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

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

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

PANAMA

Supplement

The following communication, dated 16 January 2009, is being circulated at the request of the delegation of Panama.

The Republic of Panama, pursuant to Article 18.5 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-Dumping Agreement), Article 32.6 of the Agreement on Subsidies and Countervailing Measures and Article 12.6 of the Agreement on Safeguards, as well as the related decision adopted by the Committee on Safeguards (G/SG/N/1), hereby notifies its laws and regulations relating to anti-dumping, countervailing duty and safeguard procedures.

In this connection, a copy is herewith submitted of Executive Decree No. 1 of 8 January 2009 "Regulating Decree Law No. 7 of 15 February 2006, which establishes rules for the protection and safeguarding of national production and enacting other provisions", published in the *Gaceta Oficial* (Official Journal) No. 26.201 of 14 January 2009.

REPUBLIC OF PANAMA

MINISTRY OF TRADE AND INDUSTRY

EXECUTIVE DECREE No.1

(of 8 January 2009)

"Regulating Decree Law No. 7 of 15 February 2006, which establishes rules for the protection and safeguarding of national production and enacting other provisions"

THE PRESIDENT OF THE REPUBLIC

in exercise of his constitutional and legal powers,

WHEREAS:

Decree Law No. 7 of 2006 establishes rules, investigation procedures and measures applicable to the protection and safeguarding of national production against unfair trade practices and against market situations that require emergency measures to counteract serious or material injury caused to national production, in accordance with the relevant provisions of the World Trade Organization, international trade agreements, conventions or treaties and domestic legislation;

It is necessary to regulate Decree Law No. 7 of 2006 in order to ensure the effective and timely implementation of the instruments safeguarding trade, to contribute towards the development of domestic production sectors, to foster the competitiveness and modernization of Panama's industry and to maintain a stable environment for business and fair competition;

Article 102 of Decree Law No. 7 of 2006 provides that the Executive Body, through the Ministry of Trade and Industry, shall issue the regulations for the Decree Law and shall adopt the provisions it deems most suitable for its implementation;

Article 184, paragraph 14, of the Political Constitution provides that it shall be the responsibility of the President of the Republic, together with the competent minister, to regulate those laws that so require for their proper implementation, without departing from the letter or spirit of the law;

HEREBY DECREES:

TITLE I

MEASURES TO SAFEGUARD TRADE

CHAPTER I

LEGAL REGIME

Article 1. Object and purpose. The purpose of this Executive Decree is to establish mechanisms and procedures to safeguard trade against unfair trade practices and against market situations that require the application of safeguard measures. In cases of unfair practices, these mechanisms and procedures shall allow the dumping or subsidies that are causing or threatening to cause material

injury to the domestic industry of like products to be counteracted. In the case of safeguards, they shall allow the import of goods in such quantities or under such conditions as to cause or threaten to cause serious injury to the domestic industry producing like or directly competitive products to be counteracted.

Article 2. Scope. In implementation of Article 2 of Decree Law No. 7 of 2006, the provisions of this Executive Decree shall apply to all imports of goods originating in and/or coming from countries Members of the World Trade Organization or non-member countries by public or private natural or legal persons, in fact or in law, when such imports generate or may generate effects or consequences in the Republic of Panama.

Article 3. Regulations applicable and suppletory legislation. All substantive and procedural aspects not regulated in this Executive Decree and relating to investigations for the purpose of applying measures against unfair trade practices or imposing safeguard measures shall be determined in accordance with the provisions of Article 95 of Decree Law No. 7 of 2006 and the relevant provisions contained in Law No. 23 of 1997.

Article 4. International trade agreements, conventions or treaties. Where imports subject to investigation originate in a country with which there are special provisions in this respect under an international trade agreement, convention or treaty in force, the measures regulated in this Executive Decree shall be applied in accordance with the provisions of the aforesaid treaty.

Article 5. Competence. The provisions of this Executive Decree shall be implemented, as appropriate, by the following:

(a) The Directorate-General for Safeguarding Trade in the Ministry of Trade and Industry. The investigating authority responsible for handling and conducting investigations and taking any steps needed to ensure the proper application of the administrative procedures laid down in this Executive Decree. For this purpose, it may decide on the measures and/or formalities required. It shall also be responsible for preparing and presenting the technical reports, determinations, findings and recommendations underpinning the resolutions of the competent authority.

(b) The National Directorate for the Implementation of International Trade Agreements and Safeguarding Trade in the Ministry of Trade and Industry. The authority responsible for receiving requests for the initiation of administrative investigations regulated by this Executive Decree. Likewise, and pursuant to the recommendations of the Investigating Authority, it shall be responsible for issuing resolutions arising from proceedings at the lower level, including decisions on initiating proceedings, the preliminary resolution, the acceptance of price undertakings, the final resolution and other similar decisions.

(c) Minister for Trade and Industry. The Minister shall be responsible for higher level proceedings, appeals against resolutions by the National Directorate for the Implementation of International Trade Agreements and Safeguarding Trade, and for transmitting recommendations to the Cabinet Council concerning the imposition of measures, their amendment, termination or any other decision relating thereto, pursuant to the provisions laid down in Decree Law No. 7 of 2006.

(d) Cabinet Council. On the basis of recommendations made by the Ministry of Trade and Industry, it shall be responsible for examining the imposition of measures, their

amendment, termination and any other decision related thereto, taking into account the technical, substantive and procedural aspects of the administrative investigations established by Decree Law No. 7 of 2006.

Article 6. Territorial jurisdiction. The provisions of this Executive Decree are public policy provisions applicable throughout the Republic of Panama. For administrative purposes, the Executive Body, through the Ministry of Trade and Industry, shall be responsible for implementing these provisions.

Article 7. Proceedings and period of the investigation. Pursuant to Articles 25 and 63 of Decree Law No. 7 of 2006, all stages of the administrative investigation shall proceed ex officio and shall be in accordance, *inter alia*, with the procedural principles of promptness, efficiency, publicity, impartiality and avoiding excessive formality.

Investigations regulated herein, whether on unfair trade practices or safeguards, shall be concluded less than one year from the date of the resolution on initiation of an investigation. Nevertheless, in exceptional circumstances, this period may be extended up to a maximum of eighteen months by means of a justified resolution by the Investigating Authority to be attached to the file and notified to the parties prior to expiry of the initial period.

TITLE II

COMMON SUBSTANTIVE RULES ON UNFAIR TRADE PRACTICES

CHAPTER I

GENERAL PROVISIONS

Article 8. Definitions and terms. For the purposes of this Executive Decree, the following definitions apply:

(a) Injury: Material injury means injury caused to a domestic industry or threat of material injury to a domestic industry, or material retardation of the establishment of such a domestic industry; and this term shall be interpreted pursuant to the provisions of this Executive Decree and Law No. 23 of 1997.

(b) Dumping: A product shall be considered as dumped when it is introduced into the domestic market as indicated in Article 4.8 of Decree Law No. 7 of 2006 at a price less than its normal value. This shall be considered to have occurred if the export price of the said product exported to the domestic market is less than the comparable price in the ordinary course of trade for a like product when destined for consumption in the exporting country, taking into account the alternatives indicated in Law No. 23 of 1997 regarding determination of the existence of dumping.

(c) Non-market economies or economies in transition. Any national economy in which the government determines economic activity mainly through a central planning mechanism, unlike a market economy, which basically depends on market forces for the allocation of production resources. In a "non-market" economy, the goals of production, prices, costs, allocation of investment, raw materials, labour, international trade and the majority of other economic factors are distorted under a national economic plan formulated by a central planning authority in which the public sector

usually takes the most important decisions affecting supply and demand in the domestic economy. Economies that correspond to a system traditionally known as "economies in transition" may also be considered as non-market economies.

(d) Related enterprises. Persons or entities, whether or not independent, among which there are or exist links or relations of business or common interests, whether or not contractual or a partnership, and related through aspects such as capital, administration, family or other relations, which allow one or more persons to exercise a decisive influence on the decisions of the others. The relationship or link may exist between domestic or foreign producers, exporters or importers or any other economic agent. A link or relationship may be deemed to exist when (a) one of them directly or indirectly controls the other; (b) both of them are directly or indirectly controlled by a third person; or (c) together they directly or indirectly control a third person, provided that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the economic agent concerned to behave differently from non-related entrepreneurs. For the purposes of this definition, a person shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

(e) Enterprises linked or related for the purposes of circumvention. The Investigating Authority may also consider related or linked those enterprises which act through new business arrangements in order to circumvent the application of measures against unfair trade practices so that it shall be deemed that there is a relationship between the former and the latter.

(f) Facts available. Pursuant to Article 4.10 of Decree Law No. 7 of 2006, those facts substantiated by evidence and data provided by the interested parties or additional parties in a proper and timely fashion, and the information gathered by the Investigating Authority during the course of the investigation and contained in the administrative file.

(g) Interested parties. This covers the following:

(i) The government of the country or customs territory of export of the product under investigation or the government of the country or customs territory of origin of the product under investigation;

(ii) domestic producers or trade, industrial or agricultural associations the majority of whose members are domestic producers of like products in the case of investigations into dumping or subsidies and including directly competitive products in the case of investigations for the purpose of applying safeguards;

(iii) foreign producers and/or exporters and domestic importers of the product under investigation and trade, industrial or agricultural associations the majority of whose members are domestic importers, foreign producers or exporters;

(iv) other interested parties determined by the competent authority, for which purpose it shall take into account the existence of a legitimate interest or

subjective right that may be directly affected, impaired or satisfied as a result of the administrative investigation.

(h) Investigation period. The period of time for collecting and offering data for the corresponding examination of each of the various aspects in the investigation. Without prejudice to the Investigating Authority taking into account special circumstances and determining a different investigation period, the following periods shall be determined for gathering data:

(i) Period for investigation of injury. The period for collecting data in investigations for the purpose of establishing the existence of injury shall normally be at lease three years, unless the party in respect of which data are being compiled has existed for a lesser period, and shall include the entirety of the period for data collection for the investigation into dumping or subsidies;

(ii) period of investigation into dumping or subsidies. The period for collecting data for the purpose of investigation into the existence of dumping or subsidies shall normally be 12 months, and under no circumstances less than six months, and shall end on the date as close as possible to the date of initiation of the investigation.

(i) Foreign producer. Any natural person, entity in fact or in law, whether public or private, engaged in any form of economic production activity, acting on their own behalf or on behalf of another, as a foreign manufacturer of a product like the product under investigation.

(j) Domestic producer. Any natural person, entity in fact or in law, whether public or private, engaged in any form of economic production activity, acting on their own behalf or on behalf of another, as a Panamanian manufacturer of goods like the product under investigation.

(k) Price undercutting. The amount by which the price of the imported product is less than the price of the like product produced by the industry, measured at an appropriate point of comparison.

Article 9. Domestic industry. Domestic producers as a whole of like products or those of them whose collective output constitutes a major proportion of the total domestic production of those products.

Where the Investigating Authority determines that one or more producers are related to the exporters or importers or are themselves importers of the product concerned by the application for investigation, this term may be interpreted as referring to the remainder of the producers, without expressly specifying those that are related.

In exceptional circumstances, the concept of domestic industry may be restricted to part of the territory of the Republic of Panama and, for the purposes of the production in question, may be divided into two or more competing markets and the producers within each market may be regarded as a separate industry if: (a) the producers within such market sell all or almost all of their production of the product in question in that market, and (b) the demand in that market is not to any substantial degree supplied by producers of the product in question located elsewhere in the territory. In such

circumstances, injury may be found to exist even where a major portion of the total domestic industry does not suffer prejudice if there is a concentration of the imports that are the subject of the unfair practice in that isolated market and the imports that are the subject of the unfair practice are causing injury to the producers of all or almost all of the production within such market.

When the "domestic industry" has been interpreted as referring to the producers in a certain area of the national territory, the measures shall be applied to all imports irrespective of their final destination if there are no domestic mechanisms allowing it to be determined with precision whether the imported products are intended for that area or not. In such cases, measures may only be applied if the exporters have been given an opportunity to cease exporting at distorted prices to the area concerned or otherwise give assurances regarding compliance with price undertakings and if the measures cannot be levied only on the products of specific producers which supply the area in question.

Article 10. Product investigated. The product exported regarding which the existence of an unfair practice causing injury to the domestic industry is claimed.

Article 11. Like product. Pursuant to Article 4.16 of Decree Law No. 7 of 2006, this means a product that is identical, in other words, alike in all respects to the product investigated. If the examination of similarity leads to a determination that there is no identical product, another product which, although not alike in all respects, has characteristics closely resembling those of the product investigated shall be considered a like product. In examining similarity, the Investigating Authority may take into account:

(a) The raw materials and other inputs used in producing the product;

(b) the production process;

(c) the physical characteristics and appearance of the product;

(d) the end-use of the product;

(e) the substitutability of the product with the product under investigation;

(f) the tariff classification; and/or

(g) any other factor deemed relevant by the Investigating Authority.

No one of these factors by itself or several of them together necessarily gives decisive guidance.

Article 12. Examination of similarity. The product under investigation shall be subject to two separate examinations for the purpose of comparing similarity and these shall be undertaken on the basis of the criteria defined in the preceding Article. The first examination shall be undertaken in order to determine the margin of dumping and shall consist of a comparison between the product under investigation and the like product in the market of the exporting country. The second examination shall make a comparison between the product under investigation and the like domestic product. This examination of similarity shall be used to define the concept of interested parties, in addition to any other purpose contained in this Executive Decree.

CHAPTER II

INJURY

Article 13. Determination of material injury. Determination of material injury shall be based on positive evidence and involve an objective examination of: (1) the trend in the volume of the imports that are the subject of unfair trade practices and their effect on the price of like products on the domestic market; and (2) the impact of these imports on domestic producers of such products, taking into account the provisions in the preceding Article.

(a) In order to undertake the objective examination of the trend in the volume of imports, the Investigating Authority shall consider whether or not there has been a significant increase in imports subject to unfair trade, as well as whether there has been an increase in imports subject to unfair trade as compared with domestic production or consumption. When examining the impact of the imports subject to unfair practices on prices, the Investigating Authority shall consider whether there has been significant price undercutting by the imports subject to unfair practices as compared with the price of a like domestic product or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases which otherwise would have occurred to a significant degree.

(b) In determining the impact of the imports subject to unfair practices on the domestic industry, an evaluation shall be undertaken of all relevant economic factors and indices having a bearing on the state of the industry during the period of investigation into injury referred to in Article 8(h) of this Executive Decree, including at least the following:

(i) Actual and potential decline in:

(1) Sales,
(2) Profits,
(3) Output,
(4) Market share,
(5) Productivity,
(6) Return on investments or utilization of capacity;

(ii) Factors affecting domestic prices;

(iii) Actual or potential negative effects on:

(1) Cash flow,
(2) Inventories,
(3) Employment,
(4) Wages,
(5) Growth,
(6) Ability to raise capital or investments;

(iv) Any other relevant factor submitted for the consideration of the Investigating Authority;

(v) in the special case of dumping, the amount of the dumping margin shall also be taken into account;

(vi) in the special case of agricultural subsidies, whether there has been an increase in the cost of government support programmes may also be taken into account;

(vii) as far as possible, the Investigating Authority shall examine these factors on the basis of information on the like domestic product where possible. Nevertheless, where such identification cannot be made separately, the Investigating Authority shall examine the impact of the imports subject to unfair practices taking into account the data concerning a more limited group or range of products which include the like domestic product and in respect of which the necessary information can be provided.

This list is not exhaustive and no one of these factors by itself or several of them together necessarily gives decisive guidance.

Article 14. Determination of the threat of material injury. For the purposes of this Executive Decree, dumping or subsidies shall only be considered to constitute a threat of material injury when the change in circumstances which would create a situation in which the dumping or subsidy would cause material injury is clearly foreseen and imminent. Determination of the existence of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. In determining whether the dumping or subsidy threatens to cause material injury, in addition to examining the relevance of the factors needed to determine the existence of injury provided in the preceding Article, the following factors shall also be taken into account:

(a) Whether there has been a significant rate of increase of the dumped or subsidized imports into the domestic market indicating the likelihood of substantially increased importation of these goods;

(b) whether there is sufficient freely disposable or an imminent, substantial increase in capacity of the exporter indicating the likelihood of substantially increased dumped or subsidized exports, taking into account the availability of other export markets to absorb any additional exports;

(c) whether imports are entering the domestic market at prices that will have a significant depressing or suppressing effect on domestic prices for like products and with likely increased demand for further imports of such goods;

(d) inventories of the product being investigated;

(e) evidence that the authorities in a foreign country are imposing anti-dumping measures or countervailing duties on goods like those under investigation and the likelihood that these goods are being diverted to the Panamanian market;

(f) in the special case of subsidies, their nature and the possible trade effects; in order to determine their nature, aspects such as their duration, their amount or the group of exporters they cover may be taken into account.

This list is not exhaustive and no one of these factors by itself or several of them together necessarily gives decisive guidance.

Article 15. Determination of retardation of the establishment of a domestic industry. In order to determine material retardation of the establishment of a domestic industry in the Republic of Panama, the following factors, *inter alia*, shall be taken into account:

(a) Feasibility studies, loans negotiated and/or contracts for procurement of machinery related to new investment projects or expansion of existing plant;

(b) the existence of dumped or subsidized imports and the causal relationship between the existence of the unfair practice and the material retardation in the establishment of a domestic industry;

(c) the appropriate and adequate supply of the market, taking into account the volume of the imports at distorted prices, the volume of other imports and the potential output of the project;

(d) any other relevant factor, taking into account the circumstances, including the individual overall business plan of the private or public sector showing retardation in the establishment of the domestic industry.

This list is not exhaustive and no one of these factors by itself or several of them together necessarily gives decisive guidance.

Article 16. Cumulative assessment of the impact of the imports. In order to ensure proper compliance with Article 3.3 of the Anti-Dumping Agreement and Article 15.3 of the Agreement on Subsidies and Countervailing Measures, the Investigating Authority alone may make a cumulative assessment of the impact of imports of a product from more than one country that are simultaneously subject to investigations into unfair trade practices if it determines that: (a) the margin of dumping or the amount of the subsidy established in relation to the imports from each supplier country is more than *de minimis* and the volume of imports from each country is not negligible; and (b) a cumulative assessment of the effects of the imports in the light of the conditions of competition between the imported products and the like domestic product is needed.

CHAPTER III

CAUSAL RELATIONSHIP

Article 17. Determination of the existence of a causal relationship. For the purposes of unfair practice (dumping or subsidies), it shall be proven that the imports that are the subject of the said unfair practice are causing material injury. Proof of a causal relationship between the imports subject to unfair practices and the material injury caused to the domestic industry shall be based on an examination of all relevant evidence available to the Investigating Authority.

Article 18. Non-attribution. The Investigating Authority shall also examine any known factors other than the imports subject to unfair practices, which are at the same time injuring the domestic industry, and the injuries caused by these other factors shall not be attributed to the imports subject to unfair practices. Factors which may be relevant in this respect include, *inter alia*, the volume and price of imports not sold under conditions of unfair practices, contraction in demand, changes in the

pattern of consumption, developments in technology and the export performance of the domestic industry.

Where, after having assessed the impact of these other non-attributable factors and after having eliminated their impact on injury, the Investigating Authority finds that imports of the product under investigation continue to be a cause of injury, it may conclude that there is a causal relationship.

TITLE III

SPECIAL SUBSTANTIVE RULES ON UNFAIR TRADE PRACTICES

CHAPTER I

DUMPING

Article 19. Normal value. As a first option, the normal value shall be determined on the basis of the price of the like product or good destined for consumption in the exporting country in the ordinary course of trade.

