** In the investigation to determine whether increased imports of a particular product or group of products have caused or are threatening to cause serious injury to the domestic industry producing like products, all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry shall be taken into account, in particular:

- (a) The rates and amounts of the increase in imports of the product concerned, in absolute terms and in relation to domestic production and consumption;
- (b) the share of the domestic market taken by increased imports;
- (c) the price of the imports, especially in order to determine if there has been a significant underpricing in relation to the price of the like or directly competitive domestic product;
- (d) a review of the impact on the domestic industry of the like or directly competitive products, evidenced by changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment; and,
- (e) other factors that, although not related to the evolution of imports, have a causal relationship with the injury or threat thereof to the domestic industry in question.

**ARTICLE 64. Examination:** When there is an alleged threat of serious injury, the investigating authority shall examine whether it is clearly predictable that the case should become one of serious injury, taking into account the data concerning the domestic industry indicated in Article 53.6(b), as well as the amount and rate of the increase in exports to Ecuador in absolute and relative terms, the existing or potential export capacity of the producing countries or countries of origin, and the probability that the resulting exports of that capacity will arrive on the Ecuadorian market.

**ARTICLE 65. Determination:** A determination of serious injury or threat thereof shall be based on objective evidence that demonstrates the existence of a causal relationship between the increase in imports of the product under investigation and the alleged 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 66. Report:** For the preliminary or definitive determination of serious injury or threat thereof, the investigating authority shall prepare a technical report containing all relevant factors of an objective and quantifiable nature, as well as an assessment or estimation of the possible effects of the application of a provisional or, where appropriate, definitive measure.

Once it has been determined whether or not a serious injury or threat thereof has been caused by the increased imports, the investigating authority shall submit copies of that determination and corresponding technical report to the Committee on Safeguards of the WTO.

**ARTICLE 67. Content:** The determination of whether or not there has been serious injury or a threat thereof should contain:

- (a) A description of the product concerned;
- (b) a detailed analysis of the case under investigation, which may consist of a summary of the technical report, excluding confidential information;
- (c) the names of the companies which constitute the domestic industry;
- (d) considerations relating to the methodology used for the determination of the existence of serious injury or threat thereof;
- (e) the factual and legal basis for the determination; and,
- (f) a reasoned statement concerning the relevance of the factors examined.

## **SECTION V APPLICATION OF SAFEGUARD MEASURES**

**ARTICLE 68. Safeguard measures:** Provisional and definitive safeguard measures shall be applied only to the extent and for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment.

**ARTICLE 69. Percentage:** 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. Measures:** Safeguard measures shall preferably consist of the application of an *ad valorem* tariff; only where measures of this nature are inappropriate shall specific tariffs or quantitative restrictions be applied.

**ARTICLE 71. Restriction:** If a safeguard measure involves the application of a quantitative restriction, through the establishment of a maximum import quota or entitlement, such quota or entitlement shall on no account be lower than the average level of imports of the product concerned over the last three calendar years proceeding the year in which the investigation was initiated, unless clear cause is shown of the need to set a different level in order to remedy or prevent serious injury or the threat thereof, as the case may be.

The above-mentioned quotas shall be allocated among supplying countries in accordance with the provisions of Article 5.2 of the Agreement on Safeguards of GATT 1994.

## **SECTION VI PROVISIONAL SAFEGUARD MEASURES**

**ARTICLE 72. Provisional measures:** During the investigation and in critical circumstances where delay would cause serious injury, a provisional safeguard measure may be applied. In such cases, the investigating authority shall prepare a preliminary technical report containing all relevant factors of an objective and quantifiable nature which permit an assessment of the appropriateness of the application of a measure and its possible impact on the domestic market.

The preliminary report shall be based on the existence of clear evidence that increased imports have caused or are threatening to cause serious injury to the domestic industry and shall be submitted with a corresponding recommendation to COMEXI for approval.

The provisional measure must be adopted by a COMEXI resolution within fifteen (15) working days of the date on which the investigating authority submits its recommendation.

