

WORLD TRADE ORGANIZATION

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

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

PERU

The following communication, dated 11 February 2003, has been received from the Permanent Mission of Peru.

The Permanent Mission of Peru to the International Organizations based in Geneva presents its compliments to the Secretariat of the World Trade Organization (Rules Division) and refers to its notification obligations pursuant to Article 18.5 of the Anti-Dumping Agreement (Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994) and Article 32.6 of the Agreement on Subsidies and Countervailing Measures.

In that regard, it submits herewith Supreme Decree 006-2003-PCM, Regulations on Dumping and Subsidies, which replaces Supreme Decree 043-97-EF and amendments thereto.

PCM (PRESIDENT OF THE COUNCIL OF MINISTERS)

Regulations pursuant to the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, the Agreement on Subsidies and Countervailing Measures and the Agreement on Agriculture.

**SUPREME DECREE
No. 006-2003-PCM**

THE PRESIDENT OF THE REPUBLIC

WHEREAS:

By virtue of Legislative Decision No. 26407, published in the Official Journal *El Peruano* on 18 December 1994 and in effect since 1 January 1995, the Democratic Constituent Congress adopted the Agreement Establishing the World Trade Organization (WTO) and the multilateral trade agreements contained in the Final Act of the Uruguay Round signed at Marrakesh, Morocco, on 15 April 1994;

The aforementioned multilateral trade agreements include the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, the Agreement on Subsidies and Countervailing Measures, and the Agreement on Agriculture, which provide that the Republic of Peru shall take all necessary steps, of a general or particular character, to ensure the conformity of its laws, regulations and administrative procedures with the provisions of those Agreements;

Dumping and subsidies may constitute practices that distort the competition guaranteed in the Political Constitution of Peru;

By virtue of Decree Law No. 25868 and its Regulations, adopted by Supreme Decree No. 025-93-ITINCI, the National Institute for the Defence of Competition and the Protection of Intellectual Property has been established as the body responsible for applying the legal rules that guarantee free competition;

Supreme Decree No. 043-97-EF is currently in force, subject to amendments contained in Supreme Decree No. 144-2000-EF and Supreme Decree No. 225-2001-EF, regulating application of the rules contained in the aforementioned Agreements;

In order to avoid the dispersion of regulations and to enhance regulation of the relevant Agreements, in accordance with the commitments undertaken by the Republic of Peru, it has become necessary to adopt new regulations to replace Supreme Decree No. 043-97-EF and amendments thereto;

In accordance with the provisions of Article 118, paragraph 8, of Peru's 1993 Political Constitution;

HEREBY DECREES:

Article 1: - The purpose of this Supreme Decree is to establish regulations for the rules laid down in the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, the Agreement on Subsidies and Countervailing Measures, and the Agreement on Agriculture, adopted by Legislative Resolution No. 26407, in order to prevent and remedy distortion of market competition caused by dumping and subsidies.

The Regulations shall be applicable in accordance with the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, the WTO Agreement on Subsidies and Countervailing Measures and the Agreement on Agriculture, which Agreements shall prevail in case of doubt.

The procedures for anti-dumping and countervailing measures that follow in the context of bilateral trade agreements and integration treaties to which Peru is party shall be governed by the provisions of those agreements and/or treaties.

TITLE I

General Provisions

Article 2: - General - For the purposes of these Regulations, the following definitions shall apply:

I. **Anti-Dumping Agreement:** the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, which forms part of the multilateral trade agreements contained in the Final Act of the Uruguay Round, adopted by the Democratic Constituent Congress in Legislative Resolution No. 26407.

II. **Subsidies Agreement:** the Agreement on Subsidies and Countervailing Measures, which forms part of the multilateral trade agreements contained in the Final Act of the Uruguay Round, adopted by the Democratic Constituent Congress in Legislative Decision No. 26407;

III. **The Commission:** the Dumping and Subsidies Commission of the National Institute for the Defence of Competition and the Protection of Intellectual Property (INDECOPI);

IV. **Technical Secretariat:** the Technical Secretariat of the Commission;

V. **Court:** the Court for the Defence of Competition and the Protection of Intellectual Property of the National Institute for the Defence of Competition and the Protection of Intellectual Property (INDECOPI).

VI. **WTO:** the World Trade Organization.

VII. **Days:** calendar days, unless otherwise indicated. If the day prior to the expiry of any authorized time-limit is not a working day, that time-limit shall be extended automatically until the first working day thereafter.

Article 3: - Purpose of the investigation procedure - A determination of dumping or subsidies, injury or threat of injury and their causal relationship, as well as the imposition of anti-dumping or countervailing duties, shall be made through an investigation carried out according to the administrative procedures prescribed in these Regulations.

TITLE II

Dumping

Article 4: - Determination of dumping - For the purposes of this Supreme Decree, a product shall be considered as being dumped if its export price is less than its normal value or comparable price, in the ordinary course of trade, for a like product when destined for consumption in the exporting country.

The export price, the normal value or the comparable price referred to in the preceding paragraph shall be determined in accordance with the provisions of this Title.

A fair comparison shall be made between the export price and the normal value to determine the existence of dumping. This comparison shall be made at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are also demonstrated to affect price comparability. It is understood that some of the above factors may overlap, and the Commission shall ensure that they do not duplicate adjustments that have been already made under this provision.

- (i) When the comparison requires a conversion of currencies, such conversion should 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. Normally, the date of sale would be the date of contract, purchase order, order confirmation, or invoice, whichever establishes the material terms of sale. Fluctuations in exchange rates shall be ignored and in an investigation the authorities shall allow exporters at least 60 days to have adjusted their export prices to reflect sustained movements in exchange rates during the period of investigation.
- (ii) Subject to the provisions governing fair comparison, the existence of margins of dumping shall normally be established on the basis of a comparison of a weighted average normal value with 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 established on a weighted average basis may be compared to prices of individual export transactions if the Commission finds a pattern of export prices which differ significantly among different purchasers, regions or time periods, and if an explanation is provided as to why such differences cannot be taken into account appropriately by the use of a weighted average-to-weighted average or transaction-to-transaction comparison.

