

WORLD TRADE ORGANIZATION

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

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

PANAMA

The following communication, dated 26 March 1998, has been received from the Permanent Mission of Panama.

In accordance with the established procedures, I am forwarding herewith the text of the Panamanian legislation on dumping and on subsidies and countervailing measures.

It should be noted that the Panamanian legislation on dumping and on subsidies and countervailing measures is incorporated in Law 29 of 1 February 1996 enacting rules to protect competition and adopting other measures.

It should also be noted that Articles 149, 153 and 240 of Law 29 of 1 February 1996 have been amended by Articles 283, 284 and 285 respectively of Law 23 of 15 June 1997.

In Law 29 of 1996, anti-dumping measures and subsidies and countervailing measures are dealt with under the following titles:

Title III: "Unfair Trade Practices" (Article 70 ff.);

Title VI: "Provisions Common to the Preceding Titles" (Article 115 ff.);

Title VIII: "Judicial Procedure" (Articles 141 ff.).

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Law No. 29 of 1 February 1996

Enacting Rules to Protect Competition and Adopting Other Measures

THE LEGISLATIVE ASSEMBLY

HEREBY DECREES:

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TITLE III

Unfair Trade practices

CHAPTER I

Object

Article 70. Object. The provisions of this title are intended to provide timely and objective protection to domestic industry or production against imports that are the subject of unfair trade practices causing or threatening to cause material injury or prejudice to domestic production or causing material retardation of the establishment of a domestic industry.

For the purposes of this title, unfair trade practices are taken to mean subsidies and dumping.

CHAPTER II

Subsidies

Article 71. Definition. A subsidy is understood to mean:

1. The direct or indirect granting of any financial contribution, incentive, tax concession or assistance by the State or any of its institutions to the manufacturing, production or export of a good;
2. The foregoing of, or exemption from public revenue which would otherwise be due. The exemption of an exported product from duties or taxes borne by the identical or similar product when destined for domestic consumption, or the remission of such duties or taxes in amounts not in excess of those which have accrued, shall not be deemed to be a subsidy;
3. The granting of a financial contribution, incentive, tax concession or assistance and foregoing or exemption in respect of inputs subsequently to be used in the production of a final product;
4. Any other form of income or price support to the exporter. In all of the above cases, a benefit must thereby be conferred.

Article 72. Specificity. A subsidy shall only be subject to countervailing duties if it is specific.

In order to determine whether a subsidy is specific, the following principles shall apply:

1. Where the State or the granting authority, or the legislation pursuant to which the State or granting authority operates, explicitly limits access to a subsidy to certain enterprises, such subsidy shall be specific.
2. Where the State or the granting authority, or the legislation pursuant to which the State or the granting authority operates, establishes objective criteria or conditions governing the eligibility for, and the amount of, a subsidy, specificity shall not exist, provided that the eligibility is automatic and that such criteria and conditions are strictly adhered to. The criteria or conditions must be clearly spelled out in a law, regulation, or other official document, so as to be capable of verification.
3. When notwithstanding the application of the above principles by the granting authority, or of the legislation pursuant to which the granting authority operates, there are reasons to believe that the subsidy may in fact be specific, the following factors may be considered:
 - (a) Use of a subsidy programme by a limited number of certain enterprises;
 - (b) predominant use by certain enterprises;
 - (c) the granting of disproportionately large amounts of subsidy to certain enterprises;
 - (d) the manner in which discretion has been exercised by the granting authority in the decision to grant a subsidy.
4. When the subsidy is limited to certain enterprises located within a designated geographical region within the jurisdiction of the State or granting authority, it shall be considered specific.

The term "certain enterprises" shall be understood as an enterprise or industry or a group of enterprises or industries.

Objective criteria or conditions mean criteria or conditions which are neutral, which do not favour certain enterprises over others, and which are economic in nature and horizontal in application.

Article 73. Exceptions. Countervailing duties shall not be imposed on imports that are the subject of the following subsidies:

1. Assistance for research activities conducted by firms or by higher education or research establishments on a contract basis with firms if the assistance covers up to 75 per cent of the costs of industrial research or 50 per cent of the costs of pre-competitive development activity, and provided that such assistance is limited exclusively to:
 - (a) Costs of researchers, technicians and supporting staff employed exclusively in the research activity;
 - (b) costs of instruments, equipment, land and buildings used exclusively and permanently for research activities;
 - (c) costs of consultancy and equivalent services;

- (d) additional overhead costs incurred directly as a result of the research activity;
 - (e) other running costs, such as those of materials, supplies and the like.
2. Assistance to objectively disadvantaged regions within the exporting country given pursuant to a general framework of regional development provided that:
- (a) It is limited to a complete, clearly designated geographical region with a definable economic and administrative identity;
 - (b) It is limited to a geographical region considered disadvantaged on the basis of neutral and objective criteria, indicating that the region's difficulties arise out of more than temporary circumstances, clearly spelled out in law, regulation and other official documents, so as to be easily verifiable;
 - (c) The criteria include a measurement of economic development based on factors such as per capita income, household income per capita, GDP per capita, which must not be above 85 per cent of the average for the national territory; the unemployment rate, which must be at least 110 per cent of the average for the national territory, and any other factor or composite of other factors. The measurement of such factors shall be conducted over a period of three years.
3. Assistance to promote adaptation of existing facilities to new environmental requirements imposed by law/regulations which result in greater constraints and financial burden on firms, provided that the assistance:
- (a) Is a one-time non-recurring measure;
 - (b) is limited to 20 per cent of the cost of adaptation;
 - (c) does not cover the cost of replacing and operating the assisted investment;
 - (d) is directly linked to and proportionate to a firm's planned reduction of nuisances and pollution, and does not cover any manufacturing cost savings which may be achieved;
 - (e) is available to all firms which can adopt the new equipment and/or production processes.

Article 74. Definitions. For the purposes of the preceding Article:

1. The term "industrial research" means planned search or critical investigation aimed at discovery of new knowledge, with the objective that such knowledge may be useful in developing new products, processes or services, or in bringing about a significant improvement to existing products, processes or services.
2. The term "pre-competitive development activity" means the translation of industrial research findings into a plan, blueprint or design for new, modified or improved products, processes or services, whether intended for sale or for use, including the creation of a first prototype which would not be capable of commercial use.

3. The term "general framework of regional development" means that regional subsidy programmes are part of an internally consistent and generally applicable regional development policy and that regional development subsidies are not granted in isolated geographical points having no influence on the development of a region.
4. The term "neutral and objective criteria" means criteria which do not favour certain regions beyond what is appropriate for the elimination or reduction of regional disparities within the framework of the regional policy.
5. The term "existing facilities" means facilities which have been operation for at least two years at the time when new environmental requirements are imposed.

CHAPTER III

Dumping

Article 75. Definition. Dumping shall be understood to mean the import of foreign goods at a price lower than their normal value in the exporting country for sale in the domestic market.

1. A product shall be considered as having been introduced into the commerce of another country at less than its normal value if the import price is less than the comparable price, in the ordinary course of trade, for the identical or similar product when destined for consumption in the exporting country.
2. When the said price cannot be checked against the domestic price in the exporting country market, the margin of dumping shall be determined by comparison with a comparable price of the similar or identical product when exported to a third country, provided that this price is representative.

The term "representative price" shall be understood to mean the price determined through a fair comparison between the export price and the normal value.

