

WORLD TRADE  
ORGANIZATION

G/ADP/N/1/URY/2

5 December 1996

(96-4007)

Committee on Anti-Dumping Practices

Original: Spanish

NOTIFICATION OF LAWS AND REGULATIONS  
UNDER ARTICLE 18.5 OF THE AGREEMENT

URUGUAY

The following communication, dated 23 September 1996, has been received from the Permanent Mission of Uruguay.

EASTERN REPUBLIC OF URUGUAY  
MINISTRY OF ECONOMY AND FINANCE

MINISTRY OF ECONOMY AND FINANCE  
MINISTRY OF EXTERNAL RELATIONS  
MINISTRY OF INDUSTRY, ENERGY AND MINING  
MINISTRY OF LIVESTOCK, AGRICULTURE AND FISHERIES

Having regard to Law No. 16.671 of 13 December 1994 approving the signed agreements resulting from the Uruguay Round of Multilateral Trade Negotiations contained in the Final Act signed at Marrakesh on 15 April 1994;

Whereas the aforesaid agreements include the "Agreement on the Implementation of Article VI of the General Agreement on Tariffs and Trade 1994" establishing the procedures to be followed by Member countries of the World Trade Organization for the purpose of applying anti-dumping measures;

Considering:

(I) that the country must have an efficacious means of counteracting unfair trading practices involving the importation of dumped products which are causing or threatening injury to the domestic industry;

(II) regulations for the effective implementation of the aforementioned Agreement should therefore be adopted;

Heedful of the above.

THE PRESIDENT OF THE REPUBLIC

HEREBY DECREES:

TITLE I

PROCEDURES

CHAPTER I

Principles

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Article 1. Anti-dumping duties may be applied when imports of primary or non-primary products are being dumped and are causing injury, within the meaning of this Decree, to the domestic industry.

Anti-dumping duties shall be applied in accordance with investigations initiated and conducted in conformity with the provisions of this Decree.

In compliance with the provisions of Article VI.5 of the GATT 1994, no imported product shall be simultaneously subject to both anti-dumping duties and the countervailing duties mentioned in the Agreement on Subsidies and Countervailing Measures of the GATT 1994.

Article 2. The following bodies shall be responsible for the implementation of this Decree:

- (a) The Executive Power, which shall adopt resolutions concerning the imposition of provisional measures and definitive anti-dumping duties and the review and extension of the latter;
- (b) The Ministries of Economy and Finance, External Relations, Livestock, Agriculture and Fisheries and Industry, Energy and Mines, which shall adopt the corresponding interministerial resolutions relating to the initiation of an investigation, the termination of an investigation at the request of the applicant, the acceptance of undertakings, the initiation of proceedings for the review or extension of anti-dumping duties or undertakings and the termination of proceedings without the application of anti-dumping duties.
- (c) The Agricultural Planning and Policy Office (OPYPA) of the Ministry of Livestock, Agriculture and Fisheries or the National Industry Directorate (DNI) of the Ministry of Industry, Energy and Mines, depending on the nature of the product investigated, which as the implementing authority shall conduct proceedings under this Decree, giving the opinions and taking the decisions appropriate to each case.

When the opinions relate to the aspects mentioned under (a) and (b) above, the proceedings must immediately be referred to the Advisory Committee established under the next Article.

Article 3. There shall be established an Advisory Committee consisting of a representative of the Ministry of Economy and Finance, who shall act as its chairman, and one representative each from the Ministries of External Relations, Livestock, Agriculture and Fisheries and Industry, Energy and Mines and the Office of Planning and Budget, with the task of offering the Executive Power and the ministries mentioned in the previous Article mandatory prior advice on the various aspects subject to a resolution. This Committee shall operate under the Ministry of Economy and Finance.

CHAPTER II

Determination of Dumping

Article 4. For the purpose of this Decree, a product shall be considered as being dumped when it is introduced into the domestic market, including under the temporary admission procedure, at an export price that is less than its normal value.