Article 5: - Exports from a third country – In the case where products are not imported directly from the country of origin but are exported to Peru from an intermediate country, the price at which the products are sold from the country of export to Peru shall normally be compared with the comparable price in the country of export. However, comparison may be made with the price in the country of origin, if, for example, the products are merely transshipped through the country of export, or such products are not produced in the country of export, or there is no comparable price for them in the country of export.

Article 6: - Particular market conditions – When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation or the low volume of the sales in the domestic market of the exporting country, such sales do not permit a proper comparison, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to an appropriate third country, provided that this price is representative, or with the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits.

- (a) Sales of the like product in the domestic market of the exporting country or sales to a third country at prices below per unit (fixed and variable) costs of production plus

administrative, selling and general costs may be treated as not being in the ordinary course of trade by reason of price and may be disregarded in determining normal value only if the Commission determines that such sales are made within an extended period of time in substantial quantities and are at prices which do not provide for the recovery of all costs within a reasonable period of time. It is understood that the extended period of time should normally be one year and in no case less than six months, and that sales below per unit costs are made in substantial quantities when 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 20 per cent of the volume sold in transactions under consideration for the determination of the normal value.

If prices which 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.

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 Commission 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 in the cost allocations, costs shall be adjusted appropriately for those non-recurring items of cost which benefit future and/or current production, or for circumstances in which costs during the period of investigation are affected by start-up operations. The 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 which can reasonably be taken into account by the Commission during the investigation.

- (b) The amounts for administrative, selling and general costs and for profits shall be based on actual data pertaining to production and sales in the ordinary course of trade of the like product by the exporter or producer under investigation. When such amounts cannot be determined on this basis, the amounts may be determined on the basis of:
 - (i) the actual amounts incurred and realized by the exporter or producer in respect of production and sales in the domestic market of the country of origin of the same general category of products;
 - (ii) the weighted average of the actual amounts incurred and realized by other exporters or producers subject to investigation in respect of production and sales of the like product in the domestic market of the country of origin;
 - (iii) any other reasonable method, provided that the amount for profit so established shall not exceed the profit normally realized by other exporters or producers on sales of products of the same general category in the domestic market of the country of origin.

For the purpose of this Article, 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 5 per cent or more of the sales of the product

under consideration to the Peruvian market, although the Commission shall accept a lower ratio where the evidence demonstrates that domestic sales are of sufficient magnitude to provide for a proper comparison.

Article 7: - Absence of export price – In cases where there is no export price or where it appears to the Commission that the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported products are first resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as the Commission may determine.

Allowances for costs, including duties and taxes, incurred between importation and resale, and for profits accruing, should also be made. If in these cases price comparability has been affected, the Commission shall establish the normal value at a level of trade equivalent to the level of trade of the constructed export price, or shall make due allowance as warranted under this paragraph. The Commission shall indicate to the parties in question what information is necessary to ensure a fair comparison and shall not impose an unreasonable burden of proof on those parties.

Article 8: - Normal value in the case of countries with an economy other than a market economy - Where imports are consigned from or originate in countries where there are distortions in the economy that do not permit them to be considered market economy countries, the normal value shall be determined on the basis of the comparable price in the ordinary course of trade at which the like product is actually sold in a third country with a market economy for domestic consumption, or, failing that, for export, or on the basis of any other method deemed appropriate by the Commission.

For the purpose of the previous paragraph, the following criteria shall be taken into account to determine whether the sector under investigation operates in market-economy conditions:

- (i) prices shall be determined by freely operating market forces without interference or restrictions of any kind on the part of the State;
- (ii) prices shall be set on the basis of free and fair competition;
- (iii) marketing and production costs, inclusive of inputs, raw materials and services, shall be determined without interference on the part of the State;
- (iv) decisions of firms regarding output, sales and investment shall be taken on the basis of the interaction of supply and demand, without interference on the part of the State;
- (v) firms shall maintain basic accounting records independently audited in line with international accounting standards and applied for all purposes;
- (vi) the existence of rules governing ownership, market entry and market exit that guarantee legal certainty and stability for the operation of firms.

Article 9: - Definition of like product – The term "like product" shall be interpreted to mean a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.

TITLE III

Subsidies

Article 10: - Concept and requisite characteristics of a subsidy – A subsidy shall be deemed to exist if:

- (1) there is a financial contribution by a government or any public body within the territory of a Member country which involves a direct transfer of funds or potential direct transfers of funds or liabilities, or if government revenue that is otherwise due is foregone or not collected, or if a government provides goods or services other than general infrastructure, or purchases goods, or if a government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions illustrated above which would normally be vested in the government and the practice, in no real sense, differs from practices normally followed by governments; and a benefit is thereby conferred; or
- (2) there is any form of income or price support in the sense of the Subsidies Agreement and a benefit is thereby conferred.

Article 11: - Concept of specificity – Subsidies, as defined in the preceding Article, may be specific or non-specific.

A specific subsidy shall be a subsidy that benefits an enterprise or industry or group of enterprises or industries. A subsidy which benefits certain enterprises located within a designated geographical region within the jurisdiction of the granting government shall be deemed specific.

A subsidy that benefits all industries in general shall be non-specific.

The Subsidies Agreement establishes the criteria on which to determine whether a subsidy is specific or not.

Article 12: - Classification of subsidies – Subsidies are classified as prohibited and actionable.

- (i) The following subsidies shall be prohibited:
 - (a) subsidies contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance, including those illustrated in Annex I of the Subsidies Agreement;
 - (b) subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods.

All prohibited subsidies shall be deemed specific. Countervailing measures and actions in response to this type of subsidy shall be governed by the provisions of Part V, Article 4 of the Subsidies Agreement.