3. When there are no exports to third countries either, a product shall be considered to have been introduced at less than normal value if the import price is lower than the cost of the production of the product in the country of origin plus a reasonable addition for selling cost and profit or returns.

In cases where there is no export price or where the court considers that the export price is unreliable because of association or a compensatory arrangement between the exporter and 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 to resold in the condition as imported, on such reasonable basis as the court may determine.

Article 76. Price comparison. For the purposes of this Chapter, price comparison shall be made:

1. Between sales carried out on dates as close to each other as possible and using the rate of exchange applicable for the payment of the imports on those dates;
2. between sales made at the same level of trade which, in principle, corresponds to sale at the factory or place of production;
3. between transactions involving similar quantities;

4. taking account of the differences in conditions of sale, taxation, levels of trade, physical characteristics and any other differences which could affect the equivalence of the prices to be compared.

Price comparison shall take place at the same level of trade, generally the ex-factory level, and in the ordinary course of trade.

Article 77. Ordinary course of trade. The term ordinary course of trade shall be understood to mean habitual trade or trade during a reasonable time immediately prior to the date of import into the domestic market, in the country of origin or provenance with regard to identical or similar goods, between buyers and sellers who are independent of one another.

The term "identical product or good" means a product or good which is alike in all respects to the product or good under consideration, taking account of such elements as its nature, use, function, quality, trademark and reputation.

The term "similar product or good" shall be understood to mean a product or good which, although not alike in all respects has characteristics that bear enough resemblance to the product or good under consideration, particularly as regards its nature, use, function and quality, to be considered as such.

CHAPTER IV

Material Prejudice or Injury

Article 78. Definitions. The term injury shall, unless otherwise specified, be taken to mean material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry.

Material prejudice or injury means any material loss or impairment or deprivation of any significant lawful, normal gain which the domestic industry or production suffers or may suffer as an immediate result of any of the unfair trade practices.

Domestic industry shall be taken to mean domestic producers as a whole of identical or similar products or those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products.

Article 79. Determination of material prejudice or injury. A determination of material prejudice or injury shall be based on positive evidence, and not merely on allegation, conjecture or remote possibility, and shall involve an objective examination of:

1. The volume of imports that are the subject of unfair trade practices and their effect on prices in the domestic market for identical or similar products.

Consideration shall be given to whether there has been a significant increase in imports, either in absolute terms or relative to domestic production or consumption. In determining the effect of such increase on prices of identical or similar products in the domestic market, consideration shall be given to whether imports that are the subject of unfair trade practices are sold at a lower price, or whether the effect of such imports is otherwise to depress the prices of domestic production to a significant degree or prevent price increases which would otherwise have occurred.

2. The impact of such imports on the domestic producers of such products.

An evaluation shall be made of all relevant economic factors and indices having a bearing on the state of the domestic industry concerned, such as actual and potential decline in sales, market share, profits or returns, output, productivity, return on investments or utilization of capacity; factors affecting domestic prices; the margin of dumping; and actual and potential negative effects on cash flow, stocks and inventories, employment, wages, growth, ability to raise capital or investment. This list is not exhaustive, nor does one or several of these factors necessarily suffice to justify a positive determination of material injury or threat of material injury.

Article 80. Determination of the threat of material prejudice or injury. In determining whether there is a threat of material prejudice or injury, consideration shall be given to the exporting capacity of the country or exporter in question, the likelihood of domestic price decreases as a result of such imports, the existence of underemployed capacity and an increase in stocks among national producers. In any event, the threat of injury shall be based on circumstantial evidence, on facts, and not on allegations, conjecture or remote possibility, and the injury must be imminent.

Article 81. Cumulative assessment of the effects of imports from two or more countries. In measuring the injury or threat of injury, the volume and effects of imports of identical or similar products from two or more countries may be cumulated if such products are under investigation and are competitive with each other and with the domestic product, provided the volume of imports from each country is not negligible and the margin of dumping and amount of the subsidy of each country is not *de minimis*.

Article 82. De minimis subsidies and dumping. A subsidy shall be considered to be *de minimis* if it is less than 1 per cent *ad valorem*.

If the product is imported from a developing country Member of the World Trade Organization, a maximum subsidy level of 2 per cent *ad valorem*, calculated on a per unit basis, shall be tolerated.

Similarly, the volume of subsidized imports from a developing country Member of the World Trade Organization shall be considered negligible if it accounts for less than 4 per cent of total imports of the identical or similar product, unless the imports from developing country Members of the WTO which individually account for less than 4 per cent of total imports collectively account for more than 9 per cent of imports of the identical or similar product.

The margin of dumping shall be considered to be *de minimis* if this margin is less than 2 per cent *ad valorem*.

The volume of dumped imports shall be regarded as negligible if the volume of dumped imports from a particular country Member of the World Trade Organization is found to account for less than 3 per cent of imports of the identical or similar product, unless countries which individually account for less than 3 per cent of the imports of the said product collectively account for more than 7 per cent of such imports.

The special provisions in respect of *de minimis* subsidies shall come into force with the accession of Panama to the World Trade Organization.

Article 83. Determination of de minimis dumping and subsidies. When it is determined that the subsidy or the dumping is *de minimis*, or when it is determined that the import of subsidized or dumped products is negligible in accordance with the above Articles, the investigation shall be terminated without the imposition of any protective measure.

Article 84. Causal link. There shall be a causal link between the imports that are the subject of unfair trading practices and the material damage or prejudice when the actual or threatened prejudice or impairment to the domestic industry or production of the identical or similar product or the material retardation of the establishment of such production or industry is a consequence of such imports.

Where there are other factors which simultaneously cause prejudice to the domestic industry or production, the injury or prejudice caused by such factors may not be attributed to the imports that are the subject of unfair trading practices.

CHAPTER V

Countervailing or Anti-Dumping Duties

Article 85. Definitions. The term "countervailing duty" shall be taken to mean a special duty, independent of import duties, established with a view to counteracting any subsidization of the manufacture, production or export of a foreign product. The term "anti-dumping duty" shall be taken to mean a special duty, independent of import duties, established to counteract the margin of dumping applied.

The term "margin of dumping" shall be understood to mean the price differential between the normal value of the foreign good and the price at which such good is imported into the domestic market, in conformity with Chapter III above.

Article 86. Countervailing or anti-dumping duties. Countervailing or anti-dumping duties shall in no case exceed the established subsidy or margin of dumping. Such duties shall remain in force only as long as is necessary to counteract the unfair trading practice that is causing the injury. Any definitive countervailing or anti-dumping duty shall in any case be terminated at the latest five years after the date on which it was imposed, unless following a court review initiated ex officio or at the request of an authorized party it is determined prior to that date that the termination of the duty would result in the continuation or repetition of the damage and of the subsidy or dumping.

Article 87. Periodic review. The measures imposed under the final resolution shall be reviewed ex officio or at the request of a party at least every 12 months with a view to determining whether they are still necessary.

Article 88. Revocation. If, as a result of a periodic review, it is determined that the countervailing or anti-dumping duty is no longer warranted, it shall be terminated immediately.

Article 89. Evasion. When a product is the subject of a countervailing or anti-dumping duty and its assembly or final processing is transferred to a third country after the final resolution has been issued, with a view to avoiding payment of the said duty, the final resolution may be amended to provide for the application of the imposed measure to such product coming from a third country as well.