Section I

Normal Value

Article 5. The normal value is the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country.

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.

The term "exporting country" shall be interpreted to mean the country of origin and export, except in the circumstances envisaged in Article 17.

Article 6. Normally, sales of the like product destined for consumption in the domestic market of the exporting country that constitute at least 5 per cent of the sales of the product exported to Uruguay shall be considered a sufficient quantity for the determination of the normal value. However, a lower percentage shall also be considered where it can be shown that this percentage nonetheless represents a quantity sufficient to provide for a proper comparison.

Article 7. 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 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 a 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, marketing and general costs and for profits.

Article 8. For the purpose of determining normal value, sales of the like product in the domestic market of the exporting country or to a third country at prices below per unit (fixed and variable) costs plus administrative and marketing costs may be treated as not being in the ordinary course of trade.

The provisions of the preceding paragraph shall apply only if the said sales are made:

- (a) Within an extended period of time, normally one year but in no case less than six months;
- (b) in substantial quantities, that is 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
  - the volume of sales below per unit costs represents not less than 20 per cent of the volume sold in the transactions under consideration for the determination of the normal value; and
- (c) at prices which do not provide for the recovery of costs within a reasonable period of time.

When 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.

Article 9. For the purposes of the preceding Articles, 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.

All available evidence on the correct allocation of costs must be taken into account, 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 determining appropriate amortization and depreciation periods and allowances for capital expenditures and other development costs.

Unless already reflected in the cost allocations under the preceding paragraph, costs shall be adjusted appropriately for those non-recurring items of cost which benefit future and/or current production, or for

circumstances in which costs during the period of investigation are affected by start-up operations. The 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 during the investigation.

Article 10. For the purposes of Article 7, the amounts for administrative, marketing 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 from:

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

Article 11. When the products under investigation are exported from or originate in countries which do not have a predominantly market economy and in which domestic prices are mainly set by the State, so that price comparability is difficult to establish, the normal value shall be determined on the basis of:

- (a) The price at which a like product of a third market-economy country is actually sold for consumption in the domestic market of that country or to other countries, including Uruguay itself, or failing that;
- (b) on some reasonable basis, including the price actually paid or payable in the Uruguayan market for the like product, duly adjusted if necessary, to include a reasonable margin of profit.

Article 12. For the purposes of the preceding Article, the third market-economy country shall be selected by taking into consideration the characteristics of the market for the product in question, the productive structures and the level of development. Provided that it constitutes an appropriate choice, the third country selected shall be one that is subject to the same investigation.

Once an investigation has been initiated, the interested parties shall be informed of the criteria used to select the third market-economy country and may make any comments they consider relevant within a period of 10 days.

## Section II

### Export Price

Article 13. The export price shall be the price actually paid or payable for the product exported to Uruguay, net of taxes, discounts and reductions actually granted and directly related to the sales concerned.

Article 14. In cases where there is no export price or where 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 determined:

- (a) On the basis of the price at which the imported products are first resold to an independent buyer; or
- (b) on some reasonable basis, if they are not resold to an independent buyer or not resold in the condition as imported.

### Section III

#### Comparison of Normal Value and Export Price

Article 15. A fair comparison shall be made between the export price and the normal value. 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 demonstrated to affect price comparability. Should any of these factors overlap, steps shall be taken to ensure that adjustments already made under this Article are not duplicated.

In the cases referred to in Article 14, 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 normal value shall be established at a level of trade equivalent to the level of trade of the constructed export price, or due allowance shall be made as warranted under the preceding paragraph.

The information necessary to ensure a fair comparison shall be indicated to the interested parties, without imposing upon them an excessive burden of proof.

Article 16. The value of the adjustments shall be calculated on the basis of the relevant data for the last business year available. Requests for adjustments which are insignificant in relation to the price or the value of the transactions concerned shall not be considered.