- (ii) Actionable subsidies are those that cause adverse effects to the interests of Peru, i.e.:
 - (a) injury to the domestic industry. The term "injury" here shall be taken to mean material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry and

shall be interpreted in accordance with the provisions of Article 15 of the Subsidies Agreement;

- (b) nullification or impairment of benefits accruing directly or indirectly under GATT 1994, in particular the benefits of concessions bound under Article II of GATT 1994;
- (c) serious prejudice to the interests of the country, in accordance with the provisions of Article 6 of the Subsidies Agreement.

Countervailing measures and actions in response to actionable subsidies shall be governed by the provisions of Part V, Article 7 of the Subsidies Agreement, as applicable.

Article 13: - Indirect tax reduction schemes and drawback schemes for import charges as specific subsidies – Systems for the reduction of indirect taxes on export production and drawback schemes for charges on imports consumed or utilized in export production shall only be deemed specific subsidies if the amount of the reduction or drawback exceeds the amount of the indirect taxes and import charges actually paid in the production process.

The Subsidies Agreement lays down the procedure for determining whether indirect tax reduction schemes and drawback schemes for import charges constitute subsidies.

Article 14: - Amount of the subsidy – The following criteria shall be used, as applicable, for the purpose of calculating the amount of a subsidy on the basis of the benefit to the recipient:

Government provision of equity capital shall not be considered as conferring a benefit, unless the investment decision can be regarded as inconsistent with the usual investment practice (including for the provision of risk capital) of private investors in the territory of the country granting the subsidy.

A loan by a government shall not be considered as conferring a benefit, unless there is a difference between the amount that the firm receiving the loan pays on the government loan and the amount the firm would pay on a comparable commercial loan which the firm could actually obtain on the market. In this case the benefit shall be the difference between these two amounts;

A loan guarantee by a government shall not be considered as conferring a benefit, unless there is a difference between the amount that the firm receiving the guarantee pays on a loan guaranteed by the government and the amount that the firm would pay on a comparable commercial loan absent the government guarantee. In this case the benefit shall be the difference between these two amounts adjusted for any differences in fees;

The provision of goods or services or purchase of goods by a government shall not be considered as conferring a benefit unless the provision is made for less than adequate remuneration, or the purchase is made for more than adequate remuneration. The adequacy of remuneration shall be determined in relation to prevailing market conditions for the good or service in question in the country of provision or purchase (including price, quality, availability, marketability, transportation and other conditions of purchase or sale).

If the subsidy is granted by reason of the recipient firm's overall export activity, the value of the subsidy for the product under investigation shall be calculated with due regard for the relationship between export sales of that product and the total export sales of the firm.

Generally speaking, a separate subsidy amount shall be determined for each of the known exporters or producers of the product subject to investigation, in the country investigated. For the

remaining exports originating in the country investigated, the amount established shall be no lower than that determined for firms accredited as interested parties, taking into account the best information available.

The value of loan subsidies shall be determined on the basis of the financial method most appropriate in the Commission's view, for the purpose of establishing the real impact of the subsidy on the goods.

TITLE IV

Determination of Injury or Threat of Injury

Article 15: - Determination of injury, threat of injury or material retardation of the establishment of such an industry – The Commission shall determine injury, threat of injury, or material retardation of the establishment of a domestic industry caused by dumped or subsidized imports.

Under the circumstances described in Article 20(ii), injury may be found to exist even where a major portion of the total domestic industry is not injured, provided there is a concentration of dumped or subsidized imports into such an isolated market and provided further that the dumped or subsidized imports are causing injury to the producers of all or almost all of the production within such market.

Article 16: - Determination of injury – A determination of injury for purposes of the Anti-Dumping Agreement and Subsidies Agreement shall be based on evidence and involve an objective examination of both (a) the volume of the dumped or subsidized imports and the effect of these imports on prices in the domestic market for like products and (b) the consequent impact of these imports on the domestic producers of such products.

With regard to the volume of the dumped or subsidized imports, the Commission shall consider whether there has been a significant increase in dumped or subsidized imports, either in absolute terms or relative to production or consumption of the like product in Peru. With regard to the effect of the dumped or subsidized imports on prices, the Commission shall consider whether there has been a significant price undercutting by the dumped or subsidized imports as compared with the price of a like product in Peru, or whether the effect of such imports is otherwise to depress prices to a significant degree or to prevent price increases, which otherwise would have occurred, to a significant degree.

In the special case of agricultural subsidies, there shall be an evaluation of whether the cost of government support programmes has increased, in conformity with the provisions laid down in the WTO Agreement on Agriculture.

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

Article 17: - Indicators of injury – The examination of the impact of the dumped or subsidized imports on the domestic industry shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, and ability to raise capital or investments. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.

Article 18: - Determination of causal relationship – The demonstration of a causal relationship between the dumped or subsidized imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the Commission. The Commission shall also

examine any known factors other than the dumped or subsidized imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped or subsidized imports. Factors which may be relevant in this respect include the volume and prices of imports neither sold at dumping prices nor subsidized, contraction in demand or changes in the patterns of consumption, trade-restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.

Article 19: - Determination of threat of injury – A determination of a threat of injury shall be based on facts and not merely on allegation, conjecture or remote possibility. In making a determination regarding the existence of a threat of injury, consideration shall be given, *inter alia*, to the factors indicated in Articles 3.7 and 15.7 of the Anti-Dumping and Subsidies Agreements, respectively.

TITLE V

Definition of Domestic Industry

Article 20: - Domestic industry – For the purposes of this Supreme Decree, the term "domestic industry" means the domestic producers as a whole of the like products or those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products, except that:

- (i) when producers are related to the exporters or importers or are themselves importers of the allegedly dumped product, the term "domestic industry" may be interpreted as referring to the rest of the producers. For the purpose of this paragraph, producers shall be deemed to be related to exporters or importers only if (a) one of them directly or indirectly controls the other; or (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 producer concerned to behave differently from non-related producers. For the purpose of this paragraph, one shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.
- (ii) in exceptional circumstances the national territory may, for the production in question, be divided into two or more competitive 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.