As an alternative, when there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation or the low volume of sales in the domestic market in the exporting country, such sales do not permit a proper comparison, the normal value shall be determined using one of the following methods:

(a) By constructing the price based on the cost of producing the product in the country of origin, plus a reasonable amount for administrative, selling and general costs and for profits; or

(b) by comparison with a comparable price of the like product when exported to an appropriate third country, provided that this price is representative.

Paragraph: Sales of the like product destined for consumption in the domestic market of the exporting country shall normally be considered a sufficient quantity for the determination of the normal value if such sales constitute five per cent (5%) or more of the sales of the product under consideration to the importing Member; nevertheless, a lower ratio may be acceptable where the evidence demonstrates that domestic sales are nonetheless of sufficient magnitude to provide for a proper comparison.

Article 20. Ordinary course of trade. Those transactions which reflect the habitually prevailing market conditions of the country of origin or export of the goods over a representative period between independent buyers and sellers, taking into account the adjustments corresponding to prices for reasons of commercial level of sales, discounts or other similar factors in accordance with Article 25 of this Executive Decree. 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 the normal value only if the Investigating Authority determines that such sales are made within an extended period of time in substantial quantities and are at prices that do not provide for the recovery of all costs within a reasonable period of time. If prices that are below per unit costs at the time of sale are above weighted average per unit costs for the period of investigation, such prices shall be considered to provide for recovery of costs within a reasonable period of time.

Paragraph: (a) The extended period of time should normally be one year but shall in no case be less than six months; (b) sales below per unit costs are made in substantial quantities when the authorities establish that the weighted average selling price of the transactions under consideration for the determination of the normal value is below the weighted average per unit costs, or that the volume of sales below per unit costs represents not less than twenty per cent (20%) of the volume sold in transactions under consideration for the determination of the normal value.

Article 21. Alternative method for determining the normal value: price construction. For the purposes of Article 19 of this Executive Decree, when calculating normal value by means of price construction, the 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. The Investigating Authority shall consider all available evidence on the proper allocation of costs, including that which is made available by the exporter or producer in the course of the investigation, provided that such allocations have been historically utilized 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 under the cost allocations in this section, 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 under investigation are affected by start-up operations.

When determining the normal value, the amounts for administrative, selling and general costs and for profits shall be based on actual data pertaining to production and sales in the ordinary course of trade of the like product by the exporter or producer under investigation.

When such demands cannot be determined on this basis, they 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 of the same general category of product in the domestic market of the country of origin;

(b) the weighted average of the actual amount 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 of 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.

Paragraph: The adjustment made for start-up operations shall reflect the costs at the end of the start-up period or, if that period extends beyond the period of investigation, the most recent costs that can reasonably be taken into account by the authorities during the investigation.

Article 22. Alternative method for determining normal value: sales to a third market. In those cases in which the normal value cannot be determined in accordance with the first paragraph of Article 19 above and it is decided to use as an alternative method sales to a foreign third market, the Investigating Authority shall disregard whether such sales are not in the ordinary course of trade and are not the subject of dumping.

Selection criteria. The Investigating Authority shall be responsible for selecting the third market without prejudice to suggestions that might be made by the interested parties for this purpose. In order to make this selection, the Investigating Authority may take into account aspects such as the following in addition to other criteria for guidance: the size of the market, the existence of a domestic industry in the country concerned, the similarity of the products exported to the third country and the product subject to investigation, the volume exported and other factors that also allow it to be determined that there is a sufficient degree of similarity to consider that such sales will permit an equitable comparison.

Article 23. Export price. The price actually paid or payable for the good or product when it is sold in or destined for the national territory. In cases where there is no export price or where it appears to the Investigating Authority that the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported products are first resold to an independent importer; if the products are not resold to an independent buyer or not resold in the condition as imported, the price may be constructed on a reasonable basis. In constructing the export price, adjustments shall be made to allow it to be determined as though the prior transactions had taken place in the ordinary course of trade, in accordance with the rules laid down in the following Articles.

Article 24. Margin of dumping. In order to determine the margin of dumping, the Investigating Authority shall make a fair comparison in accordance with the provisions of Article 9 of Decree Law No. 7 of 2006, determining the difference between the normal value of the like product in the exporting country in the ordinary course of trade and the export price, in proportion to the export price. Where more than one product that are not like products are subject to investigation and they affect the same domestic industry, separate calculations shall be made and individual dumping margins determined for each of them, even though they are dealt with as part of the same investigation.

Paragraph: An administrative investigation involving various products that are not like products may be subject to the same administrative procedure only if the domestic industry in both cases is composed of the same enterprises for both products. If this is not the case, the investigation shall involve separate procedures, which may be ordered ex officio in the resolution on initiation of an investigation or requested by an interested party.

Article 25. Fair comparison between the normal value and the export price. In order to determine the margin of dumping, the Investigating Authority shall make a fair comparison taking into account the provisions of Decree Law No. 7 of 2006, paying special attention to Articles 10, 11 and 12, and to this Executive Decree, determining the difference between the normal value of the like product in the exporting country in the ordinary course of trade and the export price, taking into account the following parameters of comparison:

(a) On the basis of sales made at the same level of trade, which shall in principle be the ex-factory level;

(b) on the basis of sales made at as nearly as possible the same time, using the exchange rate in effect at the time.

In order to ensure a fair comparison and where feasible, the appropriate adjustments to the normal value and the export price shall be made on the basis of differences in models or types of

product. The Investigating Authority shall, *inter alia*, take into account the following factors when making the adjustments:

(a) Due account shall be taken in each case, according to the special circumstances, of the differences which affect price comparability, including differences in terms of sale, taxation, levels of trade, quantities, physical characteristics and any other differences which are also demonstrated to affect price comparability. In order to make the comparison, a common basis shall be established to allow the differences between the products used to determine the normal value and the export price to be offset.

(b) In the cases covered in Article 23 above, costs, including taxes and duties incurred between import and resale, shall be taken into account, together with reasonable profits.

(c) Where comparison requires the conversion of currencies, such conversion shall be made using the rate of exchange on the date of sale, provided that when a sale of foreign currency on forward markets is directly linked to the export sale involved, the rate of exchange in the forward sale shall be used. Fluctuations in exchange rates shall not be taken into account and in an investigation the authorities shall allow exporters at least 60 days to adjust their export prices to reflect sustained movements in exchange rates during the period of investigation.

Without prejudice to the foregoing provisions, the existence of margins of dumping at the investigation stage shall normally be established on the basis of a comparison of a weighted average normal value and a weighted average of prices of all comparable export transactions or by a comparison of normal value and export prices on a transaction-to-transaction basis. A normal value calculated on the basis of the weighted average may be compared to the prices of individual export transactions where the authorities find a pattern of export prices which differs significantly among different buyers, regions or time periods, and if an explanation is provided as to why such differences cannot be duly taken into account by the use of a weighted average or transaction-to-transaction comparison.

Article 26. Determination of the margin of dumping. Pursuant to Article 6.10 of the Anti-Dumping Agreement, as a general rule during the investigation procedure and for the purposes of the final determination, the individual margin of dumping for each known exporter or producer of the product investigated shall be determined. This individual determination shall be made on the basis of the provisions contained in Article 24 of this Executive Decree.

In cases where the number of exporters, producers, importers or types of product involved is so large as to make such a determination impossible, the examination may be limited to a reasonable number of interested parties or products by using samples that are statistically valid on the basis of the information available at the time of the selection or to the largest percentage of the volume of exports from the country in question that can reasonably be investigated.

Any selection of exporters, producers, importers or types of product made in accordance with this Article shall preferably be chosen in consultation with, and with the consent of, the exporters, producers or importers concerned.

In cases where the authorities have limited their examination, as provided for in this Article, they shall nevertheless determine an individual margin of dumping for any exporter or producer not

initially selected that submits the necessary information in time for it to be considered during the course of the investigation, unless the number of exporters or producers is so large that individual examinations would be unduly burdensome and prevent the timely completion of the investigation. The Investigating Authority shall receive voluntary responses.

Article 27. Determination of anti-dumping measures in cases of global margins. Where it is not possible to determine individual margins for all exporters, pursuant to Article 9.4 of the Anti-Dumping Agreement, the Investigating Authority shall ensure that any anti-dumping duty applied to imports from exporters or producers not included in the examination shall not exceed:

(a) The weighted average margin of dumping determined for the selected exporters or producers; or

(b) where the liability for anti-dumping duties is calculated on the basis of the prospective normal value, the difference between the weighted average normal value for the selected exporters or producers and the export prices of exporters or producers not individually examined.

The Investigating Authority shall disregard for the purposes of this Article any zero or *de minimis* margins and margins established in those cases where the exporter's refusal to cooperate means that the facts available had to be used. The authorities shall apply individual duties or normal values to imports from exporters or producers not included in the examination that have provided the necessary information during the course of the investigation, as provided in the preceding Article.

CHAPTER II

SUBSIDIES

Article 28. Definition of a subsidy. A subsidy shall be deemed to exist if:

(a) There is a financial contribution by a government or any public body within the territory of a country, i.e. where:

(i) A government practice involves a direct transfer of funds (e.g. grants, loans and equity infusion), potential direct transfers of funds or liabilities (e.g. loan guarantees);

(ii) government revenue that is otherwise due is foregone or not collected (e.g. fiscal incentives such as tax credits); in this case, the exemptions provided in footnote 1 to the Agreement on Subsidies and Countervailing Measures shall be taken into account;

(iii) a government provides goods or services other than general infrastructure, or purchases goods;

(iv) a government makes payments to a financing mechanism or entrusts or directs a private body to carry out one or more of the types of function illustrated in sub-paragraphs (i) to (iii) above, which would normally be vested in the government, and the practice, in no real sense, differs from practices normally followed by governments.

(b) Also, where there is any form of income or price support in the sense of Article XVI of the GATT 1994.

(c) For a subsidy to exist, in the cases covered by paragraphs (a) or (b) of this Article, a benefit must thereby be conferred.

Article 29. Specificity.

(a) A subsidy shall be considered specific to an enterprise or industry or group of enterprises or industries, pursuant to the provisions of Article 6 of Decree Law No. 7 of 2006, when one of the following principles applies:

(i) 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, activities or industries;

(ii) the State or the granting authority, or the legislation pursuant to which it operates, earmarks the subsidy for exported products or products incorporating domestic raw materials or inputs rather than those imported;

(iii) despite the existence of objective criteria or conditions laid down in a law, Executive Decree or other verifiable legal rule governing the right to receive the subsidy and its amount, the right to receive it is not automatic or the granting authority does not comply with the said objective criteria or conditions;

(iv) the subsidy is limited to certain enterprises located within a designated geographical region within the jurisdiction of the State or granting authority.

(b) Even where a subsidy may be specific but cannot be described in the above terms, the Investigating Authority may determine the subsidy to be specific having regard to the following elements: exclusive use of the subsidy by a limited number of enterprises or by an industry; predominant use of the subsidy by certain enterprises or industries; the granting of disproportionately large amounts of subsidies to certain enterprises; or the fact that the manner in which discretion has been exercised by the granting authority indicates that the subsidy is not generally available.

(c) Notwithstanding the provisions of the preceding paragraphs, a subsidy shall not be considered specific where the criteria or conditions governing eligibility for the subsidy and/or its amount are objective, neutral and horizontal in application, so that they do not favour a certain enterprise or industry, the subsidy is not limited to a certain enterprise or industry, and eligibility for the subsidy and its amount are automatic.

Any determination of specificity under the provisions of this Article and those in Article 2 of the Agreement on Subsidies and Countervailing Measures shall be clearly substantiated on the basis of positive evidence.

Article 30. Conditions for the application of countervailing duties. Countervailing duties may only be imposed pursuant to an investigation initiated and conducted in accordance with the provisions of this Executive Decree, in particular those set out in Article 2 thereof, and where

appropriate on the basis of the Agreement on Agriculture of the World Trade Organization. The aforesaid investigation shall establish that the subsidy investigated is specific, that it is causing injury within the meaning of this Executive Decree and that there is a causal link between the subsidized imports and the injury. The determination of the existence of a subsidy, injury, its causal link and the recommendation on imposing countervailing duties shall be the responsibility of the Investigating Authority in accordance with the administrative procedure provided in this Executive Decree.

Article 31. Factors used to establish the amount of a subsidy according to the benefit obtained by the recipient. The amount of a subsidy shall be calculated in monetary units or in *ad valorem* percentage per unit of subsidized product imported into the national territory.

(a) For the purposes of determining the amount of the subsidy, the Investigating Authority may take the following into account:

(i) Grants. Grants may be made in different forms including, but not exclusively, equity infusion, conversion of loans into capital or debt relief under an agreement. Determination of the amount of the countervailable subsidies in any given year shall take into account the time value of money and shall refer to the amount originally paid, the number of years that have elapsed since the grant was made, the average useful life of the plant or equipment and the rate of interest payable in the country of origin.

Provision of equity capital by the government shall not be considered as conferring a benefit unless the investment decision can be considered inconsistent with the usual investment practice (including the provision of risk capital) of private investors in the said country.

(ii) Loans. Loans granted by the government at rates equivalent to the market rate shall not be considered subsidies, although the benefits resulting from loans granted in circumstances under which they would not normally be granted and lower interest rates paid or payable for loans granted at preferential rates shall be considered subsidies. When determining the amount of the countervailable subsidy in a given year, the Investigating Authority shall consider the time value of money and shall include a reference to the original amount of the loan, the number of years that have elapsed, the rate of interest paid on the loan and the market rate of interest applicable in the country of origin.

(iii) Revenue foregone. When determining the amount of the countervailable subsidy in a given year, the Investigating Authority shall take into account any revenue due to the government of the exporting country that was foregone and the products to which such revenue pertains.

(iv) Tax holidays and rebates. Non-payment of corporate tax on export earnings is a prohibited subsidy and actionable, except for developing countries listed in Annex VII to the Agreement on Subsidies and Countervailing Measures. In its determination of the margin of subsidy, the Investigating Authority shall consider the enterprise's export earnings for the period investigated and the corporate tax rate in that country. In its determination of the margin of subsidy regarding a tax holiday, the Investigating Authority shall take into

account the amount of tax paid vis-à-vis the amount payable in the absence of such tax holiday, and the products to which it applies.

(v) Input subsidies. An input subsidy is a subsidy paid on the cost of an input for a product that is subsequently exported. In its determination of the margin of subsidy, the Investigating Authority shall consider the effect of the input subsidy on the cost or price of the product under investigation.

(vi) Over-reimbursement of customs duties. Over-reimbursement of customs duties occurs when a manufacturer imports raw materials to be used to manufacture final products intended for export and the duty paid on the imports is over-reimbursed, or where the exporter cannot provide proof that the imported product for which reimbursement was claimed has actually been incorporated into the exported product. In its determination of the margin of subsidy, the Investigating Authority shall consider the amount of customs duty payable and that rebated or refunded.

(vii) Preferential interest rates for export purposes. If interest rates lower than those prevailing in the market are granted to an enterprise by the government or a public body at the request of the government, they shall be regarded as a subsidy. In its determination of the margin of subsidy, the Investigating Authority shall consider the interest rate payable on domestic and export markets, the original amount of the loan and the value of the product exported.

(viii) Other subsidies. The Investigating Authority shall determine the margin or amount for any subsidy not indicated under the preceding paragraphs with reference to the facts pertaining to each such subsidy, taking into account the following:

1. The time value of money;

2. the duration of the subsidy;

3. whether the subsidy is linked to exports or to all sales or production; and

4. any other relevant information available to the Investigating Authority.

The Investigating Authority shall be entitled to take into account and add up any or all of the subsidies found during the course of the investigation, even if the industry has not alleged their existence.

(b) In addition to the provisions contained in paragraph (a) of this Article, when determining the amount of the subsidy the following elements shall be deducted from the total subsidy:

(i) Any expenditure that has necessarily been incurred in order to be eligible for the subsidy or to benefit therefrom;

(ii) export taxes, duties or other levies to which the export of the product to Panama 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 its application.

(c) The Investigation Authority shall also take into account the following exemption criteria for subsidies:

(i) A loan guaranteed by the government shall not be considered as conferring a benefit unless there is a difference between the amount that the enterprise receiving the guarantee pays on a loan guaranteed by the government and the amount that the enterprise would pay for a comparable commercial loan in the absence of the government's guarantee. In this case, the benefit shall be the difference between these two amounts, adjusted to take into account any difference in charges;

(ii) the supply of goods and services or the purchase of goods by the government shall not be considered as conferring a benefit, unless the goods or services are supplied for less than the appropriate remuneration or the purchase is made for more than the appropriate remuneration. The appropriateness of the remuneration shall be determined in relation to prevailing market conditions for the product or service in question in the country of supply or purchase (including price, quality, commercial viability, transportation and other conditions of purchase or sale).

TITLE IV

SUBSTANTIVE RULES ON SAFEGUARDS

CHAPTER I

GENERAL PROVISIONS

Article 32. Definitions and terms. For the purposes of this Executive Decree, the following definitions apply:

(a) Injury. This concept covers the serious injury caused to a domestic industry or the threat of serious injury to a domestic industry and this term shall be interpreted in accordance with the provisions of this Executive Decree, Article 52 of Decree Law No. 7 of 2006, and Article 4 of the Agreement on Safeguards.

(b) Facts available. Facts substantiated by evidence and data provided by the interested parties or additional parties in a proper and timely fashion, and the information gathered by the Investigating Authority during the course of the investigation and contained in the administrative file.

(c) Public interest. Pursuant to Article 3.1 of the Agreement on Safeguards and when it is considered appropriate, the Investigating Authority shall weigh up the various interests that may result from the application of a safeguard measure. In such cases, it

may take into account other elements such as those included in the following illustrative list:

(i) The effect that the imposition of a measure has had or is likely to have on competition in the domestic market;

(ii) The effect that the measure has had or is likely to have on domestic producers that use the goods as inputs in the production of other goods or for the supply of services;

(iii) The effect that the imposition of a measure has had or is likely to have on competition by limiting access to goods that are used as inputs in the production of other goods or for the supply of services, or by limiting access to technology;

(iv) The effect that the imposition of a measure has had or is likely to have on the choice or availability of goods at competitive prices for consumers; and

(v) The effect that the non-imposition of the measure or the non-imposition of such a measure in the full amount is likely to have on domestic producers of inputs, including primary commodities, used in the production of like goods.

(d) Interested parties. For the purposes of this Executive Decree, this covers the following:

(i) Foreign producers and/or exporters and domestic importers of the product under investigation and trade, industrial or agricultural associations the majority of whose members are domestic importers, foreign producers or foreign exporters;

(ii) The government of the country or customs territory of export of the product under investigation or the government of the country or customs territory of origin of the product under investigation;

(iii) Domestic producers or trade, industrial or agricultural associations the majority of whose members are domestic producers of like or directly competitive products;

(iv) Other interested parties determined by the Investigating Authority, for which purpose it shall take into account the existence of a legitimate interest or a subjective right that may be directly affected, impaired or satisfied as a result of the administrative investigation.

(e) Investigation period. For the purposes of Chapter IV of Decree Law No. 7 of 2006, this means the period of time for collecting and furnishing data for the corresponding examination of each of the various aspects in the investigation. Without prejudice to the Investigating Authority taking into account special circumstances and determining a different investigation period, the following periods shall be determined for collecting data:

(i) Period for investigation into the increase in imports. The period for collecting data on the increase in imports in safeguards investigations shall normally be three years and in no case less than 12 months and shall end as close as possible to the date of initiation of the investigation;

(ii) Period for investigation of injury. The period for collecting data in investigations for the purpose of establishing the existence of injury shall normally be at least three years, unless the party in respect of which data are being compiled has existed for a lesser period, and shall include the entirety of the period for data collection for the investigation into increased imports.

(f) Directly competitive product. Pursuant to Article 52.7 of Decree Law No. 7 of 2006, this means a product which, although not a like product, competes directly with the product investigated.