When the price comparison under the first paragraph of Article 15 requires a 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. In principle, the date of sale shall 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, for the purposes of the investigation, the implementing authority shall allow exporters at least 60 days to have adjusted their export prices to reflect the relevant fluctuations in exchange rates during the period of investigation.

Article 17. In the case where products are not imported directly from the country of origin but are exported to Uruguay from an intermediate third country, the price at which the products are sold from the country of export to Uruguay 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:

- (a) The products are merely transshipped through the country of export; or
- (b) such products are not produced in the country of export; or
- (c) there is no comparable price for them in the country of export.

### Section IV

#### Margin of Dumping

Article 18. The margin of dumping shall be the difference between the normal value and the export price.

Article 19. The existence of a margin of dumping shall be determined by comparing:

- (a) The weighted average normal value and a weighted average of prices of all comparable export transactions; or
- (b) the normal value and the export prices corresponding to each transaction.

A normal value established on a weighted average basis may be compared to prices of individual export transactions if export prices are found to 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. Sampling techniques may be employed to establish the normal value and export prices, using prices which occur more frequently or are considered more representative, provided that they relate to a significant volume of the transactions investigated.

Article 20. As a rule, an individual margin of dumping shall be determined for each known exporter or producer concerned of the product under investigation. In cases where the number of exporters, producers, importers or types of products involved is so large as to make such a determination impracticable, the examination may be limited to:

- (a) A reasonable number of interested parties or products, using samples which are statistically valid on the basis of information available at the time of the selection; or
- (b) the largest percentage of the volume of the exports from the country in question which can reasonably be investigated.

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

In cases where the examination is limited, as provided for in this Article, an individual margin of dumping shall nevertheless be determined for any exporter or producer not initially selected who submits the necessary information in time for that information to be considered during the course of the investigation, except where the number of exporters or producers is so large that individual examinations would be unduly burdensome and prevent the timely completion of the investigation. Voluntary responses shall not be discouraged.

### CHAPTER III

#### Determination of Injury

Article 21. For the purposes of this Decree, the term "injury" shall, unless otherwise specified, be taken to mean material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry.

The determination of injury shall be based on positive evidence and involve an objective examination of:

- (a) The volume of the dumped imports;
- (b) the effect of the dumped imports on prices for like products in Uruguay; and
- (c) the consequent impact of these imports on Uruguayan producers of such products.

With regard to the volume of the dumped imports, consideration shall be given to whether or not it is negligible and whether there has been a significant increase in dumped imports, either in absolute terms or relative to Uruguayan production or consumption.

For the purposes of the investigation, the volume of imports from a particular country shall be regarded as negligible if it is less than 3 per cent of Uruguayan imports of a like product, unless countries which individually export to Uruguay less than the percentage in question collectively export more than 7 per cent of the said product.

With regard to the effect of the dumped imports on prices, consideration shall be given to whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product in Uruguay, 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. No one or several of these factors can necessarily give decisive guidance.

Article 22. Where imports of a product from more than one country are simultaneously subject to anti-dumping investigations, the effects of such imports may be cumulatively assessed only if:

- (a) The margin of dumping established in relation to the imports from each country is more than *de minimis* and the volume of imports from each country is not negligible; and
- (b) a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between the various imported products and the conditions of competition between the imported products and the like domestic product.

The margin of dumping shall be considered to be *de minimis* if it is less than 2 per cent, expressed as a percentage of the export price.

Article 23. The examination of the impact of the dumped imports on the domestic industry concerned 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, ability to raise capital or investments. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.

Article 24. It must be demonstrated that there is a causal relationship between the dumped imports and the injury to the domestic industry referred to in Article 21.

The demonstration shall be based on an examination of all the relevant evidence available.

Any known factors other than the dumped imports which at the same time are injuring the domestic industry must also be examined, and these injuries should not be attributed to the imports in question.