TITLE VI

Administrative Investigation Procedure

CHAPTER 1

Application and Initiation of the Investigation

Article 21: - Initiation of the investigation – Except as provided for in Article 23, an investigation to determine the existence of dumped or subsidized imports, and the effects of these unfair international trade practices, shall be initiated upon a written application addressed to the Commission by an enterprise or group of enterprises accounting for at least 25 per cent of total domestic production

of the product concerned, without prejudice to Articles 5.4 and 11.4 of the Anti-Dumping and Subsidies Agreements, respectively.

Article 22: - Application – An application to initiate an investigation shall include evidence of the following:

- (a) The dumping or subsidy;
- (b) Injury, threat of injury or material retardation of the establishment of the domestic industry;
- (c) The causal link between the dumped or subsidized imports and the alleged injury or threat of injury.

Simple assertion, unsubstantiated by relevant evidence, cannot be sufficient to meet the requirements set out in indents (a), (b) and (c) of this paragraph. The application shall also contain such information as is reasonably available to the applicant on the following:

- (d) information on the applicant or applicants: business name, public deed of incorporation of the company, taxpayers' registration number (RUC), domicile, telephone and fax number; activity or main line of business and date on which operations began; industry and association to which the applicant belongs; percentage share of each applicant in the total domestic production of the product concerned. If possible, the business name and domicile of any other enterprises besides the applicants producing the product;
- (e) information on the legal representative: name, domicile, telephone and fax number of the representative, as well as the documents that prove his or her identity;
- (f) information on the imported product and the like domestic product: country of origin or provenance of the imports, tariff heading, value and volume of the imports during the previous three years from the exporting country specified in the application. Description of the product, units of measurement and, where applicable, the conversion factors used; trade and technical names, model or type, physical and technical characteristics, physical and/or chemical analysis where applicable, uses, domestic or imported inputs used in the domestic product, presentation of the product;
- (g) information on the exporter: name, domicile, telephone and fax number of the foreign producer or exporter of the product cited in the application;
- (h) information on the importers: name and business name;
- (i) proof of payment of the corresponding fee.

A duly completed "Questionnaire for Producers Applying to Initiate an Alleged Dumping or Subsidies Investigation", freely available on the INDECOPI website, should be enclosed with any application. The official procedures for submitting applications are described in the INDECOPI Single Text on Administrative Procedures.

The Commission shall examine the accuracy and adequacy of the evidence provided in the application to determine whether there is sufficient evidence to justify the initiation of an investigation.

Article 23: - *Ex officio* Initiation of an investigation procedure – In special circumstances, the Commission may decide to initiate an investigation without having received a written application by or on behalf of a domestic industry. They shall only do so if they have sufficient evidence of dumping or subsidies, injury and a causal link to justify such an investigation. "Special circumstances" shall be considered to include situations where the domestic industry is disorganized or fragmented, national interest, and other similar circumstances.

Article 24: - Consultations in the event of an application to apply countervailing duties – In the special case of an application to apply countervailing duties, after receiving the application, providing that the requirements laid down in Article 22 have been met, and before initiating the corresponding investigation, the Commission shall invite the government of the country of origin or export to hold consultations with a view to reaching a mutually satisfactory solution regarding the application for the imposition of duties.

Without prejudice to the provisions of the preceding paragraph, the Commission may decide to initiate an investigation or apply provisional or definitive duties pursuant to Article 13.3 of the Subsidies Agreement.

Article 25: - Time-limit for the initiation of the investigation or a declaration that the application is inadmissible or unfounded – Within thirty (30) days from the date of submission of the application, the Commission shall:

- (a) Decide to initiate an investigation by means of the corresponding resolution, or:
- (b) Allow the applicant fifteen (15) days in which to meet the requirements. This period shall be calculated from the day following the corresponding application and may be extended by a further fifteen (15) days. After the requirements have been met, the Commission shall have a period of fifteen (15) days in which to take a decision, which may be extended by a further fifteen (15) days. Where the necessary documents are not provided in an appropriate form within the time-limit, the Commission shall declare the application inadmissible and shall issue the corresponding resolution, which shall be notified to the applicant;
- (c) Reject the application on the grounds that it is unfounded, issue the corresponding resolution and notify the applicant thereof.

Article 26: - Distribution and completion of questionnaires – Within ten (10) days of publishing the decision to initiate an investigation in the Official Journal, *El Peruano*, the Technical Secretariat shall distribute the corresponding questionnaires to the parties cited in the complaint and, if applicable, to the importers of the products identified by the Commission, so that within thirty (30) days from the day following the notification they may be returned, duly completed, to the Commission. In completing the forms, parties may submit their rebuttals. The time-limits applicable to foreign producers or exporters shall be calculated from the date of receipt of the questionnaire, which shall be deemed to have been received seven (7) days after dispatch to the addressee in the country of origin or export.

Copies of the application and any annexes that do not contain confidential information or, where applicable, the corresponding documents in the case of *ex officio* investigations, shall be enclosed with the questionnaires transmitted to the exporting firms cited in the complaint.

The Commission may grant additional extensions, provided adequate justification is given, subject to a maximum limit of sixty (60) days for the submission of replies to questionnaires.

Article 27: - Interested parties and participation – For the purposes of these Regulations, interested parties entitled to participate in the proceedings shall mean the following:

- (i) exporters, foreign producers or importers of the product under investigation, or trade or business associations a majority of whose members are producers, exporters or importers of such product;
- (ii) the government of the exporting country; and,
- (iii) producers of the like product in Peru, or trade or business associations a majority of whose members are producers of the like product in the territory of Peru.

The Commission may admit other natural or legal persons different from the above as interested parties, provided they demonstrate a legitimate interest in the investigation.

Legal or natural persons acting through representatives shall enclose the corresponding powers of attorney. Powers of attorney granted abroad shall be duly endorsed both by the corresponding Peruvian consul and the Ministry of Foreign Relations of Peru.