(g) Like product. Pursuant to Article 52.8 of Decree Law No. 7 of 2006, this means a product that is identical, in other words, is alike in all respects to the one with which it is compared. If the examination of similarity leads to a determination that there is no identical product, another product which, although not alike in all respects, has characteristics closely resembling those of the product investigated shall be considered a like product. In examining similarity, the Investigating Authority may take into account:

(i) The raw materials and other inputs used in producing the product;

(ii) the production process;

(iii) the physical characteristics and appearance of the product;

(iv) the end-use of the product;

(v) the substitutability of the product with the product under investigation;

(vi) the tariff classification; and/or

(vii) any other factor deemed relevant by the Investigating Authority.

No one or several of these factors can necessarily give decisive guidance.

(h) Foreign producer. Any natural person, entity in fact or in law, whether public or private, engaged in any form of economic production activity, acting on their own behalf or on behalf of another, as a foreign manufacturer of the product under investigation.

(i) Domestic producer. For the purposes of clarifying the scope of Article 52.4 of Decree Law No. 7 of 2006, a domestic producer means any natural person, entity in fact or in law, whether public or private, engaged in any form of economic production activity, acting on their own behalf or on behalf of another, as a manufacturer of the goods under investigation and offered for sale by them or by a third party.

(j) Bilateral safeguards and special triggering mechanisms. This definition includes so-called transitional safeguards, bilateral safeguards and any other measures without prejudice to the name given to the relevant regulation, which may be applied by the Republic of Panama in accordance with the provisions of international trade agreements, conventions or treaties and which differ from the emergency measures authorized exclusively by Article XIX of the GATT 1994 and the Agreement on Safeguards.

(k) Price undercutting. The amount by which the price of the imported product is less than the price of the like or directly competitive product produced by the industry, measured at an appropriate point of comparison.

Article 33. Product under investigation. For the purposes of Article 2 of the Agreement on Safeguards, this means the product exported which it is claimed is causing serious injury to the domestic industry.

Article 34. Examination of similarity. The product under investigation shall be subject to examination of similarity or competition, which shall consist of a comparison between the product under investigation and the like or directly competitive domestic product. This comparison shall be used to define the concept of interested parties and to undertake the analysis of the increase in imports, injury and causal link according to the corresponding provisions.

CHAPTER II

INJURY

Article 35. Determination of serious injury. In order to determine whether imports of a product have increased in such quantities or under such conditions as to cause serious injury to a domestic industry in accordance with Articles 53 and 54 of Decree Law No. 7 of 2006, the Investigating Authority shall evaluate all relevant factors of an objective or quantifiable nature having a bearing on the situation of that industry in order to determine whether, on the basis of the following elements, it may be concluded that there is significant general impairment of the situation in the domestic industry on the basis of the criteria below:

(a) Trend in imports: The rate and amount of the increase in imports shall be examined both in absolute terms and relative to the domestic industry, together with apparent domestic consumption, in order to establish whether the changes have been sudden and unexpected. The price of the imports, the import conditions and the share of the domestic market taken by increased imports shall also be taken into account.

(b) Situation of the domestic industry: The trend in the following indicators shall be examined, together with the performance that could reasonably have been expected from each in the light of the trend in the economy:

(i) Trend in output in absolute terms and relative to sales and domestic consumption;

(ii) trend in sales on the domestic market and net sales income, as well as the relationship between the two;

(iii) trend in the utilization of plant capacity;

(iv) productivity trend;

(v) profit and loss accounts;

(vi) employment;

(vii) price trends and impact of the imports: the trend in selling prices for the product on the domestic market shall be examined, together with the performance that could reasonably have been expected in the light of the trend in price indices in the economy, in order to determine whether the imports have depressed prices or have prevented price increases that would otherwise have occurred;

(viii) the trend in the volume of inventories, in absolute terms and relative to sales and domestic production, in order to establish whether there has been a deterioration in sales and production that reflects a quantifiable impact on the level of inventories;

(ix) the financial statements of the producing enterprise and for the production line for the product under investigation. Where it is not possible to obtain information on the production line, the impact shall be measured in relation to the production of a more restricted group or range of products that includes the like or directly competitive domestic product. The impact of the financial statements shall be measured taking into account the trend in the economic sector to which the domestic industry belongs;

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

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

Article 36. Determination of threat of serious injury. In order to determine a threat of serious injury caused by imports and pursuant to Article 4.1(b) of the Agreement on Safeguards, the following shall be considered in addition to the imminent effects on the factors referred to in the preceding Article:

(a) The possibility of an increase in imports due, *inter alia*, to the existence of a supply or sales contract, the award of a tender, an irrevocable offer or other similar contract;

(b) an increase in the export capacity of the country of origin as a result of increased utilization of plant capacity for the product investigated or an increase in inventories;

(c) the likelihood that the exports resulting from the increased potential capacity in the exporting country will be exported to the Panamanian market. For the purposes of this examination, the fall in prices, statistically valid estimations or other circumstances that may promote such exports may be taken into account;

(d) the existence of letters of credit for the payment abroad of imports of the product investigated.

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

CHAPTER III

CAUSAL LINK

Article 37. Determination of the existence of a causal link. Proof of the existence of a causal link between imports of the product under investigation and the injury caused to the domestic industry shall be provided based on an examination of all relevant evidence available to the Investigating Authority, as required by Article 55 of Decree Law No. 7 of 2006.

Article 38. Non-attribution. Pursuant to Article 4.2(b) of the Agreement on Safeguards, the Investigating Authority shall also examine any known factors other than imports of the product under investigation that are having an impact on the domestic industry, and are contributing to or participating in the injury caused to it and the injury caused by these other factors shall not be attributed to the imports under investigation. Factors that may be relevant in this respect include, *inter alia*, contraction in demand, changes in the pattern of consumption and the export performance of the domestic industry.

Where, after having assessed the impact of these other non-attributable factors and eliminated their impact on injury, the Investigating Authority finds that imports of the product under investigation continue to be a cause of injury, it may conclude that there is a causal link.

CHAPTER IV

GENERAL SAFEGUARDS

Article 39. Conditions of application. Pursuant to Article 2 of the Agreement on Safeguards, a safeguard measure may only be imposed in response to a rapid and significant increase in imports of a product as a consequence of an unforeseen change in circumstances if such an increase causes or threatens to cause serious injury to the domestic industry that produces like or directly competitive products.

Article 40. Types of safeguards. When imposing safeguard measures, the provisions of Article 5 of the Agreement on Safeguards shall be respected in the sense that the safeguard may be applied in the form of a customs duty or quantitative import restriction to the extent necessary to prevent or remedy serious injury and to facilitate adjustment. The choice of the type of measure to be imposed is at the discretion of the Investigating Authority, which may take into consideration any requests made by interested parties in this respect.

(a) Tariff modifications. The aim of application of a safeguard measure in the form of a tariff modification shall be to increase the tariff to a level that prevents or remedies the injury. For this purpose, the Investigating Authority may, as guidance, take into consideration the difference in prices between the weighted average import price of the product under investigation and the highest price of the like or directly competitive domestic product for local consumption. The Investigating Authority may also use any other method it deems reasonable and adequately justified when determining the type of measure to be applied.

(b) Quantitative restrictions. If a quantitative restriction is used, such a measure shall not reduce the quantity of imports below the level of a recent period, which shall be the average of imports in the last three representative years for which statistics are available, unless clear justification is given that a different level is necessary to prevent or remedy injury, taking into account the most recent date possible when establishing the measure.

(i) In cases where quantitative restrictions are used and the quota is allocated among supplying countries, agreement may be sought with respect to the allocation of shares in the quota with exporting countries having a substantial interest in supplying the product concerned;

(ii) in cases in which this method is not reasonably practicable, exporting countries having a substantial interest in supplying the product shall be allotted shares based upon the proportions of the total quantity or value of imports of the product supplied by the said countries during a previous representative period, due account being taken of any special factors that may have affected or be affecting trade in the product;

(iii) the Investigating Authority may depart from the provisions in sub-paragraph (b)(ii) of this Article provided that consultations are conducted with the exporting countries under the auspices of the Committee on Safeguards of the World Trade Organization and that clear demonstration is provided that:

1. The existence of serious injury and not only threat of serious injury has been determined;

2. it is established that the imports from certain countries have increased in disproportionate percentage in relation to the total increase in imports of the product under investigation over the period for collecting data on the increase in imports;

3. there are justified reasons for the departure from sub-paragraph (b)(ii) of this Article and the conditions of such departure are equitable for all suppliers of the product concerned; or the suppliers have not cooperated in the investigation.

Article 41. Adjustment plan for the domestic industry. Where the Investigating Authority deems it necessary and pursuant to Article 66 of Decree Law No. 7 of 2006, irrespective of whether the investigation was initiated ex officio or at the request of a party, the applicant may be required to submit a plan for reorganization of the industry or a plan to overcome the circumstances alleged to be the cause of injury. Submission of this adjustment plan by the domestic industry may be required by the Investigating Authority during the investigation or after it has concluded when recommending the application of measures to the Cabinet Council, without prejudice to presentation of the adjustment plan together with the application for initiation of an investigation.

Any adjustment plan must, as a minimum, include an identification of the circumstances to be overcome, the current circumstances so that the changes can be quantified, future developments, a planned scenario showing the circumstances overcome and a programme with the corresponding

timetable for carrying out the action to be taken to achieve the necessary conversion. The plan shall also show that it is financially viable and that the domestic industry has the necessary economic or credit resources to implement it. Lastly, the plan shall identify the performance indicators which, in the opinion of the industry, are appropriate for measuring the implementation of the adjustment plan.

The Investigating Authority shall examine the adjustment plan and shall consider whether the proposal is realistic and sufficient. If it considers that this is not the case, it may give the domestic industry an opportunity to modify the plan, for which a period not exceeding 15 calendar days shall be given. The proper implementation of these plans shall be revised and/or verified regularly by the Investigating Authority within the period of imposition of the safeguard measure.

Failure of the domestic industry concerned to comply with the implementation of the aforesaid plan may result in the immediate liberalization or suspension of the application of a safeguard measure, subject to the Investigating Authority's examination and recommendation, except in those cases in which failure to comply with the plan cannot be attributed to the domestic industry. Where partial non-compliance with the plan is attributable to the domestic industry, the impact of the liberalization or suspension of the measure on the domestic industry shall be evaluated as if it had complied.

Article 42. Negotiation of concessions and compensation. When applying or extending a safeguard measure, in accordance with Article 8.1 of the Agreement on Safeguards of the World Trade Organization, it shall be ensured that a substantially equivalent level of concessions and other obligations to those existing under the GATT 1994 vis-à-vis the exporting Members which would be affected by such a measure is maintained. To achieve this objective, there may be agreement on any adequate means of trade compensation for the measure's adverse effects on trade.

Article 43. Exemption from application of measures. Pursuant to Article 60 of Decree Law No. 7 of 2006, safeguard measures shall not be applied against a product originating in a developing country, Member of the World Trade Organization, as long as imports of the product concerned do not exceed three per cent (3%) of total imports and provided that developing country Members of the Organization with less than a three per cent (3%) import share collectively account for not more than nine per cent (9%) of total imports of the product concerned.

The exemption may be reviewed if, subsequent to the imposition of measures, a country that had been exempt pursuant to the preceding paragraph becomes a large supplier precisely in order to be exempt from application of the measure.

TITLE V

COMMON PROCEDURAL REGULATIONS

CHAPTER I

ADMINISTRATIVE FILE

Article 44. Content of the file. Any administrative action shall be recorded in writing and added to the respective file, except for action of an oral nature authorized by the law. The same shall apply to written submissions by the parties and to their interventions in the proceedings.

An administrative file shall be kept for investigation proceedings referred to in this Executive Decree and shall include all the documentation submitted by the parties, as well as that collected

ex officio by the Investigating Authority, which shall be filed chronologically according to the date of receipt. All the documentation shall be placed in the administrative file immediately and numbered consecutively using ink or any other secure medium. The file shall be divided into two parts, one of which shall contain information available to the public and the other confidential information, both of which shall be under the safe-keeping and responsibility of the Investigating Authority from the outset.

Article 45. Access to the file. In addition to the officials responsible for proceedings, access to the file shall only be given to interested parties, their attorneys and clerks, duly accredited to the office in writing, without prejudice to the right of interested third parties to obtain authenticated or certified copies from the respective authority, provided that the information is not confidential.

The files may only be taken out of the office when they are required for the submission of evidence, at the request of a supervisor who has to take cognizance of and decide on any procedure related to the facts concerned by the files' contents and upon authorization by the Office of the Attorney General or the Judiciary, or if the office does not have the appropriate means of complying with requests for copies.

Article 46. Requests for copies. Parties may request copies of the file and for this purpose they shall be duly accredited with the Investigating Authority and indicate the sheets for which they are requesting copies. This procedure may be conducted orally directly with the Investigating Authority and the costs shall be borne by the requesting party.

CHAPTER II

LEGAL STANDING

Article 47. Legal standing. Any person meeting the requirement of interested party as defined in Article 8(g) of this Executive Decree may be party to the administrative proceedings.

Article 48. Interested third parties. In addition to status as an interested party, the Investigating Authority may classify as an interested party any third party indirectly concerned by the final determination or rejection or revision, even if their interest is secondary or not direct in comparison with that of an interested party itself. Such a person shall act as an additional party. Such a third party shall participate in the proceedings but may not make any request on its own behalf or modify the claim to which it is an additional party, although it may make all claims of fact and of law in order to put forward its interest; it may not make appeals but may express an opinion in favour or against and provide arguments additional to those put forward by the interested parties.

This category may include industrial users of the product under investigation and/or the like domestic product and representative consumers' associations in cases where the product is normally sold at the retail level. In addition to the provisions in the preceding paragraph, these third parties shall be given an opportunity to furnish any information relevant to the investigation in connection with the facts being investigated.

Article 49. Professional representation. Pursuant to Article 50 of Law No. 38 of 2000, any action by parties in administrative proceedings on trade safeguards shall be through a competent attorney, in particular, the submission of an application for investigation, in accordance with Articles 28 and 62 of Decree Law No. 7 of 2006. Direct action by the parties such as requests for copies, review of a file, certificates and other such acts or similar acts are excluded from this requirement.

CHAPTER III

EVIDENCE

Article 50. Information requirements. Pursuant to Articles 35 and 71 of Decree Law No. 7 of 2006, the Investigating Authority may require the evidence, information and data it deems relevant from all parties to the proceedings and may use forms for this purpose. The Investigating Authority shall inform the parties concerned by an investigation of the information required and shall give ample opportunity to submit in writing all the evidence it deems relevant. Notwithstanding the investigative powers of the Investigating Authority, both the applicant and the other interested parties shall bear prime responsibility for substantiating the claims in defence of their interests.

The Investigating Authority may also require domestic producers, distributors or traders of the product or good in question, as well as customs officials, attorneys or consignees of importers, or any other person, legal entity or government body it deems appropriate, to supply information and data available to them.

Article 51. Types of evidence. Evidence shall consist of documents, affidavits, official inspections, exhibits, expert opinions, reports, circumstantial evidence, scientific methods, photocopies or mechanical reproductions and documents sent in the form of facsimiles, as well as any other rational element used to form the official's opinion, provided that they are not specifically prohibited by law and are not contrary to morality or public order. In the case of facsimile evidence and copies, the public entity concerned shall guarantee their authenticity, comparing them with the original within a reasonable period of time after receipt, by means of authentication by a notary or any other method it deems appropriate.

The Investigating Authority shall assess the admissibility of the evidence proposed and submitted by the parties, whether or not in the order of their submission, concerning the facts to be substantiated and shall also take into consideration the legal regulations governing evidence. The provisions listed below shall be taken into account with regard to evidence.

(a) Documents. Written or printed matter, plans, drawings, pictures, photographs, photocopies, X-rays, cinematographic films, discs, sound recordings and, in general, any object of a representative or declarative nature. The following rules shall apply in the case of documents:

(i) All documents drawn up or supplemented by government officials according to the required form and within the limits of their functions shall be considered public documents. Photocopies of original documents shall have the status laid down in this Article if the official authorizing them certifies therein the reason for which they are faithful reproductions of the originals. Documents drawn up by public notaries are public deeds, as are any other documents expressly designated as such by the law;

(ii) provided that they are not claimed to be counterfeit copies, public documents or deeds provide convincing evidence of the material existence of the facts which the public official affirms therein that he has himself carried out or that were carried out in his presence, in exercise of his functions;

(iii) public documents issued abroad shall be deemed comparable to Panamanian public documents provided that they meet the following requirements:

(1) they have been issued in accordance with the forms and formalities required in the country where the acts and contracts have been verified; and (2) the signature of the issuing official has been duly authenticated;

(iv) private documents issued in Panama or abroad and recognized by the parties or declared as recognized in accordance with the law shall be valid between the parties and in relation to third parties in respect of the statements contained therein, unless otherwise proven. The same shall apply to information published on the Internet, for which the party presenting it must submit a hard copy to be included in the file indicating precisely the electronic address of origin, as well as the date and time at which the hard copy was printed in order to determine that the information existed as printed at that time;

(v) private documents issued abroad may be subject to a consularization procedure or certified signature by the party providing the document. Such a procedure shall not be proof of the validity of their content, which shall be subject to the normal requirements governing private documents;

(vi) any document drawn up in any language other than Spanish shall be accompanied by a translation and copies of both. The translation shall be undertaken by an official translator and the cost borne by the party providing the document.

(b) Testimony. Testimony shall be valid for proving or clarifying facts relevant to the investigation of which the person providing the testimony has direct knowledge. The witness shall be a person of integrity and have no interest in the matter. Persons with any type of direct or indirect interest in the outcome of the investigation may testify, but their declarations shall be evaluated in this light. This is why prior to making a statement witnesses shall swear or affirm that they are declaring the truth on pain of bearing false witness; accordingly, the person responsible for the proceedings shall read out and explain to the witness in an easily understandable way the consequences that failure to tell the truth could involve in the case of perjury.

(c) Expert or technical opinions. Expert or technical evidence shall be given when it is necessary to evaluate facts or circumstances that require special knowledge outside the field of law. A party interested in providing expert evidence shall, when offering it, explain clearly and precisely the points on which the decision should focus and at the same time formulate the questions to which the expert should reply.

After agreement to the submission of expert evidence has been given, the other interested party shall be immediately notified. Any interested party opposing it may, within a specified period reasonably determined by the Investigating Authority, request that the evidence regarding the points of the decision be supplemented, describing them in detail, or may contest all or some of the points. The expert's fees shall be covered proportionately by each party according to the information requested from the expert by each one of them.

Article 52. Obligation to collaborate and obstruction of the investigation. The parties and their attorneys shall be obliged to collaborate in obtaining the evidence specified. The Investigating Authority shall communicate to interested parties sufficiently in advance the place, date and time for

submission of evidence, where appropriate, advising that the interested party may appoint an attorney or experts to assist it.

In cases in which an interested party refuses access to the necessary information, does not allow its verification, does not provide it within a reasonable time or significantly impedes the investigation, the Investigating Authority may formulate preliminary or definitive positive or negative determinations on the basis of the known facts and the best information available. In implementing this paragraph, the provisions set out in Annex II, which forms part of this Executive Decree, shall apply.

Article 53. Confidential information. For the purposes of this Executive Decree and Articles 6.5 of the Anti-Dumping Agreement, 12.4 of the Agreement on Subsidies and Countervailing Measures and 3.2 of the Agreement on Safeguards, any information which is by nature confidential or which is provided on a confidential basis by parties to an investigation shall, upon good cause shown, be treated as such by the authorities. Information provided under such conditions shall be clearly identified as confidential, otherwise it shall not be considered as such. Such information shall not be disclosed without the specific consent of the party submitting it.