These factors include the volume and prices of imports not sold at dumping prices, 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 25. The effect of the dumped exports shall be assessed in relation to the domestic production of the like product when available data permit the separate identification of that production on the basis of such criteria as the production process, producers' sales and profits. If such separate identification of that production is not possible, the effects of the dumped exports shall be assessed by the examination of the production of the narrowest group of products, which includes the like product, for which the necessary information can be provided.

Article 26. A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would result in dumping causing injury must be clearly foreseeable and imminent.

Article 27. A determination of the existence of a threat of injury shall be based, *inter alia*, on the following factors:

- (a) A significant rate of increase of dumped imports indicating the likelihood of substantially increased importation;
- (b) sufficiently free disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped exports to the domestic market, taking into account the availability of other export markets to absorb any additional exports;
- (c) imports entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and
- (d) inventories of the product being investigated.

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

### Definition of Domestic Industry

Article 28. For the purposes of this Decree, the term "domestic industry" shall include 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:

- (a) 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 purposes of this paragraph, producers shall be deemed to be related to exporters or importers only if:
  - (i) One of them directly or indirectly controls the other;
  - (ii) both of them are directly or indirectly controlled by a third person;
  - (iii) 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 de facto in a position to exercise restraint over the latter or direct his activities.
- (b) 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:
  - (i) the producers within such market sell all or almost all of their production of the product in question in that market; and
  - (ii) 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 is not injured, provided there is a concentration of dumped imports into such an isolated market and provided further that the dumped imports are causing injury to the producers of all or almost all of the production within such market.

## CHAPTER V

### Investigation Procedure

#### Section I

#### Application

Article 29. Except as provided for in Article 40, an investigation to determine the existence, degree and effect of any alleged dumping shall be initiated upon a written application by or on behalf of the domestic industry addressed to the Agricultural Planning and Policy Office (OPYPA) or the National Industry Directorate (DNI), depending on the nature of the product to be investigated.

Article 30. The application under the preceding Article shall include evidence of the existence of dumping, injury and a causal link between the dumped exports and the alleged injury. Simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient to meet the requirements of this paragraph. The application shall contain such information] as is reasonably available to the applicant on the following:

- (a) The identity and domicile of the applicant and the address for notifications in the city of Montevideo.

Where a written application is made on behalf of the domestic industry, it shall identify the industry on behalf of which the application is made by a list of all known domestic producers of the like product or associations of domestic producers of the like



product and, to the extent possible, a description of the volume and value of domestic production of the like product accounted for by such producers;

- (b) an indication of the volume and value of the domestic production of the like product;
- (c) a complete description of the allegedly dumped product, the names of the country or countries of origin or export, the identity of each known exporter or foreign producer and a list of known importers importing the product in question;
- (d) information on representative prices at which the product in question is sold when destined for consumption in the domestic markets of the country or countries of origin or export or, where appropriate, information on the representative prices at which the product is sold from the country or countries of origin or export to a third country or countries, or on the constructed value of the product;
- (e) information on representative export prices or, where appropriate, on the representative prices at which the product is first resold to an independent buyer in Uruguayan territory;
- (f) information on the evolution of the volume of the allegedly dumped imports, the effect of these imports on prices of the like product in the domestic market and the consequent impact of the imports on the domestic industry, as demonstrated by the relevant factors and indices having a bearing on the state of the domestic industry listed in Article 23.

If the application contains confidential information, the provisions of Articles 46 ff. shall apply.

Article 31. The implementing authority shall have 20 days in which to decide whether the application has been properly documented or is inadmissible. The application will be properly documented when all the requirements of Article 30 above are satisfied and the facts set out in the application have been checked and verified by preliminary summary examination.

The implementing authority may, once only, request additional information from the applicant, indicating a time-limit for its submission.

If additional information has been requested, the implementing authority shall have 20 days from the date of submission to decide whether the application has been properly documented or is to be considered finally inadmissible.