**ARTICLE 73. Resolution:** The resolution adopting a provisional safeguard measure should contain:

- (a) A determination as to the increase in imports, in absolute and relative terms;
- (b) a description of the product to which the measure applies;
- (c) a list of the producers which constitute the domestic industry;
- (d) a preliminary determination as to the existence of clear evidence that the increased imports are the cause of serious injury or threat thereof, including an account of the economic factors analysed for the purpose of the determination;
- (e) the level of the provisional safeguard measure, i.e. the amount of the tariff increase; and,
- (f) the duration of the provisional measure.

In the event that it is decided not to adopt a provisional measure, the corresponding resolution shall contain the issues of fact and law on which COMEXI based its decision.

**ARTICLE 74. Duration:** Provisional safeguard measures shall have a maximum duration of 200 days and may be suspended before the date of expiry only if a definitive resolution is issued.

When it is decided to adopt a definitive safeguard measure, the period of application of any provisional measure shall be counted as part of the total period of duration of the measure.

Within 30 days from the publication of the decision to initiate an investigation, the applicant shall submit a duly substantiated plan for the adjustment of the domestic industry to competition from imports, in accordance with the aims it is wished to achieve through imposition of the measure, as described in the application.

**ARTICLE 75. Amount:** The amount of a provisional safeguard measure shall be paid or guaranteed for payment by the importer, by cash deposit or bond.

When the amount of a definitive safeguard measure is higher than that of a provisional safeguard measure that has been paid or guaranteed, the excess shall not be payable. Conversely, provisional duties collected in an amount higher than that fixed for a definitive measure shall be refunded.

In the event that no definitive safeguard measure is established, reimbursement of the full amount paid shall be ordered promptly, or the security given for the amount of the provisional duties imposed shall be refunded to the importers.

## **SECTION VII DEFINITIVE SAFEGUARD MEASURES**

**ARTICLE 76. Definitive safeguards:** In order for a determination to be reached concerning the imposition of definitive safeguard measures, the investigating authority shall submit to COMEXI the corresponding technical report on the serious injury caused or threatened by the increased imports, so that the latter may approve the application of safeguard measures and the amount of such measures.

**ARTICLE 77. Resolution:** The COMEXI resolution approving a definitive safeguard measure should contain:

- (a) A determination as to the increase in imports, in absolute or relative terms;
- (b) a description of the product to which the measure applies;
- (c) a list of the producers constituting the domestic industry;
- (d) a definitive determination as to the existence of clear evidence that the increased imports have caused serious injury or threat thereof, including an explanatory account of the economic factors analysed for the purpose of such a determination;
- (e) the level of the definitive safeguard measure, i.e. the amount of the tariff increase;
- (f) the planned duration of the definitive measure;
- (g) the adjustment plan submitted by the applicant firms;
- (h) the timetable for progressive liberalization of the measure, in the case of measures of a total duration of over one year, including any period of provisional application; and,



- (i) an assessment as to the appropriateness of the measure in relation to the public interest.

If it is decided not to adopt a definitive measure, the resolution shall contain the issues of fact and law on which COMEXI based its decision.

In both cases, COMEXI shall adopt the corresponding resolution within 15 working days from the date that the investigating authority submits its recommendation.

### **SECTION VIII CONSULTATIONS, PUBLICATIONS AND NOTIFICATIONS**

**ARTICLE 78. Consultations:** As soon as a provisional measure is adopted and before imposing or extending a definitive safeguard measure, the investigating authority shall provide adequate opportunity for consultations to be held between the interested parties.

Such consultations shall be, *inter alia*, to examine the information supplied in notifications to the Committee on Safeguards, to exchange views on the measure and to reach an understanding on how to achieve the objective of maintaining the level of Ecuador's concessions and other obligations under GATT 1994.

**ARTICLE 79. Concessions:** When applying safeguard measures or extending their duration, the Government of Ecuador shall endeavour to maintain a substantially equivalent level of concessions and other obligations to that existing under GATT 1994 between Ecuador and the exporting Members which would be affected by such measures.