Information may be considered confidential or subject to restricted access if for reasons of public or individual interest it may not be disseminated because its disclosure would imply a significant advantage for a competitor or would have a significantly unfavourable effect for the person providing the information or for a third party from which it was received, likewise information whose disclosure could cause serious prejudice to society, the State or the person concerned, as is the case for example for negotiations on international treaties and conventions, national security, political ideas, civil status, criminal and police records, bank accounts and other similar information which is confidential in accordance with legal provisions.

It shall be the responsibility of the Investigating Authority to decide whether the justification for confidentiality is sufficient. Where this is not the case, it shall inform the party that this information will not be taken into account unless it can be convincingly shown using appropriate sources that the information is correct, for which purpose a strict time-limit will be granted that may be five to ten days. If the explanations are not satisfactory, the information shall be returned to the party providing it unless it agrees that the information should be made public and consents to its disclosure.

In accordance with the last paragraph of Article 86 of Decree Law No. 7 of 2006, where copies of documents or certificates containing confidential information are to be obtained, these shall only be provided at the request of the Office of the Attorney General or the judicial authority in the form prescribed by the relevant provisions, in which case the said authority shall ensure that the information is treated confidentially.

Article 54. Non-confidential summaries. In accordance with Article 86 of Decree Law No. 7 of 2006, the Investigating Authority shall require any person providing confidential information to attach non-confidential summaries thereof. The non-confidential summary shall be equivalent to the confidential document with an indication in each case of the information that has been omitted and the reasons therefor. Such summaries shall be sufficiently detailed to allow the other interested parties to have a clear understanding of the information provided, for which purpose the explanatory means used may include the following: data charts in percentage terms, a generic explanation of the data furnished, etc. In exceptional circumstances, the parties may indicate that the information is not susceptible of summary. In such exceptional circumstances, they shall state the reasons for which the information cannot be summarized.

If the Investigating Authority finds that the summaries are not sufficiently detailed or that the reasons given for finding it impossible to summarize the information are not warranted, it may disregard such information and return it to the party providing it so that within a strict time-limit of five to ten days it can make good the omission, renounce its presentation or authorize its inclusion in the file as non-confidential information or convincingly show using appropriate sources that the information is correct.

Article 55. In situ verification. During the investigation the Investigating Authority shall satisfy itself of the accuracy of the information submitted by the interested parties, for which purpose when it considers it appropriate it may undertake in situ verification of the information provided by the parties on which to base its conclusions, directly in either domestic or foreign enterprises. The enterprises shall be informed of the visit in advance and of the general nature of the information to be verified, without this preventing a request for further details during the visit in the light of the information obtained.

Where it is necessary to conduct investigations in the territory of other Members, the agreement of the enterprises concerned shall be obtained and the representatives of the government in question informed, provided that the said government does not oppose the investigation.

In investigations conducted in the territory of other countries, the procedure set out in Annex I to Article 209 of this Executive Decree shall be followed. Without prejudice to the provision on the protection of confidential information, the Investigating Authority shall make the findings of these investigations available to the enterprises concerned or shall provide information thereon and may make the findings available to the applicants.

Article 56. Evidence whose cost is to be borne by the interested parties. The Investigating Authority may request from interested parties ex officio and at their cost questionnaires, expert opinions, technical decisions or criteria and undertake any type of administrative procedure leading to verification of the facts claimed. The parties may also offer to assume the cost of obtaining any evidence they propose when the cost of obtaining such evidence cannot be borne by the State.

Article 57. Evaluation of evidence. Evidence shall be evaluated according to rules of sound criticism without excluding the documentary probity established by law for the existence or validity of certain acts or contracts.

CHAPTER IV

ADMINISTRATIVE RESOLUTIONS AND DECISIONS

Article 58. Administrative decisions. Decisions by the authorities in proceedings governed by this Executive Decree shall be classified in accordance with Article 201 of Law No. 38 of 2000 and shall be clear, precise and consistent. Depending on their content, they shall be entitled as follows:

(a) Resolution. A legally-based and duly substantiated administrative act deciding on the merits of the petition, bringing proceedings to an end or deciding on an incident or appeal at government level. All resolutions shall include a number, date of issue, the name of the authority issuing it and a preambular part explaining the criteria justifying it. The substantive part shall contain the decision, appeals that may be made against it at the government level, the legal basis and the signature of the official responsible.

(b) Resolution for immediate compliance. An administrative act that must be complied with immediately and may not be contested, for example, resolutions concerning a request for copies, the transmission of a file to a supervisor, closure of volumes, etc.

(c) Procedural resolution. This decides on the admissibility or rejection of evidence, on the confidentiality of information and any other interlocutory matters regarding the normal course of the proceedings but not involving the substance of the case.

(d) Substantive resolution. This category shall include those resolutions deciding on the initiation of an investigation or the imposition of provisional measures and resolutions ending the proceedings, whether or not by imposing definitive measures, and in general decisions on the merits of the claim.

The relevant competent authority shall comply with the principle of transparency and with its obligation to give public notice under the terms of this Executive Decree and Law No. 23 of 1997.

Article 59. Content and form of substantive resolutions. Substantive resolutions shall resolve each and every aspect that was the subject of the investigation. In addition to complying with the general requirements prescribed in Law No. 38 of 2000, the competent authority shall take into account the following considerations regarding content and form:

(a) The paragraphs shall be numbered consecutively from first to last throughout the body of the resolution.

(b) The following aspects shall be included in the examination of the substance, together with any other aspects deemed necessary by the competent authority, in particular those indicated in Law No. 23 of 1997:

(i) An evaluation of the lack of cooperation or hindrance by parties in furnishing evidence and the decision to utilize known facts and the best information available;

(ii) an analysis of the substantive issues raised by the parties, the exceptions put forward and the reasons deemed applicable. In particular, there shall be an analysis of the conditions or requirements for the decision on whether or not to impose measures to safeguard trade, indicating separately matters relating to unfair practices or increased imports, injury, and the causal link;

(iii) there shall be an analysis of whether or not the provisional measures, if imposed, should be confirmed, as well as any other issue related to retroactivity of definitive measures.

(c) In its decision, the competent authority shall mention the following aspects, as well as any other aspect deemed necessary:

(i) Acceptance or rejection of price undertakings and exemption of exporters from the proceedings;

(ii) determination of whether or not there has been unfair practice or an increase in imports, injury, and the causal link;

(iii) a recommendation to the Cabinet Council on the imposition of definitive measures, their duration and scope, or rejection of the complaint;

(iv) a recommendation to the Cabinet Council confirming or annulling provisional measures and retroactive application of the definitive measures.

CHAPTER V

COMMUNICATION AND NOTIFICATION

Article 60. Notifications. Resolutions shall be notified in accordance with this Executive Decree and other regulations governing administrative proceedings. Resolutions for immediate compliance or procedural resolutions shall be notified within two days following the date on which they were issued. In the case of substantive resolutions, the formalities for their notification shall be initiated at the latest within five days following the date of their issue, without prejudice to a decision by the Investigating Authority that, for the purposes of transparency, an excerpt thereof should be published in the *Gaceta Oficial*.

Notifications to be made in the national territory may be transmitted: personally, by registered mail, by public display, by publication in the *Gaceta Oficial* or a national newspaper with broad circulation, or by any other direct means such as specialized messenger service, or by electronic means. Notifications transmitted by any of the foregoing means shall take effect on the working day following that on which they were made, unless otherwise provided.

The first notification to be made to interested parties abroad that have not indicated any address for notifications in the national territory may be made through the postal services or by transmission to the competent diplomatic representative of the exporting Member accredited to Panama or otherwise to an official representative of the exporting country accredited preferably to the World Trade Organization or other similar organization. For the purposes of this Article, a notification shall be considered to have been received one week after the date on which it was sent to the addressee. Parties that have been notified in accordance with the provisions in this Article shall indicate an address or similar mechanism in order to receive notifications. Any interested party that does not provide such an indication shall be deemed to have been notified of the following procedural acts after expiry of the twenty-four (24) hours following notification of the last of the parties that has duly indicated an address therefor.

The Investigating Authority may directly inform the government of the country of origin or export of the product investigated of those procedural acts required by this Executive Decree. Such notifications may be transmitted using any of the means provided in this Article to the diplomatic representation in the Republic of Panama or, in its absence, to the representation at the World Trade Organization.

In conformity with the World Trade Organization's principle of transparency, public notice of any substantive resolutions taken during the proceedings shall be put on the website of the Investigating Authority and an excerpt shall be published in the *Gaceta Oficial* or in any national newspaper with broad circulation. These public notices shall not include any information deemed to be confidential.

Article 61. Notice and communication to the World Trade Organization. The Minister for Trade and Industry shall promptly transmit communications and/or notifications through Panama's Permanent Mission in Geneva, Switzerland, to the Committee on Anti-Dumping Practices, the

Committee on Subsidies, or the Committee on Safeguards, as appropriate. These communications shall be those which the Republic of Panama must make in its capacity as a Member of the World Trade Organization and in general terms include at least the following: (a) notice of the initiation of an investigation; (b) the imposition of provisional or definitive measures; (c) the acceptance of price undertakings; and (d) the suspension, elimination or extension of measures.

CHAPTER VI

REMEDIES

Article 62. Acts open to appeal. Substantive resolutions may be contested by the persons they affect. In such cases and pursuant to Article 93 of Decree Law No. 7 of 2006, it shall only be possible to lodge an appeal, which shall be granted with devolutive effect.

Article 63. Appeals. Appeals shall be lodged or submitted to the first-level authority in the act of notification, or made in writing within five working days of the date of notification of the resolution or act contested, pursuant to Title XI, Chapters I and III, of Law No. 38 of 2000. For the purposes of appeal proceedings, the provisions in Articles 171 et seq. of Law No. 38 of 2000 shall be followed.

Article 64. Resolution of appeals. Where it has not been announced that any evidence is to be submitted at this level, the decision shall be adopted within a period not exceeding fifteen working days of the appeal if it has been directly transmitted to the higher-level office or from the date on which the latter received the file if the appeal was made to a first-level authority.

Article 65. Exhaustion of administrative remedies. In the absence of a response from the competent official within the requisite period, the appeal shall be deemed to have been rejected and the administrative remedies exhausted. The same shall apply to rejection of the appeal.

CHAPTER VII

EARLY TERMINATION

Article 66. Termination of the investigation. In investigations into unfair trade practices, when the Investigating Authority determines that the margin of dumping or the amount of the subsidy is *de minimis*, it shall immediately terminate the investigation, as provided in Article 16 of Decree Law No. 7 of 2006. Where the Investigating Authority determines that the volume of actual or potential imports dumped or subsidized is negligible, the same shall apply.

Article 67. *De minimis* margin. In investigations into unfair trade practices, a margin shall be considered *de minimis* in the following cases:

(a) In dumping investigations, when the margin is less than two per cent (2%), expressed as a percentage of the export price.

(b) In subsidies investigations, the amount of the subsidy shall be considered *de minimis* when the amount of the subsidy is less than one per cent (1%) *ad valorem*. When the exporting country is a developing country, it shall be considered that the total level of subsidies granted for the product in question is *de minimis* if it does not exceed two per cent (2%) of its value, calculated on a per unit basis.

(c) The foregoing calculations may be made as a total per country and individually by exporter and if the total margins are less than the levels determined, the investigation shall be terminated in accordance with the preceding Article. Where it is determined that there are individual *de minimis* margins for certain exporters, the investigation into those exporters shall be terminated but shall continue for those exporters with higher margins.

Article 68. Negligible imports. Imports shall be considered negligible in the following cases:

(a) In dumping investigations, when the volume of the dumped imports from a particular country accounts for less than three per cent (3%) of imports of the like product into the domestic market, unless countries which individually account for less than three per cent (3%) of the imports of the said product into the domestic market collectively account for more than seven per cent (7%) of such imports.

(b) In subsidies investigations, when the subsidized products come from developing countries and the volume of such imports accounts for less than four per cent (4%) of total imports of the like product into the domestic market, unless the imports from developing country Members which individually account for less than four per cent (4%) of total imports collectively account for more than nine per cent (9%) of total imports of the like product into the domestic market.

(c) In general safeguards investigations, safeguard measures shall not be applied against a product originating in a developing country Member where its share of imports by the Member importing the product in question does not exceed three cent (3%), unless developing country Members which individually account for less than three per cent (3%) collectively account for more than nine per cent (9%) of total imports of the product in question.

(d) When the exports under investigation come from more than one country, the investigation may continue for those countries whose exports are not negligible.

Article 69. Withdrawal. The complainant may at any time withdraw from the investigation, by means of a duly substantiated written request, and the Investigating Authority shall then terminate the investigation. If the complaint has been submitted by several enterprises, withdrawal by some of them shall not entail termination of the investigation if the remainder represent a large proportion of the domestic industry.

TITLE VI

ORDINARY PROCEEDINGS AGAINST UNFAIR TRADE PRACTICES

CHAPTER I

PHASE PRIOR TO INITIATION OF THE INVESTIGATION

Article 70. Application. Investigations intended to determine the existence, degree and requirements necessary for the imposition of any of the measures regulated by this Executive Decree shall be initiated subject to a written application made by the domestic industry or on its behalf, except in those cases in which special circumstances justify the ex officio initiation of an investigation.

Article 71. Entitlement. All domestic producers of like products according to the definition contained in Article 9 of this Executive Decree and the provisions in Articles 26 and 27 of Decree Law No. 7 of 2006 shall be entitled to make an application if the application for initiation of an administrative investigation is supported by those producers whose collective output accounts for more than fifty per cent (50%) of total production of the like product or good among those which have expressed to the Investigating Authority either support for or opposition to the initiation of an investigation. In addition, in order to be entitled to request initiation of an investigation, the domestic producers expressly supporting the request, together with the complainants, shall account for at least twenty-five per cent (25%) of total production of the like product or good produced by the domestic industry.

The Investigating Authority may determine whether the above condition has been met using statistical techniques. In the case of fragmented production involving an exceptionally large number of producers, sampling techniques may be used. In ascertaining compliance with this requirement, the Investigating Authority may request the accreditation of each person acting on behalf of the domestic industry.

Article 72. Minimum content of the application. The application shall be drawn up by a competent attorney and shall set out the arguments and grounds of fact and of law substantiating it. In addition to the information specified in Article 28 of Decree Law No. 7 of 2006, the application shall contain at least the following information:

(a) Particulars of the applicant;

(b) detailed description of the product to be investigated, including the tariff classification, characteristics and other distinguishing particulars;

(c) description and information regarding the domestic industry to which the applicant belongs;

(d) detailed description of the like product or good of the domestic industry and other distinguishing particulars;

(e) the percentage of the like product or good of the applicant in relation to total domestic output of the said product in order to prove that the entitlement requirements have been met;

(f) name and domicile of the importers and exporters, if known;

(g) the volume and prices of the imports that are the subject of the application for an investigation and other facts and data leading to the presumption of the existence of an unfair trade practice, as well as the alleged margin of dumping or amount of the subsidy;

(h) country of origin and source of the imports; and

(i) analysis, factors, data or documents showing injury and the causal link as defined in this Executive Decree as a result of the imports under conditions of unfair trade practices.

Information and evidence that is submitted as confidential shall be clearly identified as such for the purposes of its classification. The application shall comply with the requirement on non-confidential summaries.

Any information or data which the applicant wishes to submit together with the application and which is to be provided by government bodies according to their competence may be deemed to have been filed with the competent authority if the applicant provides reliable evidence of the formalities completed to obtain them.

The applicant shall provide electronic copies of the complete application, including all its annexes. The complainant shall certify that the electronic copy submitted contains the same information as the application and, moreover, shall be responsible for ensuring that this information is contained in the version available to the public.

The Investigating Authority shall avoid all publicity regarding the application for initiation of an investigation until the latter is officially initiated.

Article 73. Initial review: formal requirements. After receiving the application, the Investigating Authority shall examine the information contained therein in order to determine whether or not all the information required pursuant to the preceding Article of this Executive Decree and Article 28 of Decree Law No. 7 of 2006 has been included.

Article 74. Notification of the applicant and extension. Where the application does not comply with the formal requirements laid down in Decree Law No. 7 of 2006 or this Executive Decree, the Investigating Authority may require compliance with the requirements not met. Likewise, even where all the formal requirements have been met but all the information required has not been provided or if it is inaccurate or unclear, the Investigating Authority may require that the information contained in the application be corrected, clarified or supplemented in order to comply with the procedure specified in Article 29 of Decree Law No. 7 of 2006. This initial review shall take place within five (5) working days of the date of submission of the application. At the end of this period, if a notification has to be made in accordance with this Article, a period of ten (10) working days following such notification shall be given to meet the requirement to correct, clarify or supplement the information in order to comply with the instructions of the Investigating Authority.

Article 75. Rejection of the application. After expiry of the period determined in the preceding Article, if the applicant has not complied with the requirement on additional information, the application shall be rejected and filed by means of a reasoned decision. A reasonable extension to the aforementioned period may be granted by the Investigating Authority, either upon a reasoned request from a party or when circumstances so warrant.

Similarly, the Investigating Authority may reject the application if the information submitted is false or irrelevant, or where the application is ill-considered, inappropriate or unjustified.

Article 76. Communication of the application. Until the resolution to initiate an investigation has been issued, the authorities, in accordance with Article 28 of Decree Law No. 7 of 2006, shall avoid all publicity regarding the application for initiation of an investigation. Nevertheless, after receiving a duly documented application that meets the formal requirements and before initiating an investigation, the Investigating Authority shall directly notify the government of the country exporting the product under investigation, by means of the channels provided in this Executive Decree. In making such communications, the Investigating Authority shall act expeditiously, promptly and directly in accordance with Articles 60 and 61 of this Decree.

Article 77. Invitation to consultations. In the special case of investigations into subsidies, together with the communication indicated in the preceding Article and pursuant to Article 13.1 of the Agreement on Subsidies and Countervailing Measures, the government or governments exporting the product under investigation shall be invited to hold consultations with the aim of clarifying the situation as to the matters referred to in Article 11.2 of the said Agreement and arrive at a mutually agreed solution.

Likewise, throughout the period of investigation, Members whose products are the subject of investigation shall be afforded a reasonable opportunity to continue consultations, with a view to clarifying the facts of the case. Without prejudice to the obligation to afford reasonable opportunity for consultation, these provisions regarding consultations shall not prevent the competent authority from proceeding promptly to initiate an investigation, reach preliminary or final determinations, whether affirmative or negative, or apply provisional or definitive measures, in accordance with the provisions of Article 13 of the Agreement on Subsidies and Countervailing Measures.

Paragraph: In accordance with the provisions of this Article, it is particularly important that no affirmative determination, whether preliminary or final, be reached without reasonable opportunity being given for consultations. Such consultations may establish the basis for proceeding under the provisions of Parts II, III or X of the WTO Agreement on Subsidies and Countervailing Measures.

CHAPTER II

OPENING AND INITIATION OF THE PROCEDURE

Article 78. Review of the application: examination of the substance. After the form of the application has been reviewed and it has been determined that the application for an investigation received is complete, the Investigating Authority shall undertake an examination of its substance, for which a period of fifteen (15) working days shall be given to evaluate the merits of the application and, by means of a reasoned decision from the competent authority, declare the initiation or rejection of the administrative investigation. During this review, the Investigating Authority shall determine whether or not there is sufficient evidence to warrant the initiation of an administrative investigation and whether the application has been submitted on behalf of the domestic industry in such a way that it meets the entitlement requirements set out in Article 71 of this Executive Decree.

Article 79. Rejection and filing of the application. The competent authority shall reject the application submitted and terminate the investigation promptly if it has ascertained that there is not sufficient evidence of either dumping or subsidies and/or injury to justify proceeding with the case, as provided in Articles 5.8 of the Anti-Dumping Agreement and 11.9 of the Agreement on Subsidies and Countervailing Measures, respectively.