## Section II

### Initiation

Article 32. For the purpose of deciding whether to initiate an investigation, the implementing authority shall consider the evidence of dumping and injury simultaneously. The implementing authority shall also proceed to examine the degree of support for the application for the initiation of a dumping investigation on the part of the other domestic producers of the like product, for the purpose of verifying whether the application has been made by or on behalf of the domestic industry. The application shall be considered to have been made by or on behalf of the domestic industry if it is supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application.

Article 33. The implementing authority shall decide on the appropriateness of initiating an investigation within 30 days of ruling on whether the application has been properly documented, referring the proceedings immediately to the Advisory Committee established under Article 3.

Article 34. The interministerial resolution, affirmative or negative, concerning the initiation of an investigation shall be issued within 30 days of the decision of the implementing authority mentioned in the preceding Article.

Article 35. The application shall be rejected and the case filed if:

- (a) There is not sufficient evidence of dumping or consequent injury to justify the initiation of an investigation;
- (b) the application was not made by or on behalf of the domestic industry;
- (c) the domestic producers expressly supporting the application account for less than 25 per cent of total production of the like product produced by the domestic industry.

Article 36. Interministerial resolutions ordering the initiation of an investigation shall be published in the Diario Oficial (Official Journal) and notified to the known interested parties; those not giving rise to the initiation of an investigation shall be notified only to the applicant.

Other parties which consider themselves to have an interest shall have 20 days from the publication of the resolution ordering the initiation of an investigation to request recognition as such and show that they satisfy the conditions laid down in the next Article.

Article 37. For the purposes of this Decree, "interested parties" shall include:

- (a) domestic producers of the like product and the trade associations which represent them;
- (b) importers of a product subject to investigation and the trade associations which represent them;
- (c) exporters or foreign producers of the product in question and the trade associations which represent them;
- (d) the governments of the countries exporting the product in question; and
- (e) other parties, domestic or foreign, deemed by the implementing authority to have an interest in the investigation.

Article 38. As soon as an investigation has been initiated, the full text of the application which gave rise to it, except for any confidential information it may contain, shall be provided to the known foreign producers and exporters and to the authorities of the exporting country and shall also be made available, at their request, to other interested parties. If the number of producers and exporters involved is particularly high, the text in question shall be provided only to the authorities of the exporting country and to the relevant trade associations.

For the purposes of the preceding paragraph, the applicant shall have five days from the date of notification of the resolution ordering the initiation of an investigation to submit copies of the application or, failing that, non-confidential summaries thereof in accordance with the provisions of Article 46, as appropriate.

Article 39. The authorities shall avoid, unless a decision has been made to initiate an investigation, any publicizing of the application for the initiation of an investigation. However, after receipt of a properly documented application and before proceeding to initiate an investigation, they shall notify the government of the exporting country.

Article 40. In exceptional circumstances, an investigation may be initiated *ex officio* if there is sufficient evidence of dumping, injury and a causal link to justify such action. Before the investigation is initiated, this evidence shall be communicated to the government of the exporting country.

Article 41. An anti-dumping investigation proceeding shall not hinder the procedures of customs clearance of the product investigated.

### Section III

#### Conduct of the Investigation

Article 42. As soon as it has been decided to initiate an investigation, the implementing authority may request the interested parties, by circulating questionnaires, to supply the information it considers necessary, giving them ample opportunity to present in writing all evidence which they consider relevant in respect of the investigation in question.

Article 43. The known interested parties receiving questionnaires shall have 40 days to reply, reckoned from the date of receipt of the questionnaire.

This period may be extended for a maximum of 30 days, upon cause shown.

In the course of the investigation, the implementing authority may request additional information.

For these purposes it shall allow a period in accordance with the nature of the information requested which may be extended, upon cause shown.

Article 44. If any interested party refuses access to, or otherwise does not provide, necessary information within the prescribed period or significantly impedes the investigation, the implementing authority, for the purpose of preliminary or final determinations, affirmative or negative, shall base its decision on the best information available, in accordance with the provisions of Chapter II of Title II.