Article 90. Imports from third countries. The provisions of this Law shall be fully applicable to cases in which the product that is the subject of unfair trading practices is not imported directly from the country of origin, but through a third country. In such cases, the transaction is considered to have taken place between the country of origin and the Republic of Panama.

TITLE VI

Provisions Common to the Preceding Titles

Single Chapter

Common Provisions

Article 115. Conversion of the Price Regulation Office and the Directorate for Consumer Protection. The budget items allocated to the Price Regulation Office and the Directorate for Consumer Protection shall be transferred to the Commission. Such civil servants employed by the Price Regulation Office and the Directorate for Consumer Protection as are required for its operation shall be relocated in the Commission; the remaining staff members employed by those two entities shall be transferred to other national government agencies where they shall receive the same remuneration.

Article 116. Statutory limitation. Action to initiate the procedure shall be subject to a limitation of three years, from the moment at which the fault took place in the case of practices which restrict competition, or from the moment at which the fault is effectively known in the case of unfair trading practices.

Similarly, there is a limitation of one year for such action with respect to consumer protection. This period of limitation shall be interrupted upon submission and notification of the request in accordance with the general provisions of the Judicial Code.

Article 117. Dissemination. The Commission shall disseminate this Law throughout the national territory and shall organize campaigns to inform the public of the rights and obligations of consumers and economic agents and how to make use thereof. Similarly, the Commission shall coordinate with business and consumer organizations the preparation of recommendations for the drawing up of contract documents in the areas governed by this Law.

In connection with the above provision, the annual budget of the Commission shall include, in addition to the allocations covering the cost of its campaigns to inform consumers, a total amount which shall in no case exceed 10 per cent of its dissemination and advertising budget in the form of a transfer to duly constituted consumer associations recognized by the relevant entities.

* * *

TITLE VIII

Judicial Procedure

CHAPTER I

Introductory Provisions

Article 141. Competence. Three civil circuit courts are hereby created in the First Judicial District of Panama, to be known as the Eighth, Ninth and Tenth Courts of the First Judicial Circuit of Panama, and one circuit court in Colón. Additional civil circuit courts are created in Coclé, Chiriquí and Los Santos, to be known as the Second Court of Coclé, the Fourth Court of Chiriquí and the Second Court of Los Santos respectively, to hear such cases in their respective judicial districts. These courts shall deal exclusively with the following cases:

1. Individual or collective complaints brought in accordance with this Law;
2. disputes arising from the implementation or interpretation of this Law in respect of monopolies, consumer protection and unfair trade practices;
3. disputes relating to intellectual property, including, *inter alia*, disputes concerning copyrights and neighbouring rights, trademarks of products or services, and patents;
4. disputes concerning agency, representation and distribution relations;
5. disputes concerning acts of unfair competition;
6. proceedings for repair of collective damage, restoration of property to the state prior to the impairment and monetary compensation for overall damages to the community concerned;
7. granting of authorizations to the Commission to institute evidentiary proceedings, to review private company documents, to carry out searches and seizures and any other measure requested by the Commission during an administrative investigation, or to seize evidence;
8. imposition of penalties for violation of the provisions of this Law and issue of decrees suspending the infringing actions;
9. the pronouncement of protective measures requested by the Commission or by a particular complainant.

Cases brought within the rest of the national territory under this Law shall be heard by the corresponding circuit court responsible for business matters.

When the complaint concerns goods or relationships coming in full or in part within the district of the First Circuit Court of Panama, the courts created under this Law shall be competent for preventive purposes, at the request of the complainant, together with the corresponding court, to hear any of the above cases.

An exception is made for cases assigned exclusively to the Commission.

Paragraph. Until the courts referred to in this Article have been established, the cases shall be heard by the respective circuit courts.

Transitional paragraph. The procedural regulations laid down by this Law shall enter into effect immediately. However, the cases mentioned under number 3 above that were initiated prior to the creation of the courts provided for in this Law shall be dealt with by the Ministry of Trade and Industry on their behalf, and shall be governed by the Law in force at the time of initiation. Cases initiated following the establishment of the above-mentioned courts shall be entirely governed by this Law.

Article 142. Entitlement. The following shall be entitled to file a claim:

1. Any person affected;
2. the Commission;
3. organized consumer associations;
4. collective management entities.

The court shall decide in each specific case on the admissibility of the claimed entitlement on the basis first and foremost of the following requirements:

- (a) The grouping must be made up of components which have suffered prejudice individually as a result of the acts or omissions committed in violation of collective interests, in which case the legal personality of the group may be established within a period of 30 days following the resolution granting entitlement to act;
- (b) defence of the specific type of collective interest impaired must be expressly laid down in the Articles of Agreement of the grouping as one of its purposes;
- (c) the grouping must be linked territorially to the place where the claimed infringement of the collective interest has occurred;
- (d) the number of members, their years of service, their group's activities and programmes and any other relevant factor must reflect the seriousness and responsibility of the group's action in defence of collective interests.

Article 143. Appellate Court. The Third High Court of Justice of the First Judicial District, comprising three magistrates, is hereby created.

This Court shall hear appeals against sentences or orders issued at first instance by the circuit courts in the cases mentioned in Article 141.

Decisions shall be signed by one magistrate, and the judgements or orders which put an end to the proceedings or call for an end thereto shall be signed by two magistrates. In case of disagreement, the matter shall be settled by the third magistrate.

In addition to the requirements set forth in the Judicial Code, the magistrates must have a minimum of three years experience in commercial law.

Article 144. Municipal courts. Two municipal courts are hereby created in Panama City and one in Colón with the exclusive responsibility of hearing consumer claims involving no more than B 3,000.

In doing so, they shall follow the procedures laid down in the Judicial Code for ordinary trials involving small amounts.

Paragraph. Until the courts referred to in this Article have been established, the cases in question shall be heard by the respective municipal courts of the provincial capitals.

CHAPTER II

General provisions

Article 145. Procedural regulations. Except in special cases, the procedures referred to in Article 141 shall be governed by the following rules:

1. The proceedings shall be oral. The order communicated shall indicate the date of the hearing, which shall be notified personally to the interested parties.
2. The time-limit for a communication shall be ten days. In the order of communication of the request, the judge shall indicate the date of the preliminary hearing to consider:
 - (a) The utility of specifying and simplifying the matters at issue;
 - (b) the necessity or utility of correcting the pleadings of the parties;
 - (c) the possibility for the parties to accept facts and documents which render the presentation of certain evidence unnecessary;
 - (d) limiting the number of experts;
 - (e) indicating the date and time at which the parties are to appear at the ordinary hearing with their evidence;
 - (f) other matters which could contribute to streamlining the proceedings.

The preliminary hearing shall lead to the establishment of the issues to be discussed.

3. Up to three days prior to the substantive hearing, the parties may ask the judge to provide a list of witnesses, specifying their place of residence or business. In doing so the judge shall apply the relevant obligatory measures.
4. The hearing calls for the participation of the disputing parties. However, if the parties fail to appear following a second notification of the hearing, the judgement shall be made on the basis of such evidence adduced or accompanying the request and the reply as the judge considers appropriate.

If the evidence cannot be examined on the day scheduled for the hearing, it shall be examined on the next working day.