Likewise, in accordance with the provisions of Article 66 of this Executive Decree, the application shall be rejected if it is determined that the volume of imports is negligible and, additionally, in the case of unfair trade practices, if these practices are deemed to be "*de minimis*".

Article 80. Prerequisites for opening an investigation. By means of a reasoned resolution, the competent authority shall decide to initiate an administrative investigation after it has verified compliance with the formal and substantive requirements and, in particular, that the evidence accompanying the application is sufficiently accurate, reliable and credible to comply with the necessary requirements for the imposition of measures at a level that justifies initiation of an investigation.

Article 81. Requirements for ex officio opening of an investigation. In special circumstances, the competent authority may decide to initiate an investigation without having received a written application from the domestic industry or on its behalf requesting initiation of an investigation. In order to be able to initiate an ex officio investigation, the competent authority shall only proceed when it has sufficient evidence of compliance with the necessary requirements for the imposition of measures at a level that justifies the initiation of an investigation.

Article 82. Resolution on initiation of an investigation. If a review of the application shows that there is sufficient evidence to justify the opening of an investigation, the competent authority shall issue a resolution initiating the corresponding investigation procedure. As a minimum, the resolution shall contain the following:

(a) Identification of the person issuing the resolution, together with the place and date on which it was issued;

(b) the contact details of the Investigating Authority responsible for carrying out the investigation;

(c) an indication that the application and the detailed description of the documents accompanying it are admissible;

(d) a detailed description of the product under investigation which has been imported or is being imported, including the tariff heading, characteristics and other distinguishing particulars;

(e) particulars of the applicant and the percentage of its production of the like product in comparison with total domestic output of the said product;

(f) description and details of the domestic industry, including the name or company name and domicile of each producer and other details concerning domestic producer(s) of the like product identified as forming part of the domestic industry;

(g) the country or countries of origin or source of the product under investigation which is allegedly the subject of unfair trade practices;

(h) the name, domicile and other details of local importers, exporters and foreign producers of the product under investigation;

(i) description, identification and details of other interested parties to be considered as such in the investigation;

(j) the grounds and substantiation underpinning the resolution, including information on the existence of the necessary requirements and conditions for the imposition of measures;

(k) the period given to interested parties and, where applicable, to the foreign government(s) indicated in which to communicate the evidence they deem appropriate, as well as the place to which they may send their claims;

(l) the investigation periods shall be determined and communicated. These periods may be modified in duly justified situations at the discretion of the Investigating Authority after initiation and prior to issuing the preliminary resolution provided that the interested parties are once again given sufficient time to submit the information required for proper defence of their interests.

Article 83. Notification and public notice of the resolution. The resolution to initiate an investigation shall be communicated to the country or countries whose products are to be investigated, as well as to other interested parties whose interests are known to the Investigating Authority, transmitting it in accordance with the Article below, for which purpose the Investigating Authority shall have a period of ten (10) calendar days. In addition, public notice of initiation of the investigation shall be given in accordance with Article 60 of this Executive Decree.

Article 84. Communication. When notifying a resolution on initiation of an administrative investigation, the requirements laid down in Article 33 of Decree Law No. 7 of 2006 must be met, transmitting the resolution on initiation to the interested party or parties so that they may defend their interests within a period of thirty (30) calendar days as of receipt of the communication or, in the case of exporters, seven (7) calendar days following dispatch of the communication to the addressee or transmittal to the competent diplomatic representative of the exporting country or countries. Due attention shall be given to any request for extension of the period of thirty (30) calendar days and, provided there is sufficient and reasonable proven justification for doing so, the extension shall be granted whenever feasible.

When making the communication prescribed by this Article to known exporters, a copy of the application submitted shall be attached, together with the accompanying annexes, and in the case of an investigation initiated ex officio, the documents used as a basis shall also be attached. In any case, the documentation to be transmitted shall be restricted to non-confidential information in accordance with the provisions of this Executive Decree.

The documentation mentioned in this Article shall be handed over to the government authorities of the exporting country by means of direct notification to the accredited diplomatic or consular representation in the country in accordance with the provisions of this Executive Decree and with international agreements to which Panama is party. If there is no accredited diplomatic or consular representation in the country, this communication may be made through the Republic of Panama's trade mission to the World Trade Organization to the accredited authority of the exporting country to the said Organization.

CHAPTER III

PROCEEDINGS AND RECEIPT OF EVIDENCE

Article 85. Requests for information. The Investigating Authority may seek from interested parties, government bodies and third parties not party to the proceedings, any evidence, information or data it deems relevant and may use forms for this purpose.

(a) From interested parties: dispatch of questionnaires. It shall send a questionnaire requesting information to foreign producers, exporters, importers and domestic producers. The interested parties shall be given a period of thirty (30) calendar days in which to respond to the questionnaires. Due attention shall be given to any request for extension of this period and provided that there is proven justification a further period of up to thirty calendar days shall be given.

(b) From government bodies. The Investigating Authority may at any time request bodies belonging to the public administration to provide any type of information or technical opinions, which they must furnish within a period thirty (30) calendar days at the latest.

(c) From third parties not party to the proceedings. The Investigating Authority may at any time require Panamanian producers, distributors or traders of the product or good in question, as well as customs officials, agents, attorneys or consignees of the importers, or any other person it deems appropriate, to furnish information and data available to them and relevant for the purposes of the investigation.

Paragraph: With regard to paragraph (a) of this Article, as a general rule, the periods given to exporters shall be calculated from the date of receipt of the questionnaire and for this purpose it shall be considered as having been received seven calendar days after the date on which it was sent to the addressee or handed to the competent diplomatic representative of the exporting Member, or in the case of a separate customs territory Member of the WTO, to an official representative of the exporting territory.

Article 86. Submission of evidence. In accordance with the provisions of Article 36 of Decree Law No. 7 of 2006, the parties may furnish their evidence during the period for communication specified in Article 84 of this Executive Decree or for reply to the questionnaires. In those cases in which an extension of this period has been requested and granted, the period for furnishing evidence shall also be extended.

Article 87. Admissibility and rejection of evidence. In order to decide what evidence is admissible and what is not, the Investigating Authority shall examine the relevance or otherwise of each piece of evidence in respect of the facts to be proved; for this purpose, it shall take into consideration the legal rules governing evidence.

The process of admissibility and rejection of evidence shall take into account the evidence offered by the parties, the provisions of this Executive Decree and of Decree Law No. 7 of 2006, after expiry of the last period for communication, including any extensions granted. Nevertheless, nothing shall prevent the Investigating Authority from allowing and ordering parties to furnish the evidence offered before expiry of this time-limit.

Article 88. Period for examining evidence. After it has been decided what evidence is admissible, it shall be furnished within a period not exceeding thirty (30) calendar days as of the end of the period for communication, as indicated in Article 36 of Decree Law No. 7 of 2006. This period may be extended by the Investigating Authority in light of the requirements applicable in each case.

To further the proceedings, the Investigating Authority may likewise at any time request any type of information or technical opinions from any of the bodies belonging to the public administration, which they must furnish within thirty (30) calendar days at the latest.

Without prejudice to the provisions on protection of confidential information, the evidence presented shall be placed in the file at the disposal of other interested parties taking part in the investigation that so request.

Article 89. Evidence to further the proceedings. To further the proceedings, the Investigating Authority may require the communication of any of the types of evidence provided in Article 51 of this Executive Decree or expansion of the evidence already received. Evidence for the purpose of

furthering the proceedings may include entirely new evidence in addition to already existing evidence. The resolution requiring the furnishing of such evidence shall also set the time-limit within which the requirement must be met and, if it is not possible to determine this, it shall be complied with promptly. This type of evidence may not be examined if it would exceed the maximum time available for completion of the investigation in the terms permitted by this Executive Decree.

Article 90. Sessions for the purpose of furnishing evidence. The evidence offered by the interested parties and duly declared admissible, as well as the evidence ordered by the administration, shall be furnished in the course of sessions duly convened for this purpose. The parties and their attorneys shall collaborate in providing the evidence decreed as prescribed in Article 144 of Law No. 38 of 2000.

Article 91. Presence and participation of interested parties. The Investigating Authority shall communicate to interested parties sufficiently in advance the place, date and time for submitting evidence, where appropriate notifying the interested party that it may appoint an attorney or experts to assist it. When submitting evidence, due account shall be taken of whether or not the information to be provided at the session is confidential in order to decide whether or not to restrict access to the session by other interested parties. In order to make this decision, the party requesting that the information be treated as confidential shall justify its request in accordance with Article 53 above and the Investigating Authority may prepare a non-confidential summary of the evidence submitted for inclusion in the file open to the public.

Article 92. Oral evidence. Oral evidence shall be given before the Investigating Authority. The Investigating Authority may limit the furnishing of oral evidence by each party to the extent it considers useful and necessary in the light of the facts to be investigated. If, for justified reasons, the witness does not appear when the evidence is to be submitted, he may be convened one other time for this purpose, otherwise the evidence shall be deemed to have been withdrawn.

When it is not possible to complete the submission of oral evidence during the hearing convened for this purpose, it may be continued at a subsequent date set within a reasonable time by the official responsible for the case.

Article 93. Technical report on evidence. The Investigating Authority shall prepare a preliminary technical report and a final technical report evaluating the evidence submitted and examined during the investigation. These reports shall include, as appropriate, financial, economic, accounting calculations and any other calculations necessary in order to analyse the information collected on the facts investigated.

These technical reports shall be submitted in order to be able to make the preliminary and final determinations. The preliminary report shall be prepared on the basis of on the information to be found in the application and may take into account the replies to the questionnaires sent out by the Investigating Authority. The final report shall be prepared after all the evidence required to be submitted has been examined. Each of these reports shall be prepared in two versions, one for the public and one confidential. The public version shall be included in the public file and the data shall be expressed in terms that respect the confidentiality of the information that has been declared to be confidential; the confidential version may not be disclosed and shall remain in the confidential file.

CHAPTER IV

PRELIMINARY DETERMINATION

Article 94. Grounds for determination. Following the public notice of initiation of an investigation and after having given the parties an opportunity to express their views on the initiation and after the minimum period of 60 days following the initiation of the investigation has expired, a preliminary determination may be issued.

Article 95. Contents of the preliminary determination. Pursuant to Articles 12.2 of the Anti-Dumping Agreement and 22.3 of the Agreement on Subsidies and Countervailing Measures, the Investigating Authority shall mention in the preliminary determination all the findings and conclusions reached on all issues of fact and of law considered relevant and for this purpose shall evaluate the arguments put forward during the proceedings and the evidence furnished. When making the preliminary determination, it shall be decided whether or not to recommend provisional measures in accordance with the provisions of this Executive Decree.

Article 96. Evaluation of the level of certainty required. The level of certainty required in order to prove the facts investigated shall be in proportion to the progress made in the investigation. The examination of the evidence furnished by the parties shall not be a requirement in order to issue this preliminary determination.

CHAPTER V

PROVISIONAL MEASURES

Article 97. Conditions and requirements. During the investigation period and after the preliminary determination has been issued, the Investigating Authority may, by means of a reasoned decision pursuant to Article 45 of Decree Law No. 7 of 2006, recommend to the Cabinet Council that it adopt such measures.

In investigations into unfair trade practices, provisional measures may only be applied if:

(a) An investigation has been initiated in accordance with the provisions of this Executive Decree and other applicable regulations, public notice has been given to that effect and Member countries of the WTO concerned and interested parties have been given adequate opportunities to submit information and make comments;

(b) a preliminary determination has been made of an unfair trade practice and consequent injury to a domestic industry caused by the imports that are the subject of the unfair practice;

(c) the competent authority judges such measures necessary to prevent injury being caused during the investigation;

(d) provisional measures shall not be applied sooner than sixty (60) calendar days from the date of the resolution on initiation of the administrative investigation.

Article 98. Duration of the measures. Provisional measures shall only be applied for as short a period as possible, in accordance with the following provisions:

(a) In dumping investigations, the period shall be determined in accordance with Article 7.4 of the Anti-Dumping Agreement and may not exceed four months; nevertheless, upon request by exporters representing a significant percentage of the trade involved, this period may be extended up to six months. Moreover, when the Investigating Authority 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.

(b) In investigations into subsidies, the provisions of Article 17.4 of the Agreement on Subsidies and Countervailing Measures regarding the period shall apply and it may not exceed four months.

Article 99. Assessment for the purpose of applying a lower duty. For the purposes of the preceding Article and at the request of a party or ex officio, the Investigating Authority may decide that a lower duty should be applied, provided that the circumstances so permit, particularly in the light of the evidence existing at the time of issuing the preliminary determination.

Article 100. Request for extension. Any request for extension of provisional anti-dumping measures made by exporters and submitted in accordance with Article 98 shall be submitted during the period of application of the measure and up to ten (10) working days before its expiry.

Article 101. Restrictions. Provisional countervailing duties or provisional anti-dumping duties may not be simultaneously adopted or imposed in order to resolve the same situation resulting from investigations into subsidies or dumping.

CHAPTER VI

UNDERTAKINGS

Article 102. Prior assumptions. In investigations into dumping or subsidies, exporters may offer undertakings, as provided by Article 8 of the Anti-Dumping Agreement and Article 18 of the Agreement on Subsidies and Countervailing Measures. Undertakings shall not be sought or accepted unless a preliminary affirmative determination of the existence of an unfair trade practice and of the injury caused by it has been made.

Article 103. Communication, offer and content of undertakings. Undertakings may consist of ceasing exports at dumped or subsidized prices or revising and increasing export prices. Such increases shall not exceed the amount necessary to offset the unfair trade practice in relation to the amount of the subsidy or the margin of dumping, as appropriate. The price increases should be lower than the amount of the subsidy or the margin of dumping if this suffices to eliminate the injury to the domestic industry.

(a) Offers by exporters. Offers by exporters may be made individually or jointly; the offer shall state that the undertakings proposed are being made voluntarily.

(b) Offers by the exporting government. In the special case of subsidies investigations, the exporting government may offer undertakings with a view to eliminating or limiting the subsidy or adopt other measures to eliminate the prejudicial effects of the subsidy.

(c) Suggestions on undertakings. The Investigating Authority may suggest price undertakings but shall not oblige any exporter to accept them. The fact that an exporter does not offer such undertakings or does not accept the invitation to make an undertaking shall in no way prejudge the examination of the case.

Article 104. Consultation of the domestic industry. After the Investigating Authority has received the undertaking, it shall transmit it to the domestic industry. In its communication, it shall describe the content of the offer in general terms and shall give domestic producers a period of ten (10) working days to express the views they deem appropriate for the defence of their individual or joint interests.

Article 105. Acceptance or rejection of undertakings. In a reasoned decision, the Investigating Authority shall accept the offer of undertakings when it is convinced that their implementation would eliminate the prejudicial effect of the dumping or the subsidy, as applicable. Nevertheless, pursuant to Articles 8.3 of the Anti-Dumping Agreement and 18.3 of the Agreement on Subsidies and Countervailing Measures, undertakings offered shall not be accepted if the Investigating Authority considers their acceptance impractical, for example, if the number of actual or potential exporters is too great, or for other reasons, including reasons of general policy. Should the case arise and where practicable, it shall provide to the exporter the reasons which have led it to consider acceptance of an undertaking as inappropriate, and shall, to the extent possible, give the exporter an opportunity to make comments thereon.

Article 106. Suspension or termination of the investigation. The investigation may be suspended or terminated without the imposition of provisional or definitive measures if the competent authority accepts the offer of satisfactory price undertakings. Where the undertakings do not cover all the exporters and producers, the investigation shall continue in the case of those which have not accepted undertakings.

Paragraph: The word "may" shall not be interpreted to allow the simultaneous continuation of proceedings with the implementation of price undertakings, except as provided in this Executive Decree.

Article 107. Continuation of the investigation. An investigation into the existence of an unfair trade practice and injury shall be terminated if the exporter so desires or the Investigating Authority so decides according to the provisions of Articles 8.4 of the Anti-Dumping Agreement and 18.4 of the Agreement on Subsidies and Countervailing Measures. In such a case, if a negative determination of the unfair trade practice or injury is made, the undertaking shall automatically lapse. In the event that an affirmative determination of the existence of the unfair practice and injury is made, the undertaking shall continue consistent with its terms and the provisions of this Executive Decree.

Article 108. Periodic information. The Investigating Authority may require public administration bodies and any exporter from whom an undertaking has been accepted periodically to provide information relevant to the fulfilment of such an undertaking and to permit verification of pertinent data.

Article 109. Non-fulfilment of an undertaking. If an undertaking is not fulfilled, the competent authority may take action pursuant to Article 8.6 of the Anti-Dumping Agreement or Article 18.6 of the Agreement on Subsidies and Countervailing Measures, as applicable, and recommend that the Cabinet Council take prompt action, which may consist of immediate application of provisional measures using the best information available. In such cases, definitive duties may be levied in accordance with this Executive Decree on products entered for consumption not more than 90 days

before the application of such provisional measures, except that any retroactive assessment shall not apply to imports entered before violation of the undertaking.

CHAPTER VII

FINAL HEARING

Article 110. Object and purpose of the hearing. The object and purpose of the hearing is to inform and hear parties to the proceedings regarding the essential facts under consideration and used as a basis for the decision on whether or not to recommend the application of definitive measures.

Article 111. Convening of the final hearing. After the evidence has been submitted and before issuing a resolution terminating the administrative investigation, pursuant to Article 41 of Decree Law No. 7 of 2006, the Investigating Authority shall summon all interested parties to a hearing. This invitation shall be sent to interested parties that have notified an address for receiving notifications in accordance with Article 60 of this Executive Decree no less than seven (7) calendar days before the date of the said final hearing so that they may effectively defend their interests.

Article 112. Communication of essential facts. In order to implement Article 41 of Decree Law No. 7 of 2006, the Investigating Authority shall prepare a report on the essential facts which serve as a basis for the decision on whether or not to recommend definitive measures and this shall be sent to all interested parties at the time of convening the hearing referred to in the preceding Article.

Article 113. Participation in the hearing. In investigations into unfair trade practices, a private hearing shall be held in which only those subjects that have been accepted as interested parties or third parties with an interest may participate, in accordance with the decisions of the Investigating Authority. Pursuant to the provisions of Article 41 of the Decree Law, representatives of the Ministry of Agricultural Development, the Ministry of the Economy and Finance, and the Ministry of Trade and Industry may also take part in the hearing.

Article 114. Procedure at the hearing. At the hearing, the official appointed for this purpose shall initiate proceedings by verifying the identity of the parties, which may attend themselves or be represented by a competent attorney. The order and time for each one's participation shall be determined in advance by the Investigating Authority taking into account the number of parties wishing to participate and any right of reply by interested parties. The absence of one or more interested parties or other persons invited to attend shall not prevent the holding of the hearing. When allotting the time allowed for participation by those participating in the hearing, the official shall take into consideration the need to guarantee proper defence of the interests concerned by the investigation. The hearing shall be recorded, transcribed and incorporated into the file.

Article 115. Presentation of final arguments. After the hearing has been concluded and the recording referred to in the preceding Article has been incorporated into the file, the interested parties shall be given the period of three (3) working days provided in Article 41 of Decree Law No. 7 of 2006 in which to submit their final arguments in defence of their interests and to express their opinions. These final arguments shall be submitted in writing and also by electronic means.

CHAPTER VIII

DEFINITIVE DETERMINATION

Article 116. Definitive determination. After having received the claims, in accordance with Article 42 of Decree Law No. 7 of 2006, the competent authority shall have ten (10) working days within which to issue a reasoned resolution terminating the administrative investigation. This resolution shall include the definitive determination and, where appropriate, shall make a recommendation to the Cabinet Council on the application of definitive measures. This time-limit may be extended by the competent authority in the light of the special conditions applicable to each investigation so that its decision is properly presented.