Article 45. Any information which is by nature confidential or which is provided on a confidential basis by parties shall, upon good cause shown, be treated as such by the implementing authority. Such information shall not be disclosed without specific permission of the party submitting it. Information deemed to be confidential shall not be incorporated in the records of the proceedings and shall be known only to the implementing authority.

Article 46. Interested parties providing confidential information must furnish non-confidential summaries thereof. These summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. In exceptional circumstances, such parties may indicate that such information is not susceptible of summary, stating the reasons why summarization is not possible.

Article 47. If a request for confidentiality is not warranted and if the supplier of the information is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, such information may be disregarded unless it can convincingly be demonstrated that the information is correct.

Article 48. During the course of an investigation, industrial users of the product under investigation, and representative consumer organizations where the product is commonly sold at the retail level, may provide information which is relevant to the investigation regarding dumping, injury and causality.

Article 49. During the course of an investigation, efforts shall be made to verify the accuracy of the information supplied by interested parties.

Article 50. When possible and deemed necessary, investigations may be carried out in the territory of other countries, provided the agreement of the firms concerned is obtained and the government of the country in question is notified and does not object to the investigation. The procedures laid down in Articles 113 ff. shall apply to investigations carried out in the territory of other countries.

When deemed necessary, investigations may also be carried out in firms involved that are established in national territory, provided that these firms give their permission.

Subject to the provisions concerning the protection of confidential information, the results of such investigations shall be incorporated in the proceedings.

Article 51. During the anti-dumping investigation all interested parties shall have an opportunity for the defence of their interests, to which end they shall, on request, be provided with opportunities to meet those parties with adverse interests, so that they may present their arguments.

The party requesting a hearing shall submit, together with his request, a list of the aspects to be considered.

The known interested parties shall be given 30 days advance notice of the holding of a hearing and of the aspects to be considered.

There shall be no obligation on any party to appear at the hearing, and failure to do so shall not be regarded as prejudicial to that party's case.

Article 52. Interested parties shall give formal notification, at least five days before the hearing is held, of the legal representatives who will attend and shall submit in writing, at least 10 days before the hearing, the arguments to be presented. In the course of the hearing, interested parties may also, on justification, present other information orally.

Oral information shall be taken into account only in so far as it is reproduced in writing and submitted for incorporation in the proceedings within 10 days of the holding of the hearing.

In the course of the hearing procedure, confidentiality shall be preserved.

The holding of hearings shall not prevent the adoption of provisional or final measures.

Article 53. Interested parties may request, in writing, to see the proceedings, which shall be made available to them provided the pursuit of the investigation so allows, except for those proceedings which are confidential and internal government documents.

Article 54. Before ruling on the existence of dumping, injury and causality, the implementing authority shall convene a hearing at which it shall inform the interested parties of the essential facts to be taken into account in its decision, allowing them 15 days to submit their final arguments.

Article 55. Once the time-limit specified in the preceding paragraph has expired, the inquiry stage of the investigation shall be considered to be complete. No information subsequently received shall be taken into account by the implementing authority in reaching its decision.

Article 56. The inquiry stage of the investigation shall be completed at least 120 days before the expiration of the maximum time-limits specified in Article 77.

Article 57. The implementing authority shall make its determination with respect to the application of anti-dumping duties within 30 days of the completion of the inquiry stage of the investigation and immediately refer the proceedings to the Advisory Committee established under Article 3.

Article 58. The Advisory Committee shall have 30 days to give an opinion concerning the application of anti-dumping duties.

#### Section IV

##### Provisional Measures

Article 59. Provisional anti-dumping measures may be applied only if:

- (a) An investigation has been initiated in accordance with the provisions of Section II of this Chapter and interested parties have been given adequate opportunities to submit information and make comments;
- (b) a preliminary affirmative determination has been made of dumping and consequent injury to a domestic industry;
- (c) such measures are judged necessary to prevent injury being caused during the investigation; and
- (d) at least 60 days have passed since the date of initiation of the investigation.