5. The judge may examine evidence ex officio and must, in any case, summon the parties for verification through an advisory procedure in accordance with the Judicial Code.
6. Procedural issues shall be decided in the judgement except where the Judicial Code expressly authorizes a special process or if, by their nature, they can and must be settled as soon as they are raised. In the first case, they shall be notified to the opposing party within three days after they are raised in the second case they shall be resolved directly with no possibility of appeal.
7. The judge must be present throughout the hearing, failing which his direct superior, ex officio or at the request of a party or the public prosecutor, shall fine him a minimum of B 25 and a maximum of B 100.
8. The hearing may only be postponed once and on reasonable grounds stated by each party prior to its initiation. Otherwise, the hearing shall take place on the scheduled date with such parties as choose to attend.
9. Only the resolution terminating the proceedings, preventing them from continuing or imposing provisional or prudential measures may be appealed. The appeal of the judgement shall have a suspensive effect; the Resolution imposing provisional or prudential measures shall have a devolutive effect; and orders terminating the proceedings or preventing them from continuing shall have a deferred effect.
10. The remedy of appeal shall be governed by Book II, Title XII, Chapter I, Section 8(a) of the Judicial Code.

CHAPTER III

Proceedings in Respect of Unfair Trade Practices

Section I

Proceedings

Article 146. Initiation of the proceedings. The proceedings shall be initiated at the request of a party, and may, exceptionally, be initiated ex officio when the Commission has sufficient evidence of unfair trade practices, injury and causal link to justify such initiation.

The initiation of a subsidies or dumping investigation shall not be an obstacle to customs clearance or to the granting of import permits by any other government entity.

Article 147. Authority of procedural rules and practice. The proceedings shall at all stages automatically be governed by, *inter alia*, the principles of promptness, efficiency, publicity, impartiality and avoiding excessive formality.

Article 148. Entitlement. The following are entitled to initiate proceedings:

1. The domestic industry or production harmed by imports that are the subject of unfair trade practices;
2. associations of producers which consider that they are affected or threatened by imports that are the subject of unfair trade practices;

3. the Commission.

Article 149. Evidence of entitlement. An application for the initiation of proceedings shall be considered to have been made by or on behalf of the domestic industry or production if it is supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the identical or similar product produced by that portion of the domestic industry expressing either support for or opposition to the application.

However, the investigation shall be initiated when domestic producers expressly supporting the application account for at least 25 per cent of total production of the identical or similar product produced by the domestic industry.

The court, or the Commission at the court's request, shall determine whether the above conditions have been met, using statistical techniques.

In the case of fragmented production involving an excessive number of producers, sampling techniques may be used.

Article 150. Application for the initiation of proceedings. Proceedings shall be initiated upon submission of an application prepared by a competent attorney, clearly indicating the factual and legal grounds or basis for the request and accompanied by evidence of imports that are the subject of unfair trade practices, material injury or prejudice or threat of material injury or prejudice, and a causal link.

The application shall contain the following minimum information:

1. Particulars of the applicant;
2. The percentage of domestic production of goods intended for the domestic market, represented by the goods which the applicant produces for domestic consumption. It must identify the industry in whose name the application is submitted by listing all of the known domestic producers of identical or similar goods or the associations of producers. The applicant must provide, where possible, a description of the volume and value of domestic production of the identical or similar good which the said producers represent;
3. Detailed description of the tariff heading of the imported product, specifying its quality as compared with domestic production and other characteristics;
4. Volume and prices of the imports that are the subject of unfair practices and their impact on the domestic production and producers affected;
5. Names and addresses of the importers and, if known, of the exporters;
6. The country of origin and of provenance;
7. Subsidy or margin of dumping and other facts and data leading to the presumption of the existence of unfair practices;
8. Determination of material prejudice or injury, or threat of material prejudice or industry, using the parameters indicated in Title III, Chapter IV of this Law.

Until the proceedings have been initiated, the parties shall avoid all publicity regarding the application.

Article 151. Procedure. Upon reception, the application shall be examined to determine whether it meets the formal requirements established by this Law and, if so, the investigation shall be initiated.

If the application does not meet the requirements of this Law or if, even though it meets those requirements, the information submitted is not clear, the applicant shall be requested to amend the application or furnish the relevant documents within five working days of notification. If this period elapses without the applicant complying with the request, the application shall be rejected and placed on file.

Article 152. Public notice of the initiation of an investigation. Once the application has been accepted and an investigation initiated, a summary of the application shall be published in a newspaper with a recognized national circulation.

Article 153. Communication. The application submitted shall be communicated to the interested parties within a period of 30 calendar days, starting seven calendar days after its date of despatch. Likewise, a copy of the application shall be communicated to the authorities of the exporting country through the accredited diplomatic or consular representation in the country or in accordance with the international agreements to which Panama is party.

The communication shall be accompanied by a questionnaire detailing the points to which reference should be made in the reply.

Due consideration shall be given to any application for an extension of the 30-day time-limit by the affected party or parties, and such extension shall be accorded wherever possible when there is sufficient justification for doing so. Extensions shall not exceed 30 calendar days.

If no reply is received within the time allowed, the investigation shall continue ex officio.

Section 2

Evidence

Article 154. Evidence. The applicant shall supply the evidence of the existence of subsidies or dumping and that the imports in question are causing or threatening to cause material prejudice to domestic production or causing material retardation of the establishment of a domestic industry in accordance with this Law.

Article 155. Examination of evidence. The court shall require and examine only such evidence as is necessary in determining the truth of the facts under investigation in accordance with the information supplied by the parties and the provisions of this Law, within a time-limit not exceeding 30 calendar days following the response to the communication.

In order to proceed better, the court may at any time request any kind of information or technical parameters from any of the government agencies, which shall be required to supply them.

It may also request the interested parties to supply questionnaires, expert reports, opinions or technical criteria as it deems appropriate, and order any type of measure to help ascertain the alleged facts.

Article 156. Evidence abroad. The court may, with a view to verifying the information received or obtaining further details, conduct investigations and obtain evidence in the territory of the exporting country, provided it has so notified the authorities of the exporting country and encountered no objection. The investigation and examination of evidence may also take place in the facilities of the exporting enterprise subject to prior approval.

Article 157. Access to information. When the authorities of the exporting country or the interested parties deny access to the necessary information, refuse to provide such information within a reasonable time-period or seriously impede the investigation, preliminary or definitive conclusions may be reached on the basis of the facts available, including those appearing in the application for the initiation of the proceedings submitted by the domestic industry or production.

Section 3

Provisional measures

Article 158. Requirements. Through a reasoned decision, the court may adopt provisional measures in order to prevent, during the period of the investigation, imminent injury or prejudice to domestic industry or production that is difficult to repair, provided it is determined that the imports that are the subject of unfair trade practices cause or threaten to cause material prejudice or injury.

The reasoned decision shall set forth the arguments of the applicant, the evidence furnished by the applicant and the arguments in favour of imposing a provisional measure.

No provisional measure shall be applied before a period of 60 calendar days has elapsed from the date of the resolution initiating the proceedings.

Article 159. Types of measures. The provisional measures shall consist of provisional countervailing or anti-dumping duties. It shall not be possible to impose both types of provisional measures in response to one situation resulting from subsidies or dumping.

Article 160. Application. The provisional measures shall involve the deposit by the importer of a guarantee in accordance with the procedures laid down by the Directorate-General of Customs of the Ministry of Finance and the Treasury.

The amount of the guarantee shall not exceed the subsidy or margin of dumping provisionally calculated, and the duration of the provisional measure should not exceed four months in the case of subsidies, and six months in the case of dumping.