- (a) For the purposes of this Article, agreements may be made, through the consultations referred to in the previous Article, regarding any adequate means of trade compensation for the adverse effects of the safeguard measures on trade.
- (b) When taking a decision to introduce a safeguard measure, the Ecuadorian Government shall also consider the fact that, in governments cases where no agreement is reached concerning adequate compensation, the interested governments may, under the terms of the Agreement on Safeguards of GATT 1994, suspend substantially equivalent concessions, as long as such suspension is not disapproved of by the WTO Council for Trade in Goods.
- (c) The right to suspend equivalent concessions shall not be exercised for the first three years that a safeguard measure is in effect, provided that it has been adopted as a result of an absolute increase in imports.

**ARTICLE 80. Publications:** If it is deemed appropriate to initiate an investigation, the investigating authority shall publish in the Official Register the resolution initiating the investigation issued by the MICIP Under-Secretary for Foreign Trade and Integration.

The same procedure shall be followed when the investigating authority establishes provisional and definitive measures.

The resolutions shall also be published in a newspaper with a broad circulation in Ecuador, for the information of all the interested parties.

The investigating authority shall have a period of ten working days from the date of the resolution initiating the investigation and the application of provisional or definitive measures, for publication and notification.

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.

**ARTICLE 81. Notifications:** The investigating authority shall make the following notifications:

**To the Government of the exporting country through its respective diplomatic representation:**

- (a) Once the application has been accepted and before the initiation of an investigation;
- (b) once a provisional measure has been adopted;
- (c) as soon as a definitive measure has been adopted or extended.

**To the interested parties:**

- (a) Once the application has been accepted and an investigation initiated;
- (b) once a provisional measure has been adopted;
- (c) as soon as a definitive measure has been adopted or extended.

**To the Committee on Safeguards of the WTO:**

- (a) Once an investigation has been initiated;
- (b) once a preliminary measure has been adopted;
- (c) as soon as a definitive measure has been adopted or extended;
- (d) with regard to the result of any consultations held, including any compensation granted, if applicable.

**To the Ecuadorian Customs Corporation:**

As soon as the resolution for the application or extension of provisional or definitive safeguard measures has been issued and published, for the corresponding implementation.

All notifications to the Council for Trade in Goods shall usually be made through the Committee on Safeguards.

**ARTICLE 82. Notifications:** When there is a proposal to apply or extend a safeguard measure, the Committee on Safeguards shall be provided with all relevant information, including:

- Evidence of the serious injury or threat thereof;
- a precise description of the product concerned and the measure proposed;

- the proposed date of introduction of the measure;
- its planned duration;
- the timetable for its progressive liberalization;
- in the case of an extension of a measure, evidence shall be provided that the domestic industry concerned is in the process of readjustment.

#### **SECTION IX DURATION OF THE SAFEGUARD MEASURES**

**ARTICLE 83. Definitive safeguard:** The period of application of definitive safeguard measures shall not exceed four years, unless they are extended in accordance with the following paragraph.

The period mentioned in the previous paragraph may be extended provided that the investigating authority has determined, in accordance with the procedures established in the current resolution for the conditions of investigations, the existence of serious injury or threat thereof.

**ARTICLE 84. Duration:** 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.

**ARTICLE 85. Liberalization:** If the safeguard measure is applied for over one year, it shall be progressively liberalized, at regular intervals, during the period of application.

#### **SECTION X MONITORING AND REVOCATION OF SAFEGUARD MEASURES**

**ARTICLE 86. Revocation:** The investigating authority shall request information on a regular basis from the company or sector protected by the safeguard measure concerning the evolution of production and sales and whether they have begun to recover, in order to determine whether the measure should be revoked.

#### **SECTION XI EXTENSION OF SAFEGUARD MEASURES**

**ARTICLE 87. Extension:** A safeguard measure may be extended ex officio or at the request of a party no less than two months before expiry of the period prescribed for the initial measure. To that end the procedure provided for the adoption of the original measure shall be followed.

Safeguard measures may be extended once only for a period of no longer than four years.