Article 60. The amount of the provisional anti-dumping measure may not be greater than the provisionally estimated margin of dumping.

Article 61. The provisional measures shall take the form of a provisional duty or, preferably, a security consisting of a cash deposit in the Banco de la Republica Oriental del Uruguay or in the Banco Hipotecario del Uruguay, at the discretion of the depositor, in the joint name of the latter and the Ministry of Economy and Finance, or of a bank guarantee in favour of the aforementioned Ministry, for a sum equal to the amount of the anti-dumping duty provisionally assessed.

Article 62. The implementing authority shall, where appropriate, give its opinion concerning the appropriateness of applying provisional measures and their amount, immediately referring the proceedings to the Advisory Committee established under Article 3.

Article 63. The interministerial resolution ordering the application of provisional measures shall be notified to the interested parties participating in the investigation and published in the Official Journal.

Article 64. Customs clearance of goods subject to provisional anti-dumping measures shall depend on the payment of the duties or the provision of the guarantee, as appropriate.

Article 65. Provisional measures shall be applied for not more than four months or, upon request by exporters of the product under investigation representing a significant percentage of the trade involved, for not more than six months. Requests for the extension of the period of application of provisional measures must be submitted to the implementing authority by exporters not less than 30 days before the expiry of the period in question.

Article 66. When in the course of an investigation it is concluded that a provisional measure less than the margin of dumping would be sufficient to remove injury, the periods specified in the preceding Article may be six and nine months respectively.

## Section V

### Price Undertakings

Article 67. The Ministries mentioned in Article 2(b) may, by joint resolution, suspend or terminate the investigation without the imposition of provisional measures or anti-dumping duties and accept the undertaking proposed, if the exporter gives the implementing authority satisfactory voluntary undertakings to revise his prices or to cease exports to Uruguay at dumped prices, so that the authority is satisfied that the injurious effect of the dumping is eliminated. Price increases under such undertakings shall not be higher than necessary to eliminate the margin of dumping. It is desirable that the price increases be less than the margin of dumping if that would be adequate to remove the injury to the domestic industry.

Article 68. Price undertakings shall not be sought or accepted from exporters unless the implementing authority has made a preliminary affirmative determination of dumping and injury caused by such dumping.

Article 69. Exporters are not obliged either to offer price undertakings or to accept those offered to them. If they do not, this shall in no way prejudice the investigation of the facts.

Article 70. The implementing authority may reject undertakings offered if it is considered that their acceptance would be ineffective. Should the case arise and where possible, the exporter shall be informed of the reasons for rejection and given an opportunity to make any comments he considers relevant.

Article 71. The opinion of the implementing authority concerning the acceptability of a proposed price undertaking shall be immediately referred to the Advisory Committee established under Article 3, together with the proceedings.

Article 72. The interministerial resolution accepting the undertaking and containing the decision to continue or suspend the proceeding shall be notified to the interested parties appearing in the investigation and published in the Official Journal.

Article 73. If an undertaking is accepted, the investigation of dumping and injury shall nevertheless be pursued if the exporter so requests or the Ministries mentioned in Article 2(b) so decide.

Article 74. An exporter whose undertaking has been accepted shall be required to provide the implementing authority with the information it requests concerning the fulfilment of that undertaking and to permit verification of pertinent data.

Non-compliance with the provisions of this Article shall be regarded as a violation of the undertaking.

Article 75. In case of violation of an undertaking after the proceeding has been suspended, actions may be taken which may constitute immediate application of provisional measures using the best information

available and the continuation of the investigation, subject to the opinion of the implementing authority and the Advisory Committee established under Article 3.

Article 76. The interministerial resolution terminating the undertaking and ordering the application of provisional measures and the continuation of the investigation shall be notified to the interested parties appearing in the investigation and published in the Official Journal.