Article 161. Imposition. The court shall establish the provisional countervailing or anti-dumping duties which shall be imposed by the Cabinet Council or by such entity as the law specifies and applied by the Directorate-General of Customs of the Ministry of Finance and the Treasury. Application by the Cabinet Council of such countervailing or anti-dumping duties as are established shall be mandatory.

Article 162. Application of countervailing or anti-dumping duties. If the decision is taken to impose definitive countervailing or anti-dumping duties, such duties may apply for the period for which the provisional measures were imposed. If the definitive countervailing or anti-dumping duty is higher than the guarantee amount, the difference shall not be claimed. If the definitive duty is lower than the guarantee amount, the amount in excess shall be reimbursed immediately or the guarantee released for the corresponding amount.

Article 163. Application of definitive countervailing duties. Definitive countervailing duties may be imposed on products put up for sale within a period not exceeding 90 days prior to the date of the application of the provisional measures provided it has been determined that:

1. There has been injury that is difficult to repair as a result of intermittent massive imports of products involving unfair business practices in a relatively short time;
2. the retroactive application of such definitive duties is necessary to prevent a repetition of the injury.

Article 164. Publication. The operative part of the provisional measure adopted shall be published in a newspaper with a recognized national circulation.

Section 4

Undertakings and Suspension of the Investigation

Article 165. Suspension. The investigation may be suspended and the proceedings terminated without application of provisional or definitive duties when the exporter undertakes to review its prices with a view to eliminating the injurious effect of the unfair trade practice in question. The price increases stipulated in the undertaking shall not be greater than necessary to counter-balance the subsidy or a margin of dumping. The price increases shall be less than the amount of the subsidy or the margin of dumping if such lesser increases suffice to eliminate the injury to the domestic industry or production.

In the case of subsidies, suspension is also possible when the exporting State or institution agrees to eliminate or limit the subsidy or to take other adequate measures to curtail its effects, thereby eliminating the injury or threat of injury to the national industry.

Article 166. Publication. A summary of the decision to accept an undertaking and suspend the investigation, including all relevant information on the factual and legal considerations and the reasons that led to the acceptance of the undertaking, shall be published in a newspaper with a recognized national circulation, taking due account of the confidentiality provisions.

Section 5

Hearing and Final Resolution

Article 167. Hearing. Having completed the examination of the evidence and before issuing a final decision, the Substantiating Commissioner shall summon all of the interested parties to a hearing for the purpose of informing them of, and hearing their views on, the essential facts under consideration and which are to serve as a basis for the decision whether or not to apply definitive measures. The parties shall be given a period of three working days to submit arguments in defence of their interests.

Article 168. Final resolution. Upon receiving the arguments, the Substantiating Commissioner shall have ten working days in which to issue a substantiated decision on the existence of subsidies or dumping, material injury or prejudice or a threat of material injury or prejudice to the domestic industry, and a causal link, imposing countervailing duties or anti-dumping duties on products that are the subject of such unfair trade practices.

Otherwise, the Substantiating Commissioner shall disregard the application and terminate the proceedings.

Article 169. Remedy of appeal. The remedy of appeal is the only remedy against the final resolution, and it must be lodged and substantiated before the higher court of appeals within ten working days following notification.

The interested parties shall be informed of the appeal within five working days so that they may present their arguments.

The higher court of appeals shall have 15 working days to settle the appeal. The appeal shall have a suspensive effect.

Article 170. Imposition of countervailing or anti-dumping duties. Once the resolution has been made executory, the definitive countervailing or anti-dumping duties established shall be imposed by the Cabinet Council or by such entity as the Law specifies, and applied by the Directorate-General of Customs of the Ministry of Finance and the Treasury. Application by the Cabinet Council of the definitive countervailing or anti-dumping duties established in the final resolution shall be mandatory.

Article 171. Publication. The operative part of the final resolution, once it has been cleared, shall be published in a newspaper with recognized national circulation. Any subsequently agreed amendment thereto shall also be published in the same form.

CHAPTER IV

Class Action

Article 172. Procedural regulations. Class actions may be brought by one or more members or a group or class of persons that has suffered injury or prejudice caused by a given good or product, and are understood to be brought on behalf of the group or class of persons in question. The Commission and organized consumer associations are entitled to bring such cases. Class actions are governed by the following rules:

1. One or several members of a class may lodge the complaint on behalf of all of the members of the class in any of the following circumstances: if the group is so large as to make the presence of all of its members impracticable; if there are factual and legal issues common to the group; if the claims of the representatives are representative of the claims of the class; if the claims treated separately could result in inconsistent or divergent judgements; and if the claims treated individually would be deceptive.
2. The complaint must be accompanied by proof of the alleged injury.
3. Upon receiving the complaint, the court shall enter it on the list and publish a summons for five consecutive days in a newspaper with a recognized national circulation for the complainant and all persons belonging to the group to appear within ten days of the last day of publication in order to defend their rights, submit arguments or participate in the proceedings. Once this has been done, notice shall be given of the complaint.
4. Within the six days following the notification of the complaint, the judge may, ex officio or at the request of a party, reject any complaint that is clearly unjustified, ill-advised or without legal foundation. The complainant shall be notified personally of the corresponding resolution, which may be appealed before the higher court.

5. By producing before the court the powers of the attorney responsible for taking the legal action or of a legal representative of his choice, the intervener joins in the complaint and undertakes to pay the corresponding fees as indicated by the judge in accordance with the amount of the penalty.
6. The judgement shall affect all of the complainants belonging to the said group whether or not they have participated in the process.
7. Parties that did not appear as third parties may file their claims during the implementation stage through the liquidation procedure provided for in Articles 983, 984 and 985 of the Judicial Code, and obtain appropriate compensation.
8. Transactions shall be subject to approval by the judge who shall ensure that the rights provided under this Law are duly protected.
9. Where several attorneys are involved, the judge shall order their unification, and shall grant the parties three days to reach an agreement. If the parties are unable to reach an agreement during the following three days, the judge shall decree their unification without exceeding five attorneys for each complaint. In making appointments the judge shall consider, *inter alia*, the lawyers appearing in the list transmitted by the Commission for that purpose, the qualification of the incumbents, their experience in the area in question and their appointment by the interested parties.
10. The judge shall charge costs to the unsuccessful party. He shall have the discretion to settle *quota litis* agreements and shall indicate the fees to be paid by the interested parties appearing in the enforcement stage having obtained a favourable sentence, distributing them fairly among the attorney responsible for bringing the action and defending the complainants in accordance, *inter alia*, with their participation and the results obtained
11. During the enforcement stage, the convicted party may, within five days prior to or following the hearing, raise before the participants in the proceedings the following pleas:
 - (a) Settlement;
 - (b) compensation;
 - (c) limitation;
 - (d) *res judicata*;
 - (e) the participant does not fit the assumptions on which the dispute is based or does not form part of the complainant class;
 - (f) the injury or prejudice was caused or aggravated by factors other than or in addition to product defect;
 - (g) the participant knew of and accepted the product defect;
 - (h) the participant did not have lawful title to the good or product whose utilization resulted in the injury.

Pleas must be justified by filing a motion in conformity with the general regulations, and shall not have a suspensive effect on the proceedings or enforcement in respect of the other complainants or participants belonging to the class in question.