Article 28: - Evidentiary period and essential facts – Within six (6) months from publication of the decision to initiate an investigation, the period for the submission of evidence or arguments by the parties shall be concluded, without prejudice to the right of the Technical Secretariat and the Commission to request information at any stage of the proceedings. However, if there are sufficient grounds, the Commission may extend the evidentiary period by a maximum of three (3) additional months.

Within thirty (30) days after the conclusion of the evidentiary period, the Commission shall issue the document of Essential Facts, forming the basis for its final resolution, which shall be notified to the parties participating in the proceedings within five (5) working days. The parties may submit their comments on the Essential Facts within a maximum of ten (10) days calculated from the day following their notification.

Following expiry of the period for receipt of comments on the Essential Facts, the Commission shall adopt a final resolution within a period of thirty (30) days.

At the request of any of the parties, a final hearing shall be convened at which they may put forward arguments relating only to the Essential Facts notified. The final hearing must be requested in the written submission containing the comments on the Essential Facts. The parties shall have seven (7) days to present in writing the arguments put forward at the hearing. Once this period has expired, the Commission shall adopt a final resolution within thirty (30) days.

Article 29: - Powers of the Commission to request information – The Commission may require the data and information it deems relevant to allow it to fulfil its task directly from the parties cited in the complaint, customs agents, surveillance, transport and other companies and public or private sector bodies, which must supply this information within the time-limits set, on pain of liability.

Where there is no response to the request referred to in the preceding paragraph, the Commission shall take a decision based on the information available, without prejudice to the provisions of Article 5 of Legislative Decree No. 807 – Law on the Powers, Rules and Organization of INDECOPI.

The Commission shall impose a fine on parties to the administrative proceedings who obstruct the taking of evidence, use the proceedings for unlawful or fraudulent purposes or in any way hinder or obstruct the normal conduct of the investigation procedure, in accordance with the applicable rules on

the subject, including Articles 110 et seq. of the Code of Civil Procedure, and the supplementary rules of administrative law.

Article 30: - Submission of information – The Commission shall provide the opportunity for industrial users of the product under investigation, and for representative consumer organizations in cases where the product is commonly sold at the retail level, to provide information which is relevant to the investigation regarding dumping, injury and the causal link between the two.

Article 31: - Copies of the documents submitted by the parties involved – All documentation submitted to the Commission during the proceedings must be accompanied by a sufficient number of copies for the other parties, except in the case of confidential information.

Article 32: - Time-limit for investigation procedures – The Commission shall have a period of nine (9) months to conclude the investigation. This period shall be calculated from the date on which the decision to initiate the investigation was published in the Official Journal, *El Peruano*.

Provided that there are grounds for doing so, the Commission may extend the time-limit for the investigation, during the evidentiary period, for a maximum of three (3) additional months.

Article 33: - Publication of resolutions – The resolution initiating an investigation, as well as those applying provisional or definitive anti-dumping or countervailing duties, abolishing or changing such duties, or terminating or postponing an investigation, shall be published just once in the Official Journal, *El Peruano*.

CHAPTER II

Evidence

Article 34: - Disclosure and confidentiality of records – The Technical Secretariat, the Commission and the Court are responsible for the disclosure of records, as well as the confidentiality of information. The records, other than those containing confidential information, shall be made available to other interested parties involved in the proceedings, providing they have participated in such proceedings. Once the proceedings have been completed, the records, except those containing confidential information, shall be made available to the public. The proceedings shall be considered restricted while they remain in progress.

Article 35: - Best information available - In cases in which an interested party refuses access to, or otherwise fails to provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available. Application of this Article shall remain consistent with the provisions of Annex II of the Anti-Dumping Agreement.

Article 36: - Documents submitted in a language other than Spanish – Documents submitted in another language shall only be taken into account when a simple Spanish translation is enclosed with the documents. The interested party and translator shall take joint responsibility for the translation, in accordance with Article 11.1.2. of Law No. 27444 – Law on General Administrative Procedure – or any legislation replacing it.

Article 37: - Confidential information – Information shall be considered confidential where its disclosure would be of significant competitive advantage to a competitor or have a significantly adverse effect upon a person supplying the information or upon a person from whom the supplier acquired the information.

For this purpose, the information set out in the illustrative list annexed to this Supreme Decree, without being exclusive, may be considered confidential. Where information is by nature confidential, the interested party shall not be required to show good cause.

Where confidentiality is invoked in respect of any other type of information, the Commission shall evaluate the reasons cited by the party to justify such a claim. If no such justification is submitted, the Technical Secretariat shall request the party to provide good cause for the confidentiality of the information within seven (7) days. Requests for the confidentiality of information must be submitted in writing at the same time as the information is submitted. Otherwise, the authorities shall not be responsible for its disclosure.

Access to information declared confidential shall be restricted to the Technical Secretariat, the Commission and the Court, depending on which stage of the administrative procedure has been reached. In case of an administrative challenge, access shall be restricted to the specific judge or court of the judiciary.

Article 38: - Submission of non-confidential summaries – All parties providing confidential information are required to furnish non-confidential summaries thereof.

Where confidentiality is requested for information or where it is confidential by nature and the interested party has failed to submit the corresponding non-confidential summary, the Technical Secretariat shall request that either such summary be provided, or the request for confidentiality be withdrawn, partially or totally, within seven (7) days.

These summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. In exceptional circumstances, the party may indicate that such information is not susceptible of summary, and a statement of the reasons why summarization is not possible must be provided.

If the parties submitting information as confidential fail to provide good cause for this special treatment, to furnish the corresponding non-confidential summary, or to withdraw the request for confidentiality within the time-limit set by the Commission, this information may be disregarded, unless convincing evidence from an appropriate source demonstrates that the information is correct. The Commission may order the return of the information if it can be obtained in non-confidential form from other sources.

Article 39: - Hearings – Within the evidentiary period, the parties may request a hearing, without prejudice to the hearing that the Commission shall convene *ex officio* within the same period. No party shall be obliged to attend a hearing and its absence shall not be detrimental to its cause.