Article 117. Level of imposition of measures. When issuing the recommendation on imposition of definitive measures, the Investigating Authority shall indicate the level at which it considers the definitive measures should be imposed according to each investigation. Pursuant to Article 19 of Decree Law No. 7 of 2006, the measure recommended may not exceed the margin of dumping or the amount of the subsidy established in the final determination.

In dumping investigations and where possible in accordance with the particular conditions of each investigation, individual measures shall be determined for exporters according to their special conditions and, where appropriate, exemptions from the application of such measures shall be indicated. Pursuant to Article 9.5 of the Anti-Dumping Agreement, in such investigations residual measures shall be imposed on imports from the country or countries investigated in order to prevent circumvention of the measures. The residual measure shall be determined at a level situated between the highest and lowest levels of the measure; nevertheless, when imposing it, consideration may be given to whether or not the exporters to which the residual measure is to apply have cooperated or not.

In subsidies investigations, a total amount of subsidy per country shall be determined in such a way that, if it is so decided, a countervailing duty may be fixed without discrimination on imports declared subsidized and causing injury irrespective of their source, excluding imports from sources that have renounced the subsidies in question or have accepted undertakings in accordance with the provisions in this Executive Decree.

Article 118. Examination of application at a lower level. The Investigating Authority may examine use of a lower duty provided that the circumstances so permit and taking into account criteria that it deems timely and relevant.

Article 119. Content of the final determination. The competent authority's final resolution shall include a final determination which shall contain at least the following information in addition to those aspects indicated in Article 59 of this Executive Decree:

(a) Information identifying the applicant and a summary of the arguments included in the application;

(b) a full description of the product that is the subject of the investigation;

(c) information on the date of initiation of the investigation and, where applicable, the extension of the period of investigation;

(d) a brief summary of the main facts taken as proven and used as a basis for the preliminary determination;

(e) whether provisional measures have been imposed and details on their application;

(f) a summary of the findings of the examination of evidence, as well as identification of the evidence that has been rejected and the reasons therefor;

(g) if undertakings have been made, a brief mention of them, as well as whether or not they were accepted or rejected;

(h) a brief summary of the parties' final arguments regarding the facts on which the investigation was based;

(i) the main findings of the Investigating Authority during the course of the investigation on the existence of conditions for the imposition of definitive measures depending on whether it is a dumping or subsidies investigation, as governed by this Executive Decree and the applicable regulations;

(j) indication and evaluation of the arguments on whether or not it is in the public interest to apply measures;

(k) if there has been an analysis of application of a lower duty, an explanation of the method used and the conclusions reached;

(l) the recommendation to the Cabinet Council on whether or not to impose definitive anti-dumping or countervailing duties.

Article 120. Final recommendation. The recommendation referred to in paragraph (l) of the preceding Article shall be transmitted to the Cabinet Council as prescribed in Article 43 of Decree Law No. 7 of 2006 and shall indicate whether definitive measures should be imposed and the form they should take, as well as the details needed for their proper application. If provisional measures have been applied, there shall be a recommendation on whether or not to confirm their application and on the retroactivity of the definitive measures.

After the Cabinet Council has received the resolution from the competent authority, it shall decide whether to accept or reject the recommendation and shall issue the relevant decree for this purpose.

TITLE VII

SPECIAL PROCEDURES FOR THE APPLICATION OF MEASURES AGAINST UNFAIR TRADE PRACTICES

CHAPTER I

COMMON PROVISIONS

Article 121. Types of procedures. New shipper reviews, intermediate reviews and consideration of extensions shall be considered special procedures. Such procedures are special and shall be dealt with in abbreviated form in accordance with provisions of this Chapter.

Article 122. Initiation at the request of a party or ex officio. A new shipper review may only be initiated at the request of a party, whereas the review of measures and consideration of extensions

may be the subject of procedures at the request of a party or on the initiative of the Investigating Authority.

Article 123. Applications. If an application is submitted by an interested party, it shall be drawn up by a competent attorney and shall set out the arguments and grounds of fact and of law substantiating it. If there are numerical data, the formats proposed by the Investigating Authority shall be used and they shall be presented on the compatible computer media indicated by the Authority.

Article 124. Formalities and procedure. The procedures covered by this Title shall be dealt with by means of a file kept for this purpose as a separate volume but as part of the investigation that has led to imposition of the measures serving as a basis for any of the procedures described herein.

After receiving the application, the Investigating Authority shall examine its contents in order to determine whether or not all the information required for each different procedure pursuant to this Title has been included. Where the application does not comply with the formal requirements, the applicant may be asked to provide the missing information. Likewise, even where all the formal requirements have been met but all the information required has not been provided or if it is inaccurate or unclear, the Investigating Authority may require that the information contained in the application be corrected, clarified or supplemented. This initial review shall take place within five (5) working days of the date of submission of the application. At the end of this period, if a notification has to be made in accordance with this Article, a period of ten (10) working days following the date of the communication shall be allowed to respond to the notification or to the requirement to correct, clarify or supplement the information in order to comply with the instructions of the Investigating Authority. If its request is not met within the specified time-limit, the application shall be rejected and filed without any further procedure. A reasonable extension to the aforementioned period may be granted by the Investigating Authority either upon a reasoned request from a party or when circumstances so warrant.

Similarly, an application shall be rejected if the information submitted is false or irrelevant or in the case of ill-considered, inappropriate or unjustified applications.

Article 125. Initiation and convening of the interested parties. After the review of the form has been completed and it has been determined that the application is complete in accordance with the preceding Article, the Investigating Authority shall undertake an examination of the substance, for which a period of thirty (30) working days shall be given to evaluate the merits of the application and, by means of a reasoned resolution, declare that the administrative investigation has been initiated or rejected.

When the competent authority has initiated a special implementation procedure, either as a result of an application or on its own initiative, the Investigating Authority shall communicate it to the interested parties concerned depending on the form of investigation, whose details are contained in the administrative file on the investigation resulting in imposition of the measure and which have indicated an address for receiving notifications. When communicating the initiation, the interested parties shall be given a period of fifteen (15) calendar days to contest it, furnish evidence and provide any defence they consider relevant to their interests. An appeal may be made against the resolution initiating the investigation in accordance with the provisions of this Executive Decree.

Article 126. Request for information. The Investigating Authority may request the interested parties concerned, government bodies and third parties not party to the proceedings to provide evidence, information and data it deems relevant, for which purpose it may use the questionnaires or

forms it deems appropriate. The provisions in Title VI, Chapter III, on the examination and receipt of evidence shall apply as appropriate to special implementation procedures.

Article 127. Submission of evidence. After the period for offering evidence has expired and after having taken a decision on which evidence would be admissible, the evidence required shall be submitted within a period not exceeding thirty (30) calendar days of the date of expiry of the period allowed. This period may be extended by the Investigating Authority in those cases in which there are problems in completing the evidential stage. The parties called on to participate in the proceedings and their attorneys shall collaborate in furnishing the evidence required.

Article 128. Verification of the information. The evidence submitted with the application or offered in the response shall clearly indicate the sources used: identification of the accounts ledgers, databases, names of the publications and any other relevant information facilitating its verification. The Investigating Authority shall select the appropriate means for verifying the information when it considers necessary and appropriate.

Article 129. Final allegations. After all the evidence required has been examined, the file shall be made available to the parties by means of a resolution that shall be duly communicated, allowing a period of five (5) working days for review of the file and the evidence therein. At the end of this period, the parties shall have an opportunity to put forward final allegations in writing in which they shall set out their arguments and shall be given a maximum period of three (3) working days for this purpose. In exceptional cases, the Investigating Authority may receive these allegations orally in the course of a hearing convened for this purpose; these allegations shall nevertheless be transcribed and incorporated into the file.

Article 130. Resolution. If the outcome of the investigation leads to a determination that the necessary conditions for modifying the application of the measures, extending them, establishing new conditions for a new shipper or for terminating their application do not exist, the application shall be rejected and filed. If, on the other hand, there are sufficient grounds, the competent authority shall issue a resolution recommending to the Cabinet Council the modification of application of the measures, their extension, the establishment of new conditions for a new shipper or the termination of their application.

Article 131. Appeals. An appeal may only be made against the resolution indicated in the preceding Article in accordance with Article 93 of Decree Law No. 7 of 2006.

CHAPTER II

NEW SHIPPER REVIEW

Article 132. Purpose of the procedure. The purpose of this procedure is to give to those exporters that did not participate in the investigation into unfair trade practices resulting in the measure because they did not export like products during the period of the investigation and were not or had not been linked to any of the parties to which the measures were applied an opportunity for an examination of their exports to determine whether or not a special and different measure should apply to them.

Article 133. Admissibility. Pursuant to Article 23 of Decree Law No. 7 of 2006, Article 9.5 of the Anti-Dumping Agreement and Article 19.3 of the Agreement on Subsidies and Countervailing Measures those exporters which prove that they did not export like products during the period of investigation into dumping or subsidies and were not or had not been linked to any of the parties to

which the measures were applied may request the initiation of such a review. Applications from new shippers shall not be accepted until definitive measures have been imposed.

Article 134. Content of the application. The exporter's application shall contain at least the following:

(a) Particulars of the applicant, including name and personal identity number or company name and registration number, domicile, postal address if it is not the same as that of the domicile, fax number, e-mail address or website.

(b) Declaration of whether it is a manufacturing or trading enterprise or whether it is engaged in both activities and an indication of the type of legal structure used by the applicant enterprise as given in the place of its registration. For example, an indication whether it is a public limited company, limited liability company, partnership, etc. An indication as to whether there is any relationship with other enterprises exporting goods to Panama.

(c) Main line of business or principal activity, identifying all the products it trades and/or manufactures. In the case of products like those on which measures have been imposed, a description of the production process in the fullest possible detail and an illustrative chart, the physical, chemical, technical specifications of the product and its uses and if possible an illustrative catalogue, the inputs used, and the technical standards met by the products under investigation.

Any information or data which the applicant wishes to submit together with the application and which is to be provided by government bodies according to their competence may be deemed to have been filed with the Investigating Authority if the applicant provides reliable evidence of the formalities completed to obtain them.

Where the information presented includes confidential data, it shall be submitted in two versions: confidential and public. These shall be identical except that the public version shall contain a non-confidential summary of the information that has been omitted. This summary should express clearly the data deemed confidential in such a way as to permit an understanding of the information omitted, for example, charts without numbers may be used, as well as explanations in terms of percentages or other forms. The public information shall be made available to the other parties concerned by the investigation. Information shall be classified as confidential, if so requested, in accordance with the relevant provisions in this Executive Decree.

Article 135. Communications to interested parties. If the application is complete, it shall be decided to initiate a review. The order to initiate a review shall only be communicated to those domestic producers which requested the imposition of the measures under review to allow them to defend their interests and furnish the evidence they deem relevant.

Article 136. Suspension of measures during the review. In accordance with Article 9.5 of the Anti-Dumping Agreement, no measures shall be levied on imports from exporters or producers that have requested the review while the review is being carried out. Nevertheless, the competent authority may authorize that the customs valuation be suspended and/or guarantees be provided to ensure that, should such a review result in the imposition of measures in respect of such producers or exporters, duties can be levied retroactively to the date of initiation of the review.

Article 137. Imposition of measures or exemption. If the findings of the investigation lead to the conclusion that the exporter meets the necessary requirements, the imposition of an individual measure shall be ordered or it shall be decided that no measure should be applied to the exporter concerned.

CHAPTER III

REVIEW OF MEASURES

Article 138. Requirements for review of measures. On the basis of Article 20 of Decree Law No. 7 of 2006, Article 11.2 of the Anti-Dumping Agreement or Article 21.2 of the Agreement on Subsidies and Countervailing Measures, any interested party may request a review of the measures and for this purpose shall submit all positive evidence concerning the need for review and provided that a reasonable time has elapsed since the determination of the definitive measure.

The provisions of this Chapter shall apply to the review of price undertakings.

Article 139. Content of the application. An application for review shall contain at least the following:

(a) Particulars of the applicant, including name and personal identity number or company name and number of registration, domicile, postal address if it is not the same as that of the domicile, fax number, e-mail address or website, and its status as an interested party in accordance with the provisions of this Executive Decree.

(b) A clear indication of the measure whose review is requested, the period during which it has been in force and the circumstances which the applicant considers justify review of the measure or the price undertaking, specifying how it wishes the review to be carried out.

(c) Sufficient evidence to support the information on the alleged change in circumstances or conditions that originally justified the imposition of measures.

In order to facilitate the submission of the application, the Investigating Authority may prepare forms to guide or direct the applicant regarding the type, amount and detail of the information required.

Any information or data which the applicant wishes to submit together with the application and which is to be provided by government bodies according to their competence may be deemed to have been filed with the Investigating Authority if the applicant provides reliable evidence of the formalities completed to obtain them.

Where the information presented includes confidential data, it shall be submitted in two versions: confidential and public. These shall be identical except that the public version shall contain a non-confidential summary of the information that has been omitted. This summary should express clearly the data deemed confidential in such a way as to permit an understanding of the information omitted, for example, charts without numbers may be used, as well as explanations in terms of percentages or other forms. The public information shall be made available to the other parties concerned by the investigation. Information shall be classified as confidential, if so requested, in accordance with the relevant provisions in this Executive Decree.

Article 140. Communication to interested parties. If the application is complete, it shall be decided to initiative a review and this shall be notified to all interested parties listed in the file so that they may defend their interests and furnish the evidence they deem necessary. Enterprises which, although not classified as interested parties prior to the review became interested parties at the time of its initiation, may also participate.

Article 141. Review of the measures. When a review of the measures is requested based on the existence of the requirements indicated in Article 138 of this Executive Decree, the Investigating Authority shall examine and determine whether or not it is necessary to maintain the duty in order to offset the dumping or subsidy or whether the injury would be likely to continue or recur if the duty were removed or modified, or both.

If, as a result of this review, it is determined that the measure is no longer warranted and should be annulled, abolished or at least modified, a report shall be sent to the Cabinet Council so that it may consider the elimination or immediate annulment of the said duty or the corresponding modification, as appropriate.

In order to be able to request such a review, at least one year must have elapsed since the Cabinet Council ordered the imposition of definitive measures.

CHAPTER IV

REVIEW OF EXTENSIONS

Article 142. Requirements for submission. Pursuant to Article 19 of Decree Law No. 7 and Article 122 above, measures against unfair trade practices may be extended at the request of a party or ex officio. Where consideration is given to an extension as a result of an application, this shall be adequately substantiated and submitted no less than one hundred and twenty (120) calendar days prior to expiry of the measure. In accordance with Article 11.3 of the Anti-Dumping Agreement and Article 21.3 of the Agreement on Subsidies and Countervailing Measures, the duty may remain in force pending the outcome of such a review.

Pursuant to Article 11.3 of the Anti-Dumping Agreement, the applicant shall prove that it has the status of interested party in conformity with the provisions of Article 8(g) of this Executive Decree.

The fact of not being an interested party in the original investigation that led to the imposition of measures shall in no way prevent a new producer from being given such status and, if it meets the representativeness requirements, being entitled to act as an applicant.

Applications for extension shall be dealt with by the Investigating Authority, in accordance with the provisions of this Chapter and Title VII, Special procedures for the application of measures against unfair trade practices.

Article 143. Participation by interested parties. If the application is complete, it shall be decided to initiate a review. This shall be notified to all interested parties listed in the file so that they may defend their interests and furnish the evidence they deem necessary. Enterprises which, although not classified as interested parties prior to the review became interested parties at the time of its initiation, may also participate.

Article 144. Content of the application. An application for review shall contain at least the following:

(a) Particulars of the applicant, including name and personal identity number or company name and registration number, domicile, postal address if it is not the same as that of the domicile, fax number, e-mail address or website, and its status as an interested party in accordance with the provisions of this Executive Decree.

(b) A clear indication of the measure whose extension is requested, the period during which it has been in force and the circumstances which the applicant considers justifies extension of the measure.

(c) Sufficient evidence to support the application for extension of the measure.

In order to facilitate the submission of the application, the Investigating Authority may prepare forms to guide or direct the applicant regarding the type, amount and detail of the information required.

Any information or data which the applicant wishes to submit together with the application and which is to be provided by government bodies according to their competence may be deemed to have been filed with the Investigating Authority if the applicant provides reliable evidence of the formalities completed to obtain them.

Where the information presented includes confidential data, it shall be submitted in two versions: confidential and public. These shall be identical except that the public version shall contain a non-confidential summary of the information that has been omitted. This summary should express clearly the data deemed confidential in such a way as to permit an understanding of the information omitted, for example, charts without numbers may be used, as well as explanations in terms of percentages or other forms. The public information shall be made available to the other parties concerned by the investigation. Information shall be classified as confidential, if so requested, in accordance with the relevant provisions in this Executive Decree.

Article 145. Requirements and period of extension. Where it is determined that elimination of the measure would lead to continuation or recurrence of the injury and the conditions that caused it, a recommendation may be made to the Cabinet Council that an extension of up to five (5) years should be granted.

TITLE VIII

GENERAL SAFEGUARDS PROCEDURE

CHAPTER I

PHASE PRIOR TO INITIATING AN INVESTIGATION

Article 146. Application. Investigations intended to determine the existence, degree and requirements necessary for the imposition of a safeguards measure shall be initiated in accordance with Article 61 of Decree Law No. 7 of 2006 subject to a written application made by the domestic industry or on its behalf, except in those cases in which special circumstances justify the ex officio initiation of an investigation.

Article 147. Entitlement. All domestic producers of like or directly competitive products according to the definition in Article 52.4 of Decree Law No. 7 of 2006 shall be entitled to make an application if, when applying for initiation of an administrative investigation, they represent at least twenty-five per cent (25%) of total production of the like or directly competitive product produced by the domestic industry.

The Investigating Authority may determine whether the above condition has been met, using statistical techniques. In the case of fragmented production involving an exceptionally large number of producers, sampling techniques may be used. In ascertaining compliance with this requirement, the Investigating Authority may request the accreditation of each person acting on behalf of the domestic industry.

Article 148. Minimum content of the application. The application shall be drawn up by a competent attorney and meet the requirements laid down in Article 65 of Decree Law No. 7 of 2006 and shall set out the arguments and grounds of fact and of law substantiating it.

Any information or data which the applicant wishes to submit together with the application and which is to be provided by government bodies, according to their competence, may be deemed to have been filed with the competent authority if the applicant provides reliable evidence of the formalities completed to obtain them.

The applicant shall provide electronic copies of the complete application, including all its annexes. The complainant shall certify that the electronic copy submitted contains the same information as the application and, moreover, shall be responsible for ensuring that this information is contained in the version available to the public.

In order to facilitate the submission of the application, the Investigating Authority may prepare forms to guide or direct the applicant regarding the type, amount and detail of the information required. The application shall contain at least the following:

(a) Particulars of the applicant;

(b) detailed description of the product to be investigated, including the tariff classification, characteristics and other distinguishing particulars;

(c) description and information regarding the domestic industry to which the applicant belongs;

(d) detailed description of the like or directly competitive product or good of the domestic industry and other distinguishing particulars;

(e) the percentage of the like or directly competitive product or good of the applicant in relation to total domestic output of the said product;

(f) name and domicile of the importers and exporters, if known;

(g) the volume and prices of the imports that are the subject of the application for an investigation;

(h) country of origin and source of the imports; and

(i) analysis, factors, data or documents showing serious injury and the causal link as defined in this Executive Decree as a result of the imports under conditions of unfair trade practices.

Information and evidence that is submitted as confidential shall be clearly identified as such for the purposes of its classification. The application shall comply with the requirement on non-confidential summaries.

The Investigating Authority shall avoid all publicity regarding the application for initiation of an investigation until the latter is officially initiated.