CHAPTER V

Authentication of Evidence

Article 173. Disclosure. Either of the parties may require the other to disclose information and supply documentation in any of the following forms:

1. Sworn declarations in response to oral or written questions;
2. examinations, written or directed to the parties;
3. exhibition of documents and other items;
4. permission to enter the territory or facilities of the other party with a view to conducting visual inspections and for other purposes;
5. physical or mental examinations;
6. request for recognition of facts, property or documents.

Evidence may also be authenticated through the mechanisms laid down in the Judicial Code.

Article 174. Supply of information. Except where the judge has set limits, any party may require the other parties to supply or display information, property or documents in respect of any matter that is not subject to professional secrecy, which is relevant to the subject of the dispute and relates to the complaint or defence of any of the parties, including the existence, description, nature, ownership, condition and location of any book, document or other object and the identification or location of persons having a knowledge of any matter that might be raised.

Article 175. Information on insurance contracts. The parties may obtain information regarding the existence and content of any insurance contract under which any person involved in the insurance business may be responsible, in full or in part, for the judgement of the court of for the compensation or refund of payments made in execution of the judgement.

The parties may not obtain information on the insurance application forming part of the insurance contract.

Where more extensive information or additional documentation is requested, the court may order that it be supplied by such other means as it considers appropriate, subject to restrictions on the scope of disclosure and the provisions relating to fees and payments.

Article 176. Resolutions. At the request of the party requesting disclosure and for good cause, the court may issue such resolutions as are necessary to protect the party against harassment, humiliation, unjustified waste or any other abuse, including:

1. Preventing disclosure of a clearly reckless nature or requiring a security guarantee from the court;

2. permitting disclosure only under certain specific terms and conditions relating, *inter alia*, to time, date and place;
3. permitting disclosure only by a means different from the means requested;
4. preventing the investigation of certain matters or limiting of the scope of disclosure to certain matters;
5. permitting disclosure only in the presence of persons appointed by the court;
6. permitting a sealed declaration made outside of court to be opened only following a court order;
7. preventing the disclosure of trade secrets or other research results, discoveries or trade information of a confidential nature;
8. having the parties provide the court simultaneously with certain documents or information in sealed envelopes to be opened only upon court order.

If the application is rejected in full or in part, the court may order any of the parties to supply or permit the disclosure of information under such terms and conditions as it considers fair.

Article 177. Means of disclosure. Unless the court rules otherwise at the request of a party, for the convenience of the parties or the witnesses and for the sake of justice, means of disclosure may be requested in any order. The processing of a request from a party for disclosure in the form of a sworn declaration or in any other form shall not delay disclosure requested by the other party.

Article 178. Disclosure of additional information. The party that has fully answered a request for disclosure shall not be required to provide additional information acquired subsequently, except:

1. In respect of any question aimed at establishing the identity and location of persons with a knowledge of the facts concerning which they are required to provide a declaration;
2. where the new information obtained reveals that:
 - (a) the party's answer was incorrect at the time it was made;
 - (b) although the answer was correct at the time it was made, it is no longer correct;
3. where the obligation is imposed by the court or by agreement with the parties, or at any time prior to the hearing through new requests for additional information relating to previous replies.

Article 179. Disclosure order. Any party may request the court to order any specific disclosure subject to due notification of the other parties and all persons affected.

Article 180. Omissions in the answering of questions. If the respondent fails to answer a question submitted in accordance with the preceding articles or a corporation or other entity fails to appoint the natural person to act as its representative, or if one of the parties fails to answer the request for inspection made pursuant to Article 230 or fails to allow the requested inspection to take

place, the requesting party may ask the court to order the respondent to reply, to appoint the representative or to allow the requested inspection to take place.

If the request is rejected, in full or in part, the court may order the appropriate protective measures.

Article 181. Evasive or incomplete reply. For the purposes of this Law, an evasive or incomplete reply shall be considered as a refusal to reply.

Article 182. Contempt of court. Failure to carry out a court order shall be considered as contempt of court.

Section 1

Penalties

Article 183. Refusal. If a party refuses to accept the authenticity of a document or the truthfulness of any statement, as the law requires, and if the party requesting acceptance then shows that the document was authentic or demonstrates the truthfulness of a statement, that party may request the court to order the other party to pay expenses incurred in such demonstration, including lawyers' fees. The court shall issue a resolution to that effect unless it establishes that:

1. The request was objectionable;
2. the requested acceptance was unimportant to the proceedings; or
3. there were good grounds for the refusal.

Article 184. Resolutions. At the request of a party, the court hearing the case may issue such resolutions as it considers reasonable with respect to the omissions listed below, and require the party concerned to pay the costs related to the omission, including lawyers' fees, unless the court concludes that such omission was justified or that owing to other circumstances the penalty would not be justified:

1. Failure to appear before the official assigned to hear the party's statement after having been duly notified;
2. failure to answer or challenge the interrogation;
3. failure to respond to the request for inspection.

Article 185. Presumption. Failure of a summoned party to appear, refusal to reply or evasive response shall result in the presumption of certain facts that formed the subject of the admissible affirmative questions contained in the interrogatories, and the judge shall record this circumstance during the hearing.

The same presumption shall apply in respect of the facts contained in the request or the reply thereto when, in the absence of interrogatories, the summoned party fails to appear. Where the questions were not affirmative, or the fact in question does not require replies, failure to appear, evasive response or failure to respond shall be counted against the summoned party.

Section 2

Testimony

1. Oral examination

Article 186. Requests. A party wishing to obtain statements through the oral interrogation of witnesses shall so notify the other parties in writing sufficiently in advance, indicating the name and address of the persons whose statements are requested if known, or, if they are not known, a sufficiently detailed description of such persons to allow their identification.

The court may, at the request of a party or upon good cause shown, extend or reduce the time-limit for taking statements, and may also fix the date and order in which the statements are taken in keeping with the interests of the parties, the witnesses and the administration of justice.

The court shall appoint an interpreter or translator where it deems appropriate in view of special circumstances.

Article 187. Proceedings. The person taking the statement shall begin the proceedings by swearing in the declarant. The statement shall be taken down in shorthand or in another appropriate form, and shall be transcribed, unless the parties agree otherwise. It shall indicate any challenges or objections the parties may raise so that the court may decide, when appropriate, whether they are justified. The party requesting the statement shall pay transcription costs.

If the person selected by the party wishing to take the witness's statement is not authorized to swear in the declarant, the judge, at the request of the interested party, shall grant such authorization.

The court may draw up a list of stenographers which may include those whose names are supplied by lawyers attached to the court who shall be authorized, for such time as the court decides, to swear in witnesses appearing before them to make statements outside of court.

Article 188. Written examination. Parties that have received notice to take statements may choose to question the declarant in writing rather than orally. In such case, the questions are drawn up in writing and the answers are recorded word for word.

2. Written examination

Article 189. Copies. A party wishing to take a statement on the basis of written questions shall hand a copy of the questions to each one of the parties, indicating the name and address of the person before whom the statement must be made.

Article 190. Cross-examination. The party thus notified may submit the questioning party to a written cross-examination within five days following the notification.

Article 191. Copies. A copy of the notification and of the questions shall be supplied by the requesting party to the party indicated in the notification, who shall proceed to take the witness's statement in reply to the questions and to act in accordance with the requirements laid down in Articles 197, 198 and 200.

Article 192. Notification of the parties. Once the statement has been submitted to the registrar, the requesting party shall notify all of the other parties thereof.

3. Protection

Article 193. Protective measures. The court may, at the request of a party or of the declarant, on good cause shown and in consultation with the parties, issue an order for the said statement not to be made, or for the statement to be taken by means of oral or written examination.