Information provided at a hearing shall only be taken into account if it is submitted in writing to the Commission within seven (7) days after the hearing.

Article 40: - Evaluation of evidence – The form and evaluation of evidence shall be governed by the provisions of Article 6 of the WTO Anti-Dumping Agreement and Article 12 of the Subsidies Agreements.

CHAPTER III

Price undertakings

Article 41: - Offering of price undertakings – When, during the course of an investigation, the exporter or the government of the country exporting the product at allegedly dumped or subsidized

prices offers voluntary price undertakings with a view to removing injury to the domestic industry, the Commission shall request the other interested parties to submit their comments on the substance of such undertakings within fifteen (15) days. The Commission may suspend or terminate the procedure without imposing provisional or definitive measures, providing it is satisfied that the undertaking would eliminate the injurious effect of the dumping or subsidy.

Article 42: - Acceptance of the price undertaking by the Commission – If an undertaking by an exporter or the government of an exporting country, as applicable, is accepted, a resolution shall be issued suspending or terminating the investigation. This resolution shall be based on the undertaken made.

Article 43: - Monitoring of price undertakings – Fulfilment of these undertakings shall be subject to periodic review by the commission. Where the Commission finds in the course of the review that an undertaking has not been respected, or there is an unjustified delay in transmitting the information necessary to verify compliance, it shall give the interested party fifteen (15) days in which to present its arguments, at the expiry of which the Commission may immediately apply the relevant provisional duty, using the best information available.

In such cases, the Commission shall pursue with the investigation and may levy definitive duties on products entered for consumption ninety (90) days before application of the provisional duties, except that any such retroactive assessment shall not apply to imports entered before the violation of the undertaking.

CHAPTER IV

End of the Investigation Without Imposition of Measures

Article 44: - End of the investigation – The Commission shall declare the application unfounded and terminate the investigation as soon as it is satisfied that there is not sufficient evidence of either dumping or subsidies, injury or threat of injury, or a causal link to justify proceeding with the case. The investigation shall also be terminated in the following cases:

- (i) **Dumping:** There shall be immediate termination in cases where the Commission determines that the margin of dumping is *de minimis*, or that the volume of dumped imports, actual or potential, or the injury, is negligible. The margin of dumping shall be considered to be *de minimis* if this margin is less than 2 per cent, expressed as a percentage of the export price. The volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from a particular country is found to account for less than 3 per cent of imports of the like product in Peru, unless countries which individually account for less than 3 per cent of the imports of the like product in Peru collectively account for more than 7 per cent of imports of the like product in Peru.
- (ii) **Subsidy:** There shall be immediate termination in cases where the amount of a subsidy is *de minimis*, or where the volume of subsidized imports, actual or potential, or the injury, is negligible. For the purpose of this paragraph, the amount of the subsidy shall be considered to be *de minimis* if the subsidy is less than 1 per cent *ad valorem*.

In the case of exports from developing country members of the WTO, the investigation regarding countervailing measures shall be terminated when the Commission determines that:

- (a) the total amount of subsidies granted for the product in question is less than 2 per cent of its value, calculated on a per unit basis; or

- (b) the volume of subsidized imports accounts for less than 4 per cent of total imports of the like product in the importing Member, unless imports from developing country members which individually account for less than 4 per cent of imports of the like product collectively account for more than 9 per cent of total imports of the like product in the importing Member.
- (iii) **Withdrawal:** according to the provisions of Article 189 of Law No. 27444.
- (iv) **Abandonment:** according to the provisions of Article 191 of Law No. 27444.

CHAPTER V

Imposition and Collection of Anti-Dumping or Countervailing Duties

Article 45: - Imposition of anti-dumping or countervailing duties – The Commission may only impose anti-dumping or countervailing duties, as applicable, when it has determined the existence of dumping or subsidies, injury or threat of injury and the causal link between the dumped or subsidized imports and the alleged injury to the domestic industry.

Article 46: - Legal character of definitive duties – Anti-dumping and countervailing duties are measures designed to offset the distortions caused to the market by dumping and subsidization practices. Pursuant to Article 18, paragraph 1 of the Anti-Dumping Agreement and Article 32, paragraph 1, of the Subsidies Agreement, no other measure besides anti-dumping or countervailing duties, as applicable, shall be applied in response to these practices.

Provisional or definitive anti-dumping and countervailing duties constitute fines and not any form of taxation.

Provisional or definitive anti-dumping and countervailing duties are not subject to rebates, discounts for prompt payment, reductions by breaking up payments or of any other kind.

Article 47: - Amount of anti-dumping or countervailing duties – Once the margin of dumping or subsidy, injury and causal link have been determined, the Commission shall apply anti-dumping or countervailing duties, as applicable. The anti-dumping or countervailing duties may be equal to the margin of dumping or to the amount of the subsidy determined. It is desirable that the duty imposed by the Commission should be less than the margin of dumping or amount of the subsidy if such lesser duty would be adequate to remove the injury.

Article 48: - Duration of anti-dumping or countervailing duties – An anti-dumping or countervailing duty shall remain in force only as long as the causes of injury or threat thereof remain, and for no more than 5 years.

Article 49: - Application of provisional anti-dumping or countervailing duties – Provisional anti-dumping or countervailing duties may be applied only if:

- (i) an investigation has been initiated in accordance with the provisions of this Supreme Decree, a public notice has been given to that effect and interested parties have been given adequate opportunities to submit information and make comments;

- (ii) a preliminary affirmative determination has been made that dumping or subsidies exist and that there is injury to a domestic industry caused by one of those practices; and
- (iii) the Commission judges such measures necessary to prevent injury being caused during the investigation.

Provisional anti-dumping or countervailing duties shall not be applied sooner than sixty (60) days from the date of initiation of the investigation. The application of provisional measures shall take into account the relevant provisions of Article 9 of the Anti-Dumping Agreement and Article 19 of the Subsidies Agreement.