Article 149. Initial review: formal requirements. After receiving the application, the Investigating Authority shall proceed in accordance with Article 6.7 of Decree Law No. 7 of 2006 and shall examine the information contained in the application in order to determine whether or not all the information has been included.

Where the application does not comply with the formal requirements laid down in the Decree Law or this Executive Decree, the Investigating Authority may require compliance with the requirements not met. Likewise, even where all the formal requirements have been met but all the information required has not been provided or if it is inaccurate or unclear, the Investigating Authority may require that the information contained in the application be corrected, clarified or supplemented. This initial review shall take place within five (5) working days of the date of submission of the application.

At the end of this period, if a notification has to be made in accordance with this Article, a period of ten (10) working days of such notification shall be given in which to comply with the instructions of the Investigating Authority.

Article 150. Rejection of the form of the application. After expiry of the period determined in the preceding Article, if the applicant has not complied with the requirement on additional information, the application shall be rejected and filed by means of a reasoned decision. A reasonable extension to the aforementioned period may be granted by the Investigating Authority, either upon a reasoned request from a party or when circumstances so warrant.

Similarly, the Investigating Authority may reject the application if the information submitted is false or irrelevant, or where the application is ill-considered, inappropriate or unjustified.

CHAPTER II

OPENING AND INITIATION OF THE PROCEDURE

Article 151. Review of the application: examination of the substance. After the form of the application has been reviewed and it has been determined that the application for an investigation received is complete, the Investigating Authority shall undertake an examination of its substance, for which a period of fifteen (15) working days shall be given to evaluate the merits of the application and, by means of a reasoned decision from the competent authority, declare the initiation or rejection of the administrative investigation. During this review, the Investigating Authority shall determine whether or not there is sufficient evidence to warrant the initiation of an administrative investigation and whether the application has been submitted on behalf of the domestic industry in such a way that it meets the entitlement requirements set out in Article 147 of this Executive Decree.

Article 152. Rejection and filing of the application. The competent authority shall reject the application submitted and terminate the investigation promptly if it has ascertained that there is not sufficient evidence of the conditions necessary for the imposition of measures.

Article 153. Prerequisites for opening an investigation. By means of a reasoned resolution, the competent authority shall decide to initiate an administrative investigation after it has verified compliance with the formal and substantive requirements and, in particular, that the evidence accompanying the application is sufficiently accurate, reliable and credible to comply with the necessary requirements for the imposition of measures at a level that justifies initiation of an investigation.

Article 154. Requirements for ex officio opening of an investigation. In special circumstances, the competent authority may decide to initiate an investigation without having received a written application from the domestic industry or on its behalf requesting initiation of an investigation. The competent authority shall only initiate an ex officio investigation when it has sufficient evidence of compliance with the necessary requirements for the imposition of measures at a level that justifies the initiation of an investigation.

Article 155. Resolution on initiation of an investigation. If a review of the application shows that there is sufficient evidence to justify the opening of an investigation, the competent authority shall issue a resolution initiating the corresponding investigation procedure. As a minimum, the resolution shall contain the following:

(a) Identification of the person issuing the resolution, together with the place and date on which it was issued;

(b) the contact details of the Investigating Authority responsible for carrying out the investigation;

(c) an indication that the application and the detailed description of the documents accompanying it are admissible;

(d) detailed description of the product under investigation which has been imported or is being imported, including the tariff heading, characteristics and other distinguishing particulars;

(e) particulars of the applicant and the percentage of its production of like or directly competitive products in comparison with total domestic output of the said product;

(f) description and details of the domestic industry, including the name or company name and domicile of each producer and other details concerning domestic producer(s) of the like or directly competitive products identified as forming part of the domestic industry;

(g) the country or countries of origin or source of the product subject to a safeguards investigation;

(h) the name, domicile and other details of local importers, exporters and foreign producers of the product under investigation;

(i) description, identification and details of other interested parties to be considered as such in the investigation;

(j) the grounds and substantiation underpinning the resolution, including information on the existence of the necessary requirements and conditions for the imposition of measures;

(k) the period given to interested parties and, where applicable, to the foreign governments indicated in which to communicate the evidence they deem appropriate, as well as the place to which they may send their claims;

(l) the investigation periods shall be determined and communicated. These periods may be modified in duly justified situations at the discretion of the Investigating Authority after initiation and prior to issuing the preliminary resolution provided that the interested parties are once again given sufficient time to submit the information required for proper defence of their interests.

Article 156. Notification and public notice of the resolution. Until the resolution on initiating an investigation has been issued, the authorities shall avoid all publicity regarding the application for initiation of an investigation. After it has been issued, the Investigating Authority shall publish an excerpt of the resolution in the *Gaceta Oficial* or in a national newspaper with broad circulation. This excerpt shall include the address of the web page containing the full resolution.

The resolution to initiate an investigation shall be communicated to the country or countries whose products are to be investigated, as well as to other interested parties whose interests are known to the Investigating Authority and to the Committee on Safeguards of the World Trade Organization.

Article 157. Communication. When notifying a resolution on initiation of an administrative investigation, the resolution shall be transmitted to the interested party or parties within the period set out in Article 69 of Decree Law No. 7 of 2006 so that they may respond within a period of thirty (30) calendar days as of receipt of the communication or, in the case of exporters, seven (7) calendar days following dispatch of the communication to the addressee or transmittal to the competent diplomatic representative of the exporting country or countries. Due attention shall be given to any request for extension of the period of thirty (30) calendar days and, provided there is proven justification, the extension shall be granted whenever feasible.

When an investigation is initiated at the request of a party, a copy of the application submitted shall be attached, together with the accompanying annexes, and in the case of an investigation initiated ex officio, the documents used as a basis shall also be attached. In any case, the documentation to be transmitted shall be restricted to non-confidential information in accordance with the provisions of this Executive Decree.

The documentation mentioned in this Article shall be handed over to the government authorities of the exporting country through direct notification to the accredited diplomatic or consular representation in the country in accordance with the provisions of this Executive Decree and with international agreements to which Panama is party. If there is no accredited diplomatic or consular representation in the country, this communication may be made through the Republic of Panama's trade mission to the World Trade Organization to the accredited authority of the exporting country to the said Organization.

CHAPTER III

PROCEEDINGS AND RECEIPT OF EVIDENCE

Article 158. Requests for information. The Investigating Authority may, in exercise of the powers conferred by Article 71 of Decree Law No. 7 of 2006, require interested parties, government bodies and third parties not party to the proceedings, to provide any evidence, information or data it deems relevant and may use forms for this purpose.

(a) From interested parties: dispatch of questionnaires. In the case of foreign producers, exporters, importers and domestic producers, it shall send a questionnaire requesting information. The interested parties shall be given a period of thirty (30) calendar days in which to respond to the questionnaires. Due attention shall be given to any request for extension of this period and provided that there is proven justification a further period of up to thirty calendar days may be allowed. Provided that it is feasible, the extension requested shall be granted.

(b) From government bodies. The Investigating Authority may at any time request bodies belonging to the public administration to provide any type of information or technical opinions, which they must furnish within a period not exceeding thirty (30) calendar days.

(c) From third parties not party to the proceedings. The Investigating Authority may at any time require Panamanian producers, distributors or traders of the product or good in question, as well as customs officials, agents, attorneys or consignees of the importers, or any other person it deems appropriate, to furnish information and data available to them and relevant for the purposes of the investigation.

Paragraph: With regard to paragraph (a) of this Article, as a general rule, the periods given to exporters shall be calculated from the date of receipt of the questionnaire and for this purpose it shall be considered as having been received seven calendar days after the date on which it was sent to the addressee or handed to the competent diplomatic representative of the exporting Member, or in the case of a separate customs territory Member of the WTO, to an official representative of the exporting territory.

Article 159. Submission of evidence. The parties may furnish their evidence during the period allowed in the communication of the resolution on initiation to the interested parties. In those cases in which an extension of this period has been requested and granted, the period for furnishing evidence shall also be extended.

Article 160. Admissibility and rejection of evidence. In order to decide what evidence is admissible and what is not, the Investigating Authority shall examine the relevance or otherwise of each piece of evidence in respect of the facts to be proved; for this purpose, it shall take into consideration the legal rules governing evidence.

The process of admissibility and rejection of evidence shall take into account the evidence offered by the parties and the provisions of this Executive Decree after expiry of the last period for communication, including any extensions granted. Nevertheless, nothing shall prevent the Investigating Authority from allowing and ordering parties to furnish the evidence offered before expiry of this time-limit.

Article 161. Period for examining evidence. After it has been decided what evidence is admissible, it shall be furnished within a period not exceeding fifteen (15) calendar days of the date of expiry of the period for communication. This period may be extended by the Investigating Authority taking into account the special features of each case.

To further the proceedings, the Investigating Authority may likewise at any time request any type of information or technical opinions from any of the bodies belonging to the public administration, which shall be required to furnish them within thirty (30) calendar days at the latest.

Without prejudice to the protection of confidential information, the evidence presented shall be placed in the file at the disposal of other interested parties taking part in the investigation that so request.

Article 162. Evidence to further the proceedings. To further the proceedings, the Investigating Authority may require the communication of any of the types of evidence provided in Article 51 of this Executive Decree or expansion of the evidence already received. Evidence for the purpose of furthering the proceedings may include entirely new evidence in addition to already existing evidence. The resolution requiring the furnishing of such evidence shall also set the time-limit within which the requirement must be met and if it is not possible to determine this, it shall be complied with promptly. This type of evidence may not be examined if it would exceed the maximum time available for completion of the investigation in the terms permitted by this Executive Decree.

Article 163. Sessions for the purpose of furnishing evidence. The evidence offered by the interested parties and which has been duly declared admissible, as well as the evidence ordered by the administration, shall be furnished in the course of sessions duly convened for this purpose. The parties and their attorneys shall collaborate in providing the evidence decreed.

Article 164. Presence and participation of interested parties. The Investigating Authority shall communicate to interested parties sufficiently in advance the place, date and time for submitting the evidence, where appropriate notifying the interested party that it may appoint an attorney or experts to assist it. When submitting the evidence, due account shall be taken of whether or not the information to be provided at the session is confidential in order to decide whether or not to restrict access to the session by other interested parties. In order to make this decision, the party requesting that the information be treated as confidential shall justify its request in accordance with Article 53 of this Executive Decree and the Investigating Authority may prepare a non-confidential summary of the evidence submitted for inclusion in the file open to the public.

Article 165. Oral evidence. Oral evidence shall be given before the Investigating Authority. The Investigating Authority may limit the furnishing of oral evidence by each party to the extent it considers useful and necessary in the light of the facts to be investigated. If, for justified reasons, the witness does not appear when the evidence is to be submitted, he may be convened one other time for this purpose, otherwise the evidence shall be deemed to have been withdrawn.

When it is not possible to complete the examination of oral evidence during the hearing convened for this purpose, it may be continued at a subsequent date set within a reasonable time by the official responsible for the case.

Article 166. Technical report on evidence. The Investigating Authority shall prepare a preliminary technical report and a final technical report evaluating the evidence submitted and examined during the investigation. These reports shall include, as appropriate, financial, economic, accounting

calculations and any other calculations necessary in order to analyse the information collected on the facts investigated.

These technical reports shall be submitted in order to be able to make the preliminary and final determinations. The preliminary report shall be prepared based on the information to be found in the application and may take into account the replies to the questionnaires sent out by the Investigating Authority. The final report shall be prepared after all the evidence has been examined. Each of these reports shall be prepared in two versions, one for the public and one confidential. The public version shall be included in the public file and the data shall be expressed in terms that respect the confidentiality of the information that has been declared to be confidential; the confidential version may not be disclosed and shall remain in the confidential file.

CHAPTER IV

PRELIMINARY DETERMINATION

Article 167. Grounds for determination. Following the public notice of initiation of an investigation, a preliminary determination may be issued on the basis of the information and evidence contained in the application and the information thus far available to the Investigating Authority.

Article 168. Contents of the preliminary determination. In the preliminary determination provided in Article 79 of Decree Law No. 7 of 2006, the Investigating Authority shall mention all the findings and conclusions reached on all issues of fact and of law considered relevant and for this purpose shall evaluate the arguments put forward during the proceedings and the evidence furnished. When making the preliminary determination, it shall be decided whether or not to recommend provisional measures in accordance with the provisions of this Executive Decree.

Article 169. Evaluation of the level of certainty required. The level of certainty required in order to prove the facts investigated shall be in proportion to the progress made in the investigation. The examination of evidence shall not be a requirement in order to issue this preliminary determination.

CHAPTER V

PROVISIONAL MEASURES

Article 170. Conditions and requirements. During the investigation period and after the preliminary determination has been issued, the Investigating Authority may, by means of a reasoned decision, recommend to the Cabinet Council that it adopt such measures if:

(a) An investigation has been initiated in accordance with the provisions of this Executive Decree and other applicable regulations and public notice has been given to that effect;

(b) a preliminary determination has been made of the existence of clear evidence that the increase in imports has caused or threatens to cause serious injury;

(c) the competent authority judges that there are critical circumstances where any delay would cause damage which it would be difficult to repair.

An excerpt from the provisional safeguards measure adopted shall be published in the *Gaceta Oficial* or in a recognized newspaper with broad circulation.

Article 171. Duration of the measures. As provided in Article 80 of Decree Law No. 7 of 2006, the provisional measures shall under no circumstances be applied for more than two hundred (200) calendar days.

Article 172. Type of measures. Restrictions. Provisional measures shall be adopted in the form of tariff increases, which may be guaranteed by cash deposits or bonds in an amount equivalent to that provisionally established in the measure.

Where, having completed the legal procedure for determining whether a definitive safeguard measure is to be applied, the Investigating Authority determines that the increase in imports has not caused or threatened to cause serious injury to the domestic industry, the temporary tariff increases imposed by means of provisional safeguard measures shall be refunded to the importers.

Article 173. Evaluation for the purposes of application. In order to conduct the evaluation for the purposes of applying provisional measures, the Investigating Authority may take into account the following elements, *inter alia*: the level and rate of the increase in imports and the degree of price undercutting, as well as any other criteria it deems timely and appropriate.

CHAPTER VII

FINAL HEARING

Article 174. Object and purpose of the hearing. The object and purpose of the hearing is to inform and hear parties to the proceedings regarding the essential facts under consideration and used as a basis for the decision on whether or not to recommend the application of definitive measures.

Article 175. Convening of the final hearing. After the evidence has been submitted and before issuing a resolution terminating the administrative investigation, in exercise of the powers given by Article 73 of Decree Law No. 7 of 2006, the Investigating Authority shall summon all interested parties to a public hearing. This invitation shall be sent to interested parties that have notified an address for receiving notifications in accordance with Article 60 of this Executive Decree no less than seven (7) calendar days before the date of the said final hearing so that they may effectively defend their interests.

In addition, the Investigating Authority shall order publication of a public invitation once only in a national newspaper. This invitation shall inform those interested in attending or participating in the hearing that there is limited space and they should request the Investigating Authority in writing for prior authorization in order to be able to attend. This request should set out the reasons why the person wishes to participate in this procedure. The space shall be allotted at the discretion of the Investigating Authority, on the basis of representativeness criteria and in accordance with the order in the application. Those who are not party to the procedure but wish to participate in the hearing shall only be allowed to do so in the form of an oral statement on whether or not the application of the safeguard measure is in the public interest.

Pursuant to the provisions of Article 41 of Decree Law No. 7 of 2006, representatives of the Ministry of Agricultural Development and the Ministry of the Economy and Finance may also take part in the hearing.

Article 176. Communication of essential facts. In order to implement Article 41 of Decree Law No. 7 of 2006, the Investigating Authority shall prepare a report on the essential facts which serve as a

basis for the decision on whether or not to recommend definitive measures and this shall be sent to all interested parties at the time of convening the hearing referred to in the preceding Article.

Article 177. Procedure at the hearing. At the hearing, the official appointed for this purpose shall initiate proceedings by verifying the identity of the parties, which may attend themselves or be represented by a competent attorney. The absence of one or more interested parties or other persons invited to attend shall not prevent the holding of the hearing. When allotting the time allowed for participation by those participating in the hearing, the official shall take into consideration the need to guarantee proper defence of the interests of those concerned by the investigation. The hearing shall be recorded, transcribed and incorporated into the file.

Article 178. Presentation of final arguments. After the hearing has been concluded and the recording referred to in the preceding Article has been incorporated into the file, the interested parties shall be given the period of three (3) working days provided in Article 73 of Decree Law No. 7 of 2006 in which to submit their final arguments in defence of their interests and to express their opinions. These final arguments shall be submitted in writing and also by electronic means.

CHAPTER VII

DEFINITIVE DETERMINATION

Article 179. Definitive determination. After having received the claims, the competent authority shall have ten (10) working days within which to issue a reasoned resolution terminating the administrative investigation. This resolution shall include the definitive determination and, where appropriate, shall make a recommendation to the Cabinet Council on the application of definitive measures. This time-limit may be extended by the National Director for the Implementation of Treaties and Safeguarding Trade at the request of the Director for Safeguarding Trade in the light of the special conditions applicable to each investigation so that its decision is properly presented.

Article 180. Application of measures or rejection of the application. When issuing the final resolution, the competent authority shall evaluate whether the necessary conditions exist for imposing definitive measures in accordance with the requirements of this Executive Decree and other applicable regulations. If such conditions do not exist, the competent authority shall reject the application and terminate the investigation.

Article 181. Level of imposition of measures. When issuing the recommendation on imposition of definitive measures, the Investigating Authority shall indicate the level at which it considers the definitive measures should be imposed and their duration.

Pursuant to the provisions of Article 58 of Decree Law No. 7 of 2006, the duration of the initial application of safeguard measures may not exceed four (4) years. This duration may be extended once only in accordance with Article 188 of this Executive Decree.

Definitive measures may consist of tariff increases or quantitative restrictions. In order to conduct the analysis needed to determine the tariff increase, the Investigating Authority may take into account the level of the increase in imports and the degree of price undercutting, as well as any other criteria it deems timely and appropriate.

Article 182. Evaluation of the public interest. When recommending whether or not to impose measures in its final determination, on the basis of Article 3.1 of the Agreement on Safeguards, the Investigating Authority may mention those arguments related to the public interest and which have

been put forward by the interested parties or by the public in general within the time-limit allowed in the public notice of a preliminary determination.

Article 183. Content of the final determination. The competent authority's final resolution shall include a final determination which shall contain at least the following:

(a) Information identifying the applicant and a summary of the arguments included in the application;

(b) a full description of the product that is the subject of the investigation;

(c) information on the date of initiation of the investigation and, where applicable, the extension of the period of investigation;

(d) a brief summary of the main facts taken as proven and used as a basis for the preliminary determination;

(e) whether provisional measures have been imposed and details on their application;

(f) a summary of the findings of the examination of evidence, as well as identification of the evidence that has been rejected and the reasons therefor;

(g) a brief summary of the parties' final arguments regarding the facts on which the investigation was based;

(h) the main findings of the Investigating Authority during the course of the investigation on the existence of conditions for the imposition of definitive safeguard measures, as governed by this Executive Decree and the applicable regulations;

(i) indication and evaluation of the arguments upon whether or not it is in the public interest to apply measures;

(j) the recommendation to the Cabinet Council, where applicable.

Article 184. Final recommendation. The recommendation referred to in paragraph (j) of the preceding Article shall indicate whether definitive measures should be imposed and the form they should take, as well as the details needed for their proper application. If provisional measures have been applied, there shall be a recommendation on whether or not to confirm their application and on the retroactivity of the definitive measures.

After the Cabinet Council has received the resolution from the competent authority, it shall decide whether to accept or reject the recommendation and shall issue the relevant decree for this purpose.