4. Errors and irregularities in the statements

Article 194. Correction. The notification to the party concerning the taking of statements shall be considered as cleared of all errors, irregularities or omissions unless a written objection is addressed in good time to the requesting party.

Article 195. Disqualification. No objection shall be brought on the grounds of disqualification of the person before whom the statement is to be made unless such objection is lodged prior to the initiation of the statement or as soon as the objecting party learns or could have learned of the said disqualification.

Article 196. Foregoing the right of objection. The right to voice objections pertaining to the legal incapacity of a witness, to the invalidity or inappropriateness of the statement, to errors and irregularities in the way in which the statement was taken, the questions formulated and the answers supplied or in the way in which the witness was sworn in, to the conduct of the parties or to any other errors that could have been cleared through objection at the appropriate time during the statement, shall be considered to have been forfeited.

Article 197. Renunciation. The right to object to the form of the written questions submitted shall be considered as having been renounced unless such objection is submitted in writing and notified to the responsible party within the time-limit set for the cross-examination.

Article 198. Clearance. Unless the total or partial withdrawal of a statement is requested promptly after the time at which a fault was discovered or could have been discovered, such errors and irregularities as may have been committed in the transcription of the statement or in its preparation, signature, authentication, sealing and dispatch or submission to the court, or in any other related action, shall be considered to have been cleared.

5. Reading, correction and signature of the statement

Article 199. Reading and signature. Once the statement has been transcribed, it shall be submitted to the declarant for reading and signature unless the declarant and the parties forgo such requirement, which fact shall be recorded in the record.

Article 200. Finalization. The person before whom the statement was made shall record any amendment the declarant wishes to make and the reasons for such amendment. The statement, with such amendments as may have been made, shall be signed by the declarant except in case of renunciation by the parties, incapacity or death of the declarant or renunciation of signature by the declarant. If the declarant fails to sign the statement, the person before whom the statement was made shall sign it and record in the record the reason why it was not signed by the declarant.

Article 201. Use of the statement. Once the above requirements have been met, the statement may be used for the purposes for which it was taken except if the court, at the request of a party, decides that the reasons adduced by the declarant for refusing to sign the statement justify its rejection.

6. Certification and submission of the statement

Article 202. Certification. Once the statement has been completed in accordance with the preceding Article, the person before whom the statement was made shall certify that the declarant was duly sworn in and that the document certified by him contains a faithful transcription of the statement. He shall place the document in a sealed envelope identifying the case and the declarant, which he shall submit or send without delay, by registered post, to the registrar of the court in question.

Article 203. Copy of the statement. The person before whom the statement was made shall supply a copy of the statement to any other parties or to the declarant against payment of fees approved by the court.

Article 204. Notification of the parties. The person before whom the statement was made shall immediately notify the parties of its submission to the registrar of the court.

Article 205. Completion of the statement. If one of the parties does not adduce the statement in full, any of the other parties to the proceedings may put forward part or the rest of the statement.

Article 206. Substitution of the parties. The substitution of parties shall not affect the right to use statements taken previously in the course of the proceedings, and statements made during proceedings that were abandoned may be used in subsequent proceedings involving the same parties, their representatives or assignees with the same effect as if they had been originally made to be used in such subsequent proceedings, provided they concern the same dispute.

Article 207. Failure to appear. If the party that has notified the wish to take a statement fails to appear or if the declarant fails to do so because he was not summoned, and the other party does appear, the court may order the party that did not appear or by whose fault the declarant did not appear to reimburse the expenses incurred by the other party and the legal representative of the other party in appearing, including reasonable lawyers' fees.

7. Entitlement to take statements

Article 208. Entitled persons. Statements may be taken in the Republic of Panama by any official authorized by the law to swear in the declarant, or any person appointed by the court, who is thereby empowered to swear in the declarant and take the statement.

Article 209. Statements abroad. Statements may be taken outside the Republic of Panama subject to notification of the parties:

1. By a person authorized to swear in the declarant under the laws of the country in question or of Panama;
2. By a person appointed by the court for that purpose, who is thereby empowered to swear in the declarant and take the statement; or
3. Through letters rogatory.

The appointment of authorized persons by the court or the dispatch of the letters rogatory shall take place, subject to request and notification of the parties, under terms and conditions that are fair and appropriate. The notice or letter of request shall mention the name, title and function of the person before whom the statement is to be made.

Article 210. Disqualification. Sworn statements shall not be taken by a relative up to the fourth degree of consanguinity or the second degree of relationship by marriage; by the employee, legal representative or adviser of any of the parties or the employee of such legal representative or adviser; or by anyone having a pecuniary interest in the case or relative of such person up to the fourth degree of consanguinity or the second degree of relationship by marriage, or relative of the legal representative or adviser.

8. Agreements between parties on the taking of statements

Article 211. Agreements between the parties. Unless the court decides otherwise, the parties may:

1. Agree in writing that the sworn statements may be taken, subject to prior notice, before any person, at any time and place and in any form, and that when they have been taken, they may be used in the same way as any other sworn statement;
2. alter the proceedings established under these provisions, using other means of disclosure. However, agreements to extend the deadline for response to the request for disclosure may only be concluded subject to approval by the court.

9. Statements

Article 212. Use of the statements. During the ordinary hearing or during the hearing held in response to a request, all or part of a statement admissible as evidence may be used against any party that was present or represented at the taking of the statement or was duly notified thereof, as follows:

1. By any party, with a view to refuting or challenging the testimony of the declarant;
2. By the opposing party, for any purpose, when the statement was made by the other party or by any person who at the time at which it was taken was an official, a director, an agent or an administrator of a legal person, public or private, party to the proceedings;
3. By any of the parties, for any purpose, in the case of a statement by a witness or one of the parties when the court determines:
 - (a) That the witness is deceased;
 - (b) that the witness is outside of Panama, unless it is proved that the absence of the witness is attributable to the party submitting the statement;
 - (c) that the witness cannot appear or make a statement owing to advanced age, illness, disablement or imprisonment;
4. If the party submitting the statement has not obtained the appearance of the witness through a summons.

Article 213. Objections. Subject to the present provisions, an objection may be raised, during the ordinary hearing or the hearing held in response to a request, to the admission of any statement or part thereof, for the same reasons that would have made them inadmissible if the declarant had been present in the proceedings.

10. Pending statements or statements pending appeal

Article 214. Contribution of statements. Persons wishing to ensure that their own testimony or the testimony of another person is considered in respect of a matter that could be brought before a court of the Republic of Panama may submit to the court a sworn request to that effect. The request shall be made under oath and shall indicate:

1. That the requesting party wishes to participate in a case being heard by the said court but is not currently in a position to file the suit;
2. the nature of the suit they wish to file and their interest in such suits;
3. the facts they wish to establish through their testimony and the reasons why they wish their testimony to be heard;
4. names and description, and, where known, the address of persons who could constitute the opposing party, and the essential points of the testimony they hope to obtain from each one of them, with a request to the court for authorization to take the requested statements.

Article 215. Notification. The requesting party shall ensure that each one of the persons mentioned in the request as a possible opposing party is personally notified, and shall supply them with copies of the request indicating the intention to ask the court for their corresponding authorization at the date and place mentioned therein.