Article 50: - Duration of provisional anti-dumping or countervailing duties – The application of provisional anti-dumping or countervailing duties shall be limited to as short a period as possible, not exceeding four months, or, by decision of the Commission and at the request of exporters accounting for a significant proportion of the trade involved, to a period not exceeding six months. When the Commission, in the course of an investigation, considers whether a duty less than the margin of dumping or amount of the subsidy is sufficient to remove the injury, these time-limits may be six and nine months, respectively.

Article 51: - Variation of the amount between provisional and definitive duties – If the definitive anti-dumping or countervailing duty is higher than the provisional duty paid or payable, or the estimated amount guaranteed, the difference shall not be collected. If the definitive duty is less than the provisional duty paid or payable, or than the estimated amount guaranteed, the excess amount shall be reimbursed or a new calculation of the duty made, as applicable.

Where definitive duties are not imposed, the entire amount paid shall be refunded and the security given to cover the amount of the provisional duties imposed shall be refunded or released.

Article 52: - Time-limit for requests for reimbursement of excess or undue payments – The time-limit for importers to request reimbursement of anti-dumping or countervailing duty payments in excess or that were not due shall be four years after the date of publication of the decision to impose definitive anti-dumping or countervailing duties.

Article 53: - Application of definitive anti-dumping duties retroactively – A definitive anti-dumping duty may be levied on products entered for consumption not more than ninety (90) days prior to the date of application of provisional measures when, in relation to the dumped product under consideration, the authorities determine:

- (i) there is a history of dumping which caused injury, or that the importer was, or should have been, aware that the exporter practised dumping and that such dumping would cause injury; and
- (ii) the injury is caused by massive dumped imports of a product in a relatively short time which in light of the timing and the volume of the dumped imports and other circumstances (such as a rapid build-up of inventories of the imported product) is likely to seriously undermine the remedial effect of the definitive anti-dumping duty to be applied, provided that the importers concerned have been given an opportunity to comment.

No anti-dumping duties shall be levied retroactively on products entered for consumption prior to the date of initiation of the investigation.

Article 54: - Application of definitive countervailing duties retroactively – In critical circumstances where for the subsidized product in question the Commission finds that injury which is difficult to repair is caused by massive imports in a relatively short period of a product benefiting from subsidies paid or bestowed inconsistently with the provisions of GATT 1994 and of the Subsidies Agreement and where it is deemed necessary, in order to preclude the recurrence of such injury, to assess countervailing duties retroactively on those imports, the definitive countervailing duties may be assessed on imports which were entered for consumption not more than 90 days prior to the date of application of provisional measures.

No countervailing duties shall be levied retroactively on products entered for consumption prior to the date of initiation of the investigation.

Article 55: - Body responsible for the collection of anti-dumping and countervailing duties – Customs is responsible for the collection of anti-dumping and countervailing duties imposed by the Commission, in accordance with the provisions of these Regulations.

Article 56: - Payment of anti-dumping and countervailing duties – Anti-dumping and countervailing duties shall be paid on the invoiced f.o.b. value, or on the weight or any other unit of measurement, in accordance with the INDECOPI resolution, and shall be payable from the date appearing on the Single Import Declaration.

Provisional duties shall be paid in cash or guaranteed by means of irrevocable, binding, unconditional and immediately cashable security issued by a banking or financial entity, expressed in United States dollars, and payable to the National Institute for the Defence of Competition and the Protection of Intellectual Property (INDECOPI).

Definitive duties may not be guaranteed, and shall be paid in cash. Customs may not permit the release of goods subject to definitive anti-dumping or countervailing duties unless payment of such duties has been unquestionably guaranteed.

Article 57: - Reports submitted by Customs – Customs shall transmit to the Commission, within one month following the close of each quarter, monthly reports on application of the anti-dumping or countervailing duties in force. These reports shall contain the following information:

- (1) The volume and value of imports of each of the products subject to definitive and provisional anti-dumping or countervailing duties in force, broken down by origin;
- (2) The amount collected in respect of each of the definitive and provisional anti-dumping or countervailing duties in force, broken down by origin;
- (3) A list of the securities lodged for provisional duties in force;
- (4) The volume and value of imports corresponding to the subheadings comprising spare parts and components of finished products, subject to definitive anti-dumping or countervailing duties.

Article 58: - Application of anti-dumping or countervailing duties on the import of spare parts or components – The Commission may apply provisional or definitive anti-dumping or countervailing duties on the import of spare parts or components imported from the country of origin of the final product subject to definitive duties if there is proof that such goods are being imported for the purpose of circumventing the application of anti-dumping or countervailing duties imposed on the final product. For this purpose, the Commission shall take the following factors into account, *inter alia*:

- (a) Whether the product sold in Peru has been assembled or finished in Peru using spare parts or components produced in the country of origin of the final product subject to definitive duties;
- (b) whether the product sold in Peru has been assembled or finished in a third country using spare parts or components produced in the country of origin of the final product subject to definitive duties;
- (c) whether the product has been assembled or finished by a party related to the exporter or producer of the final product subject to definitive duties;
- (d) whether the import of spare parts or components for the product subject to definitive duties and assembly or finishing of such products have increased following publication of the decision initiating the investigation;
- (e) any other circumstance determining a change in the characteristics of trade for which there is no economic cause or justification other than imposition of the duty and if there is proof that payment of the definitive duties imposed on the final product is being circumvented.

The review procedure shall be governed by the provisions laid down in Articles 21 to 57 of these Regulations, where applicable.

CHAPTER VI

Definitive Duty Review Procedures

Article 59: - Review procedure owing to changed circumstances – After a period of at least twelve (12) months has elapsed from publication of the decision which put an end to the investigation, the Commission may, at the request of any interested party or *ex officio*, consider whether the definitive anti-dumping or countervailing duties in force should be maintained or modified. In evaluating the request, the Commission shall consider whether there is sufficient evidence of a significant change in circumstances which warrants a review of the duties imposed.