CHAPTER VIII

EXAMINATION OF LIBERALIZATION AND EXTENSION

Article 185. Examination of liberalization. Pursuant to Article 59 of Decree Law No. 7 of 2006, when the duration of a safeguard measure is over one (1) year, it shall be progressively liberalized at regular periods or intervals during the period of application, in accordance with the provisions of

Article 7.4 of the Agreement on Safeguards. If a safeguard measure has been extended, it may not be more restrictive than it was at the end of the initial period and shall continue to be progressively liberalized.

In order not to impede the application of an extension in accordance with the provisions in this Chapter, Decree Law No. 7 of 2006 and the Agreement on Safeguards, the process of liberalizing the measure shall be carried out on the basis of a linear projection of the liberalization process as though the measure had been applied over the maximum possible period.

If the duration of the safeguard measure exceeds three (3) years, the Investigating Authority shall review the situation not later than the mid-term of the period of application and, if appropriate, shall recommend that the Cabinet Council withdraw the measure or increase the pace of liberalization.

A safeguard measure may likewise be liberalized or suspended if the domestic industry fails to comply with the plan to overcome the circumstances alleged or with the adjustment plan where compliance with such a plan is established in the final resolution, except where the non-compliance is not attributable to the domestic industry.

Article 186. Review of extension of measures. Pursuant to Article 58 of Decree Law No. 7 of 2006, safeguard measures may be extended at the request of a party or ex officio. Where review of an extension is initiated at the request of a party, the application shall be adequately substantiated to meet the requirements of Article 7.2 of the Agreement on Safeguards and be submitted no less than one hundred and twenty (120) calendar days prior to expiry of the measure. The applicant shall prove that it has the status of interested party in accordance with Article 8(g) of this Executive Decree and that it has the necessary entitlement to act on behalf of the domestic industry under the same conditions as those required in order to be able to request the initiation of a regular administrative investigation. The safeguard measure may continue to be applied pending the outcome of the review even after expiry of the time-limit, but in such cases if the extension is not granted the duty paid after the date of expiry shall be promptly refunded.

The fact of not being an interested party in the original investigation that led to the imposition of measures shall in no way prevent a new producer from being given such status and, if it meets the representativeness requirements, being entitled to act as an applicant in relation to an application for extension.

Applications for extension shall be dealt with in an accelerated procedure for which the Investigating Authority shall take as a basis the provisions of this Chapter and, where necessary and applicable, shall follow the procedural rules prescribed for regular general safeguard procedures.

Article 187. Content of the application. An application for review shall contain at least the following:

(a) Particulars of the applicant, including name and personal identity number or company name and registration number, domicile, postal address if it is not the same as that of the domicile, fax number, e-mail address or website.

(b) A clear indication of the measure whose extension is requested, the period during which it has been in force and the circumstances which the applicant considers justifies extension of the measure.

(c) Sufficient evidence to support the application for extension of measures.

(d) Any information or data which the applicant wishes to submit together with the application and which is to be provided by government bodies according to their competence may be deemed to have been filed with the Investigating Authority if the applicant provides reliable evidence of the formalities completed to obtain them.

(e) Where necessary, all documentation shall be submitted in two versions: confidential and public. These shall be identical except that the public version shall contain a non-confidential summary of the information that has been omitted. This summary should express clearly the data deemed confidential in such a way as to permit an understanding of the information omitted, for example, charts without numbers may be used, as well as explanations in terms of percentages or other forms. The public information shall be made available to the other parties concerned by the investigation. Information shall be classified as confidential, if so requested, in accordance with the relevant provisions in this Executive Decree.

Article 188. Resolution and period of extension. Where it is determined that elimination of the measure would lead to continuation or recurrence of the injury and the conditions that caused it, a recommendation may be made to the Cabinet Council that it grant the extension of the safeguard measure. The measure may be extended once only for a maximum of six (6) years, provided that it is determined in accordance with Article 7.2 of the Agreement on Safeguards that the measure continues to be necessary to prevent or remedy injury or the threat of serious injury and that there is evidence that the industry is adjusting.

If, as a result of the investigation, it is determined that the necessary conditions for modifying the measures or extending them do not exist, the application shall be rejected and filed.

Article 189. Appeals. An appeal may be made against the resolution indicated in the preceding Article.

TITLE IX

APPLICATION OF SPECIAL SAFEGUARDS

CHAPTER I

BILATERAL SAFEGUARDS

Article 190. Concept. This definition includes measures called transitional safeguards, bilateral safeguards and any other measures without prejudice to the name given to the relevant rule of international law which may be applied by the Republic of Panama in accordance with the provisions of international economic integration treaties and differ from the emergency measures authorized exclusively by Article XIX of the GATT 1994 and the Agreement on Safeguards.

Article 191. Conditions for application. The conditions and requirements for applying such safeguards or mechanisms shall be defined in the pertinent international trade agreement, convention or treaty.

In the case of bilateral safeguards, the evaluation of the conditions of injury, the increase in imports and the causal link shall be made in accordance with the provisions of the Agreement concerned and those in this Executive Decree, where necessary.

Where the administrative procedure concerns the use of special triggering mechanisms, the only requirement shall be confirmation of the objective facts and conditions on the international market normally referring to a trigger price or volume of imports. These conditions of application do not include an analysis of the injury to the domestic industry and do not therefore require an examination of those belonging to it.

The Ministry of Trade and Industry, in the normal exercise of its functions, shall be exclusively and directly responsible for applying such measures and there is therefore no need to submit a recommendation for approval by the Cabinet Council. In those cases where international rules authorizing use of the measure have so provided, the countries concerned shall be invited to consultations on the conditions of application of the measures.

Article 192. Procedure applicable. Application of the measures regulated in this Chapter shall be in accordance with the provisions of the specific international treaties in each case and, where no such provision exists, shall comply with the procedural rules set out in this Executive Decree.

Article 193. Regulatory integration. In the absence of any such provisions in the corresponding treaty, the provisions of Article XIX of the GATT 1994, the Agreement on Safeguards, and the relevant national legislation, in particular this Executive Decree, shall apply.

CHAPTER II

OTHER SPECIAL TRIGGERING MECHANISMS

Article 194. Concept. This category shall include those measures derived from international rules which provide for an expeditious and different procedure from that provided for general and bilateral safeguards. These include the special agricultural safeguard regulated by Article 5 of the World Trade Organization's Agreement on Agriculture, as well as any other similar measure, irrespective of the name given to it.

Article 195. Nature of the automatic triggering procedure. The application procedure for this mechanism is exceptional and automatic so that in principle it does not provide for the participation of interested parties, unless otherwise decided by the Investigating Authority. Nothing shall prevent the use of this mechanism as the result of an application by domestic producers. This procedure is based on the rights given to the Republic of Panama under international treaties according to which special short-term mechanisms may be used to protect the domestic economy under the specific conditions set out in the said international rules.

Article 196. Form of procedure. This procedure shall be conducted in a summary and accelerated form. Its objective is to confirm the concrete and objective facts authorizing the application of a unilateral measure for a very short period. Unless the Investigating Authority decides otherwise, the procedure shall be conducted without the participation of anyone considered to be an interested party.

Article 197. Procedure. This procedure may be initiated ex officio or at the request of a party. In the latter case, the application shall be submitted by any person who proves the existence of a subjective right that has been impaired. The application shall indicate clearly the product that is to be the subject of automatic safeguard measures and the reasons considered to justify the imposition of the measure. Where the application is submitted by a party, it shall be drawn up by a competent attorney and shall set out the arguments and reasons of fact and of law on which it is based.

After it has received the application, the Investigating Authority shall examine its content in order to determine whether all the information required under the terms of this Executive Decree has been included and, where it deems relevant, shall order the initiation of the investigation. Similarly, the Investigating Authority may reject the application if the information submitted is false or irrelevant, or where the application is ill-considered, inappropriate or unjustified.

Article 198. Allocation of competence. The Investigating Authority shall conduct the procedure on behalf of the National Directorate for the Administration of Treaties and Safeguarding Trade. The latter shall be responsible for ordering the initiation of the investigation and deciding on the imposition of measures in such proceedings.

Article 199. Participation in the procedure. Status as an interested party in the procedure may only be granted by the National Director for the Administration of Treaties and Safeguarding Trade, who has full discretion to take a decision in the light of the contribution which the party may make to the investigation. For this purpose, status as an interested party shall be specifically requested, indicating the reasons justifying the request.

Article 200. Convening of interested parties and their participation. A party shall be invited to take part in the procedure only in those cases in which, exceptionally, the status of interested party has been granted, and shall be given the corresponding opportunity to submit evidence, take part in its examination and present final claims.

Article 201. Evidence. The Investigating Authority may require any public or private person, in fact or in law, to provide evidence, information and data it deems relevant, for which purpose it may use questionnaires or forms when it considers appropriate. The provisions of Title VI, Chapter III, on the examination and submission of evidence shall apply to automatic application procedures. Those required to do so shall submit the evidence within a maximum period of five (5) working days, although this period may be less if in the opinion of the Directorate for Safeguarding Trade special circumstances exist.

Article 202. Resolution. The competent authority shall issue a resolution indicating whether or not triggering measures are to be imposed depending on whether the factual assumptions required for the imposition of such measures are met. Appeals against this resolution may only be made in accordance with the provisions of this Executive Decree. Measures shall be imposed in accordance with the international rules authorizing use of this mechanism.

Article 203. Public notice. In such investigations, public notice shall be given of the initiation of the investigation and its final resolution; for this purpose, the provisions of this Executive Decree on public notice of initiation and definitive determination shall apply as appropriate.

Article 204. Consultations and negotiation on compensation. Where international rules also require the holding of consultations or any type of negotiation and there are no relevant procedural provisions in this Executive Decree, the provisions of the said rules shall be followed.

TITLE X

FINAL PROVISIONS

CHAPTER I

SMALL AND MEDIUM-SIZED ENTERPRISES

Article 205. Technical assistance and cooperation. The Ministry of Trade and Industry, to the extent of its possibilities and through the Directorate for Safeguarding Trade, shall provide small and medium-sized enterprises with technical assistance and cooperation in order to explain to them the use of the instruments regulated by this Executive Decree. The Ministry may also require support from other public, private, national or foreign institutions whose assistance could enhance understanding of international procedures to safeguard trade.

As part of the technical assistance and cooperation for all the country's production sectors, focusing in particular on small and medium-sized enterprises, the Ministry of Trade and Industry may prepare manuals on procedures, forms and guidelines showing these enterprises how to proceed with formulating and safeguarding their interests within the framework of an investigation governed by this Executive Decree.

CHAPTER II

IMPLEMENTATION OF MEASURES

Article 206. Application of measures. A definitive or provisional measures imposed in accordance with the provisions of this Executive Decree shall apply as of the working day following its publication in the *Gaceta Oficial* or in a national newspaper with broad circulation.

Article 207. Circumvention. The following are deemed to constitute circumvention of countervailing or anti-dumping duties or safeguard measures:

(a) Introduction into the national territory of inputs, parts or components for the purpose of production or assembly of the product subject to countervailing or anti-dumping duties or safeguard measures.

(b) Introduction into the national territory of goods subject to countervailing or anti-dumping duties or safeguard measures with inputs, parts or components integrated or assembled in a third country.

(c) Introduction into the national territory of goods from the same country of origin as the good subject to countervailing or anti-dumping duties or safeguard measures that have slight differences in comparison with the product in question.

(d) Introduction into the national territory of goods subject to countervailing or anti-dumping duties imported at a price lower than the applicable price.

(e) Any other action resulting in failure to pay the countervailing or anti-dumping duties or safeguard measures, for example, making an inaccurate declaration of the value or volume of the product, its origin; or its nature or classification.

Goods imported under such conditions shall be subject to payment of the countervailing or anti-dumping duties or to the corresponding safeguard measure. Circumvention of provisional or definitive countervailing or anti-dumping duties or safeguard measures shall be determined through proceedings initiated ex officio or at the request of an interested party, as provided in Annex III to this Executive Decree.

Article 208. Judicial review of measures. Decisions by the Cabinet Council may be subject to judicial review in accordance with the relevant provisions. Likewise, in cases where administrative channels have been exhausted, the contesting party may turn to judicial channels according to the rules governing administrative litigation.

CHAPTER III

ANNEXES

Article 209. Annexes. Annexes I, II and III shall form an integral part of the text of this Executive Decree and indicate the following:

ANNEX I

PROCEDURE TO BE FOLLOWED IN IN SITU INVESTIGATIONS CONDUCTED ABROAD

1. When initiating an investigation, the authorities of the exporting country and the enterprises known to be interested shall be informed of the intention to carry out in situ investigations.

2. Only government officials or experts appointed by the Investigating Authority may participate in the investigating team. The enterprises and authorities of the exporting country shall be informed of the composition of the team.

3. It shall be normal practice to obtain the express consent of interested enterprises in the exporting country before definitively scheduling the visit. The enterprises concerned shall be notified of the visit sufficiently in advance.

4. After obtaining the consent of the interested enterprises, the Investigating Authority shall communicate to the authorities of the exporting country the names and address of the enterprises to be visited and the dates agreed. Visits may only take place if the Investigating Authority notifies them to the representatives of the country in question and the latter do not oppose the visit.

5. Inasmuch as the ultimate objective of the in situ investigation is to verify the information received and obtain further details, this investigation shall only take place after a response to the questionnaire has been received, unless the enterprise concerned otherwise agrees and the Investigating Authority informs the government of the exporting country of the scheduled visit and the latter does not oppose it; moreover, it shall be normal practice to inform the interested enterprises prior to the visit of the general nature of the information to be verified and what other information needs to be supplied, although this shall not prevent further details being requested during the visit in the light of the information obtained.

6. Wherever possible, replies to the requests for information or to the questions by the authorities or the enterprises in exporting countries and essential for the proper outcome of the in situ investigation shall be given prior to the visit. The investigating team may contact third parties

concerned in order to corroborate the information that is the subject of the visit and for this purpose shall inform the enterprise of the persons to be contacted.

7. During the in situ verification procedures, the investigating team shall draw up a document that includes the signatures of those participating and a summary of the relevant facts encountered in the course of the visit. Subsequently, the investigating team shall prepare a verification report incorporating all the findings, the questions posed and the replies given, as well as the verifications conducted. This report shall be prepared in two versions, a confidential version of which a copy shall be given to the enterprise visited with the original being included in the confidential file, and a non-confidential version to be made available to all other interested parties.

ANNEX II

BEST AVAILABLE INFORMATION

1. As soon as possible after initiating the investigation, the Investigating Authority shall specify in detail the information sought from each party and the form in which it should be set out in its reply. It should also ensure that the party is aware that, if it does not provide this information within a reasonable time, the Investigating Authority shall be at liberty to base its decisions on the facts available, including those appearing in the application for initiation of an investigation submitted by the domestic industry.

2. The Investigating Authority may also request that a party provide its reply using a specific medium (for example, in computer format) or in a specified computer language. When making such a request, the Investigating Authority shall take into account whether the party has a reasonable possibility of responding in the preferred medium or computer language and shall not request the party to provide its response using a computer system that is different from the one it habitually uses. The Investigating Authority shall not request computerized replies if the party does not keep computerized accounts and if submitting the reply in the form requested places an unreasonable additional burden on the party, for example, an excessive increase in cost and effort.

3. When making determinations, all the verifiable information submitted properly in such a way as to be used in the investigation without excessive difficulties, provided in time and, where appropriate, in a medium or computer language requested by the authorities shall be taken into account. Where a party does not reply using the preferred medium or computer language but the Investigating Authority considers that the circumstances referred to in paragraph 2 above exist, it shall not be considered that the fact that it has not responded in the preferred medium or computer language significantly hinders the investigation.

4. Where the Investigating Authority is unable to process the information because it has been provided in a specific medium (for example, a computer format), the information shall be provided in writing or in any other acceptable form.

5. Even though the information provided is not the best in all respects, this fact shall not serve as justification for the Investigating Authority to disregard it provided that the interested party has done everything within its power.

6. Where evidence or information is not accepted, the party providing it shall be informed immediately of the reasons which have led to its non-acceptance and shall be given an opportunity to submit new explanations within a reasonable time, taking due account of the time-limits set for the investigation. If the Investigating Authority considers that the explanations are unsatisfactory, in any

determinations published it shall explain the reasons for which it has rejected the evidence or information.

7. Where the Investigating Authority has to base its conclusions, including those on the normal value, on information obtained from a secondary source, including the information appearing in the application for initiation of an investigation, it shall proceed with special caution. In such cases, wherever possible, it shall compare such information with that available from other independent sources, for example, published price lists, official import statistics and customs statistics, as well as the information obtained from other interested parties in the course of the investigation. Nevertheless, obviously if a party does not cooperate and thus fails to communicate relevant information to the Investigating Authority, this could lead to a less favourable result for this party than if it had cooperated.

ANNEX III

PROCEDURE FOR INVESTIGATION INTO CIRCUMVENTION

1. Circumvention proceedings may be initiated ex officio or at the request of a party. The application for initiation shall be submitted to the competent authority by a competent attorney, representing a party that has a right or legitimate interest likely to be affected.

2. Any application for review relating to circumvention shall include information on the specific type of circumvention which is alleged. In addition, in fulfilment of the powers granted by Decree Law No. 7 of 2006, the Investigating Authority may request from any importer, exporter, domestic or foreign producer, government bodies and third parties not party to the proceedings the evidence, information and data it considers relevant for the purpose of the circumvention investigation.

3. If it is considered that there are grounds for initiating a circumvention investigation, the competent authority shall issue a reasoned resolution on initiation in which it shall request the information it considers necessary, determine whether the proceedings should only involve one investigation phase or preliminary and final phases, taking into account the complexity of the investigation and the evidence to be examined. The resolution shall give the parties investigated a reasonable time to provide evidence and undertake a proper defence of their interests.

4. An appeal against this resolution may be lodged in accordance with Articles 171 et seq. of Law No. 38 of 2000.

5. If the parties that have been requested to supply information are unable to respond within the designated time, they may request an extension for an equal period of time. After the time allowed for presentation and submission of the evidence required by the Investigating Authority has elapsed, the necessary procedures shall be followed without delay. After the period allowed for receiving the information requested or examining the evidence has ended, this phase shall be deemed to have been concluded and a preliminary or definitive determination may be adopted on the basis of the information and evidence available.

6. In circumvention investigations, earlier information to be found in the administrative file on imposition of the measure may be used provided that more recent information has not been presented ex officio or by the parties.

7. In the case of a negative preliminary determination, drawn up in accordance with paragraph 3, and provided that the relevant interested party has, as a minimum, submitted a substantive although

incomplete response within the time allowed, this party shall be given an opportunity to remedy the omission within a period of seven (7) days and in its definitive conclusion the Investigating Authority shall take into account the additional information thus provided.

8. The Investigating Authority may conduct the verifications it deems necessary in order to confirm the accuracy and relevance of the data provided by any interested party.

9. If the Investigating Authority determines that circumvention has occurred, its definitive resolution may impose the following:

(a) A tariff increase to offset the absorption of duties through circumvention;

(b) extension of the scope of measures to spare parts, components or like replacement products, new models or other such products giving rise to the circumvention.

10. Circumvention proceedings require the submission of a recommendation to the Cabinet Council for its approval with a view to imposing new measures or modifying those already existing.

CHAPTER IV

REPEAL AND ENTRY INTO FORCE

Article 210. Repeal. This Executive Decree repeals all contrary provisions.

Article 211. Entry into force. This Executive Decree shall enter into force from the date of its publication in the *Gaceta Oficial*.

FOR PUBLICATION AND IMPLEMENTATION

Done at Panama City on the eighth day of the month of January of two thousand and nine (2009).

MARTÍN TORRIJOS ESPINO
President of the Republic

GISELA ÁLVAREZ OF PORRAS
Ministry of Trade and Industry

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