**ARTICLE 88. Approval:** A safeguard measure may be extended provided that the investigating authority has determined, in accordance with the procedures established in the articles concerning conditions, investigation, determination of serious injury or threat thereof and application of safeguard measures of the WTO Agreement on Safeguards, that the safeguard measure continues to be necessary to prevent or remedy serious injury and that there is evidence that the industry is

undergoing a process of adjustment, and provided that the relevant provisions of the articles concerning the level of concessions and other obligations, notification and consultation of the same Agreement are complied with.

**ARTICLE 89. Progressive liberalization:** Measures which are extended shall not be more restrictive than those in force at the end of the initial period, and the progressive liberalization considered appropriate in relation to the adjustment plan shall be continued during the period of extension.

## **SECTION XII RENEWED APPLICATION OF A SAFEGUARD MEASURE**

**ARTICLE 90. Prohibition:** No new measure may be applied to the same product before two years have elapsed since the end of the duration of a safeguard measure.

If the safeguard measure has been applied for a period of over four years, the prohibition contained in the previous paragraph shall apply after a period equal to half the period of its duration has elapsed.

**ARTICLE 91. Renewed application:** Notwithstanding the provisions of the preceding Article, safeguard measures of a duration not exceeding 180 days may be applied again to imports of the same product in cases where:

- (a) At least one year has elapsed since the date of introduction of the safeguard measure on the import of the product concerned;
- (b) such a 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 safeguard measure.

**ARTICLE 92. 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 93. Agricultural products:** In any stage of the investigation process, the investigating authority may set up inter-institutional 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 94. Working parties:** 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.

**ARTICLE 95. Forms:** To facilitate the submission of information and the corresponding documentation for the interested parties, 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.

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

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

The period for returning the forms may, at the request of an interested party, be extended by the investigating authority for 30 working days, provided there is good reason and wherever practicable.

## TITLE V APPLICATIONS TO THE ANDEAN COMMUNITY

**ARTICLE 96. 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 97. Acceptance for processing:** Within eight working days of receiving the corresponding documentation, the investigating authority shall verify compliance with the application requirements and, if these have 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 98. 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 Ecuadorian Customs Corporation 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 99. 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 100. Investigations of Ecuadorian exports for dumping, subsidies or safeguards:** When an Ecuadorian producer or exporter learns 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, Industrialisation 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 101. Report to COMEXI:** If investigations of Ecuadorian products for dumping, subsidies or safeguards are initiated abroad, the investigating authority shall inform COMEXI on the substantive elements of the investigations, the measures adopted, the producers or exporters, the results obtained and the current situation.

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 REMEDIES

**ARTICLE 102. Action:** Definitive decisions determining whether or not anti-dumping or countervailing duties should be applied may be challenged in the district administrative courts.

## CHAPTER IV POWERS

**ARTICLE 103. Competent bodies:** For the application of this instrument, the following powers shall be taken into account:

(a) **The department responsible for the administration of unfair trade practices and safeguards shall:**

- Conduct investigations concerning 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 concerning dumping, subsidies or safeguards and propose the application of provisional countervailing duties, where appropriate;

- communicate, publish and notify all 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 undertake other appropriate action in its capacity as investigating authority.

**(b) The MICIP Director of Trade Operations shall:**

- Direct and coordinate 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) The Foreign Trade and Investment Council (COMEXI) shall:**

- Impose provisional or definitive countervailing or anti-dumping duties and safeguard measures;
- rule on conciliation formulas proposed by the parties.

**(d) The Minister of Foreign Trade, Industrialization and Fisheries (MICIP) shall:**

- Accept or reject offers made in statements of intent;
- notify to the Ecuadorian Customs Corporation 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) The Competent Customs Body shall:**

- 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 ARTICLE. Repeal and entry into force:** COMEXI Resolution 0003, published in Official Register No. 288 of 1 April 1988 is hereby repealed.

The present Resolution shall enter into force from the date of its publication in the Official Register.

**FOR PROCLAMATION**

Done at Quito, Metropolitan District,  
Cristóbal Orrantía  
CHAIRMAN, COMEXI

Milton Cevallos,  
SECRETARY

I hereby certify that this Resolution was adopted by COMEXI in ordinary session on Monday,  
10 April 2000.

Milton Cevallos  
Under-Secretary for Foreign Trade and Integration and  
Secretary of COMEXI

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