Article 216. Decision. The court shall issue a decision containing the name and description of the declarants, the subject of their statements, and the name of the person before whom the statements are to be made, indicating the place, date and time of the statements and whether they are to be based on oral examination or written questions. It shall summon the persons in question to make their statements.

Article 217. Transfer of statements. If a statement taken judicially abroad to preserve testimony is admissible in the courts of the country in which it was taken, such statement may be used in subsequently initiated proceedings in a court of the Republic of Panama on the same subject provided the parties to both cases are the same.

Article 218. Statements under appeal proceedings. If a judgement of the court is appealed or if the time limit for appeal has not yet elapsed, the court that issued the judgement may, at the request of a party, order that statements be taken from witnesses for use in subsequent court proceedings.

The statements may be taken and used in the form and under the conditions set forth in this Law for cases still pending in court.

Section 3

Interrogatories

Article 219. Interrogatories. Any party may serve any other party with up to 20 written questions and the party receiving the questions must supply all information to which it has access. The said interrogatories may be served following the initiation of the proceedings without judicial authorization.

Article 220. Replies. The questions must be answered under oath, in writing and separately, and must be signed by the party under examination. The party under examination must submit its answers and objections to the examining party within 45 days following receipt of the questions.

Article 221. Incomplete replies. The examining party may claim before the court the inadequacy of the replies or of the objections to the questions, and the court, unless it considers the answers to be adequate and the objections valid, shall order that they be corrected.

Article 222. Confidential matters. The court may exempt a party from answering questions even if there has been no objection within the established time-limit when such questions concern matters of a confidential nature which the declarant is not under any legal obligation to answer, or when they do not comply with Article 174.

Article 223. Additional information. The questions may be submitted after a statement has been taken, or a statement taken after the questions have been answered.

Article 224. Protective measures. The court may, at the request of the party under examination, order the protective measures described in Article 193.

Section 4

Acceptance

Article 225. Acceptance of the facts. Any of the parties may request another party to accept the truthfulness of a given fact, including the authenticity of any document. The request must be accompanied by copies of the said document unless such copies have already been supplied or made available to the party, for examination and copying. The request may be made to any of the parties without authorization by the court.

Article 226. Forms of acceptance. Each item for which acceptance is requested must be indicated separately. The fact, statement or authenticity of the document shall be considered as accepted unless the requested party provides the requesting party with a written answer or objection, signed by the party or its legal representative, within 30 days of receipt of the copy of the request, or of the notification of the time-limit set by the court.

Any objection raised must be substantiated.

The reply must specifically deny the truthfulness of an assertion or the authenticity of a document, or explain, in detail, the reasons why the party cannot reply affirmatively or negatively.

The replying party may not claim lack of knowledge or information as an excuse for refusing to answer affirmatively or negatively unless it shows, under oath, that it has conducted a reasonable investigation and that the information or knowledge available is not sufficient to warrant an affirmative or negative answer.

The request referred to in the preceding Article may not be rejected merely because it raises a controversial issue which must be discussed in the hearing. The party may refuse to accept an item or explain the reasons why it can neither accept it or reject it.

Article 227. Request or clarification or supplementary information. The requesting party may challenge before the court, the adequacy of the answers or objections, and the court shall order the requested party to reply unless it considers the objections to be valid. The court may consider an item to be accepted and order a reply to be corrected if it does not meet the requirements of this

Article; otherwise, it may postpone its final decision until the preliminary hearing or any other date prior to the ordinary hearing.

Article 228. Effects. All items that have been accepted in accordance with the preceding Articles shall be considered as definitively established. Acceptance by a party in conformity with this Article may only be used in the case under consideration and does not constitute acceptance for any other purpose.

Section 5

Inspection of Documents

Article 229. Obligation to submit documents. Without prejudice to the preceding articles, any of the parties may ask the court to order another party to supply specific documents in their possession, custody or control which constitute or could serve as evidence of the facts that may be legally disclosed and have a bearing on the issues in dispute, or permit them to be examined, copied or photocopied.

Section 6

Judicial Inspection

Article 230. Judicial inspection. A judicial inspection may be requested during or prior to the hearing of the places or objects that are to be the subject of the proceedings.

The inspection may be conducted with the help of experts appointed by the court or by the parties, and may be accompanied by a display of moveable property where necessary for the purposes of the judicial examination.

At the request of the judge or of a party, maps, drawings or photographs are made of the place or objects under inspection.

Section 7

Recognition of Private Documents

Article 231. Optional recognition. A person wishing to recognize a private document of his may do so before the judge, subject to prior identification.

Article 232. Request. A person wishing to have another person recognize judicially a private document may so request the judge.

The judge to whom the request for recognition of one of the mentioned documents is submitted shall summon the signatory or the person who ordered the signature to recognize the document under oath, indicating the date and time of verification.

Once the recognition has taken place, the judge shall order the document to be returned with the acknowledgement to the person by whom it was requested so that he may exercise his rights, provided the document does not form part of a file.

CHAPTER VI

Provisions Common to the Proceeding Chapters

Article 233. Reviews. Requests for review of appellate decisions by the High Court of Appeals are possible:

1. In the case of judgements involving civil penalties referred to in Article 27 of this Law or which order the dismantling of a concentration;
2. In the case of judgements pronounced pursuant to a class action;
3. In the case of judgements which impose penalties of B 500,000 or more;
4. In the case of judgements pronounced by the High Court of Appeals in suits concerning economic concentrations.

The remaining decisions of the High Court of Appeals are not subject to review.

Suits concerning economic concentrations come within the jurisdiction of the High Court of Appeals as the court of sole instance.

Article 234. Residual rule. Without prejudice to the provisions of the special laws, the provisions of the Judicial Code shall also apply to this Law in respect of matters not covered by this Law.

Article 235. Opinion of the Commission. In collective actions, the judge shall request the opinion of the Commission; in the case of individual complaints, the judge may use his own discretion. The Commission shall transmit its opinion within a non-renewable period of three days following receipt of the note containing a copy of the relevant documents.

Article 236. Discretionary functions of the Commission. The Commission shall have the following discretionary functions in connection with the proceedings, without prejudice to such other functions as may be required for reasons of efficiency and to ensure compliance with judicial decisions:

1. To advise the judge on the representativeness of groups bringing cases before the court in defence of collective interests and on the demarkation of the group or category represented by the authorized association in order to identify the persons affected by the judgement;
2. to decide as to the technical suitability of prudential measures and report to the judge on failure by the person responsible to respect such measures;
3. to introduce the mechanisms necessary to the effective publication of the records of the proceedings and contribute to the amicable settlement of the dispute, providing the judge with a draft settlement for submission to the parties;
4. to issue reasoned opinions with respect to the determination of overall compensation and the share of each responsible party therein;

5. to conduct all of the necessary hearings concerning acts implying decisions involving the collective interest concerned such as disclaimers, acceptance of payments, transactions or any means of discharging the obligations of the responsible party.

Article 237. Communication. In the cases referred to under Article 141, subparagraph 3, the judge shall inform the administrative entities responsible for intellectual property rights of the acceptance of the request. The judge shall also send an authenticated copy of final decisions which in any way modify, encumber, annul or confirm the intellectual property rights protected under the relevant legal provisions.

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FOR COMMUNICATION AND IMPLEMENTATION

Adopted on third reading at the Palacio Justo Arosemena, in Panama City, on the .. day of January 1996.

The President,
Dr. Carlos R. Alvarado A.

The Secretary General
Erasmio Pinilla C.