Article 60: - Review procedure once a reasonable time-period has elapsed – Once the time-period established under Article 48 of these Regulations has elapsed, the Commission shall consider, on its own initiative or upon a duly substantiated request made by or on behalf of the domestic industry before the time-period has elapsed, whether to initiate a review procedure to determine whether the removal of anti-dumping or countervailing duties would lead to a continuation or recurrence of injury and dumping. Duties may continue to be applied pending the results of the review.

Article 61: - Review procedure for new exporters – If a product is subject to anti-dumping duties, the Commission shall carry out a review for the purpose of determining individual margins of dumping for any exporters or producers in the exporting country in question who have not exported the product to Peru during the period of investigation, provided that these exporters or producers can show that they are not related to any of the exporters or producers in the exporting country who are subject to the anti-dumping duties on the product.

Once initiated, such a review shall be concluded within an extendable period of ninety (90) days. No anti-dumping duties shall be levied on imports from such exporters or producers while the review is being carried out. The Commission may, however, order Customs to suspend valuation of such products and/or request guarantees to ensure that, should such a review result in a determination of

dumping in respect of such producers or exporters, anti-dumping duties can be levied retroactively to the date of the initiation of the review.

CHAPTER VII

Appeal

Article 62: - Appeal – For the purpose of challenging a final decision, recourse may be had to an application for reconsideration and an appeal.

The aforementioned appeals must be made within fifteen (15) working days from the day following publication of the decisions by the Commission in the Official Journal, *El Peruano*.

Definitive duties imposed shall not be suspended as a result of an appeal being made.

Article 63: - No right of appeal against precautionary decisions – Precautionary decisions imposing provisional anti-dumping or countervailing duties or decisions rejecting applications shall not be subject to appeal.

Article 64: - Time-limit for taking a decision on applications for reconsideration – The Commission shall take a decision on an application for reconsideration within 30 days from the date of its submission.

Article 65: - Time-limit for referring appeals to the courts – Appeals shall automatically be accepted by the Commission and the file transmitted to the courts within a period not exceeding 10 days. The courts shall take a decision on appeals within a period not exceeding 6 months, extendable by a further 2 months.

Article 66: - End of administrative remedies – The decision by the courts exhausts all administrative remedies.

Supplementary Provisions

First: - Treatment for countries that are not members of the WTO – The Commission shall apply the provisions of Supreme Decree No. 133-91-EF, amended by Supreme Decree No. 051-92-EF and suppletorily by this Supreme Decree, to countries that are not members of the WTO.

Second: - Suppletory application – For the purposes of this Supreme Decree, the provisions of the Law on General Administrative Procedure shall apply suppletorily.

Third: - Legal grounds for fines – The fines provided for in this Supreme Decree shall be governed by the provisions of Article 48(c) of Decree-Law No. 25868.

Fourth: - Appeals against the collection of anti-dumping or countervailing duties – Appeals strictly against the collection of anti-dumping and/or countervailing duties in which it is alleged that Customs applied such duties incorrectly, shall be submitted to INDECOPI, upon proof of payment of definitive duties or, in the case of provisional duties, guarantee of the amount subject to appeal and payment of the respective fee. Once both requirements have been fulfilled, the Commission shall take an initial decision within thirty (30) days. The INDECOPI court shall issue its second and definitive administrative decisions within a period not exceeding thirty (30) days.

Fifth: - Enforcement of anti-dumping and countervailing duties – INDECOPI shall be responsible for the enforcement of anti-dumping or countervailing duties, upon express communication from Customs that such duties are due. The procedure shall take place in accordance with the Law on Enforcement Procedure No. 26979 and its Regulations adopted by Supreme Decree No. 036-2001-EF.

Sixth: - Signature and entry into force – This Supreme Decree shall be signed by the President of the Council of Ministers, the Minister of Economy and Finance, the Minister of Production and the Minister of Foreign Trade and Tourism, and shall enter into force on the day following its publication in the Official Journal, *El Peruano*.

TRANSITIONAL PROVISION

Single paragraph: - The provisions contained in this Supreme Decree are applicable at all stages of ongoing proceedings.

REPEALING PROVISION

Single paragraph: - Supreme Decrees No. 043-97-EF, No. 144-2000-EF and No. 225-2001-EF are hereby repealed.

Done at Government House, Lima, 10 January 2003.

ALEJANDRO TOLEDO, Constitutional President of the Republic
LUIS SOLARI DE LA FUENTE, President of the Council of Ministers
JAVIER SILVA RUETE, Minister of Economy and Finance
RAÚL DIEZ CANSECO TERRY, Minister of Foreign Trade and Tourism
EDUARDO IRIARTE JIMÉNEZ, Minister of Production

ANNEX ILLUSTRATIVE LIST CONCERNING INFORMATION WHICH MAY BE OF A CONFIDENTIAL NATURE

Information which is confidential by nature and therefore does not require the provision of good cause:

- Production costs
- Distribution costs
- Data on pricing at the different stages of production
- Specifications of components, where appropriate
- Data on pricing at the various stages of marketing
- Commercial secrets relating to the nature of a product or production process
- List of customers
- Conditions of sale (excluding conditions of sale to the public)
- Prices for customers
- Future marketing strategies
- Prices applied to different customers
- Research and development data
- Business secrets relating to the nature of a product or production process
- Industrial secrets and know-how

- Technological projects
- Investment projects.
- Information which may be of a confidential nature, upon provision of good cause:
- Data on utilization of capacity
- Inventories, valued in monetary terms
- List of suppliers, where appropriate
- Non-public balance sheets and financial statements
- Commercial invoices
- Technological capacity
- Information which could prejudice the provision of similar information or information from the same source
- Any other specific commercial information which, if disclosed to the public, could cause substantial harm to the competitive position of the party submitting the information
- Information from third parties not involved in the investigation procedure, the unauthorized disclosure of which could cause them injury.

A non-confidential summary must be submitted in all cases unless it is materially impossible to produce such a summary, in which case good cause must be provided for that impossibility, which shall be considered by the Commission.