## Section VI

### Conclusion of the Investigation

Article 77. Investigations shall, except in special circumstances, be concluded within one year, and in no case more than 18 months, from the date of the initiating resolution.

Article 78. The applicant may, at any time, request the implementing authority to close the investigation.

Article 79. The implementing authority shall give its opinion on the request to close the investigation, referring the proceedings immediately to the Advisory Committee established under Article 3.

Article 80. Without prejudice to closure ordered at the request of the applicant, the investigation shall conclude with an interministerial resolution that does not give rise to the application of anti-dumping duties when:

- (a) There is insufficient evidence of dumping or injury;
- (b) the margin of dumping is *de minimis*, within the meaning of the last paragraph of Article 22;
- (c) the volume of dumped exports, actual or potential, or the injury caused, is negligible within the meaning of Article 21.

Article 81. The investigation may conclude with the application of anti-dumping duties if the Executive Power arrives at a final determination of dumping, injury and causality, within the meaning of this Decree. The amount of the anti-dumping duty may not exceed the margin of dumping.

The resolution of the Executive Power ordering the application of anti-dumping duties shall indicate the name of the supplier or suppliers of the product concerned, together with the relevant duties. If the number of suppliers is particularly high, the resolution shall indicate the name of the supplying countries, together with the respective duties.

Article 82. When an undertaking has been accepted and the investigation completed:

- (a) If a negative determination of dumping or injury is made, the closure of the investigation shall be ordered by interministerial resolution and the undertaking shall automatically lapse, except where such a determination is due in large part to the existence of a price undertaking. In such a case, it may be required that the undertaking be maintained for a reasonable period consistent with the provisions of this Decree;
- (b) If an affirmative determination of dumping and injury is made, the investigation shall be closed by interministerial resolution and the application of anti-dumping duties shall be suspended in so far as the undertaking is fulfilled in accordance with its terms and the provisions of this Decree.

Article 83. In case of violation of an undertaking under the preceding Article, action shall be taken with a view to the termination of the undertaking and the immediate establishment of anti-dumping duties by the Executive Power, in accordance with the results of the investigation carried out, subject to the opinion of the implementing authority and the Advisory Committee established under Article 3.

Article 84. In the cases provided for in this Section, the resolutions ordering the closure of an investigation shall be notified to the interested parties appearing in the investigation and published in the Official Journal.

A resolution not giving effect to a request for closure of the investigation by the applicant shall be notified solely to the latter.

## CHAPTER VI

### Imposition and Collection of Anti-Dumping Duties

#### Section I

##### Imposition

Article 85. For the purposes of this Decree, the term "anti-dumping duty" shall be taken to mean a levy equal to or less than the margin of dumping calculated, assessed and applied in accordance with the provisions of this Decree for the purpose of counteracting the prejudicial effects of dumping.

Article 86. The anti-dumping duty, provisional or definitive, shall be calculated by applying fixed or variable ad valorem or specific duty rates or a combination of the two. Ad valorem rates shall be applied to the customs value of the goods, calculated in accordance with the relevant legislation. Specific rates shall be fixed in United States dollars and converted into national currency, in accordance with the relevant legislation.

Article 87. The anti-dumping duties applied to imports from known exporters or producers who were not included in the selection referred to in Article 20 and have supplied the information requested shall not exceed the weighted average margin of dumping established with respect to the selected exporters or producers.

#### Section II

##### Collection

Article 88. When an anti-dumping duty is imposed in respect of any product, such anti-dumping duty shall be collected in the appropriate amounts in each case, on a non-discriminatory basis on all imports of such products from all sources found to be dumped and causing injury, except for imports from those sources from which price undertakings under the terms of this Decree have been accepted.

#### Section III

### Products Subject to Provisional Measures or Anti-Dumping Duties

Article 89. Provisional measures and anti-dumping duties shall only be levied on imported products from the date of publication of the resolutions ordering their assessment, except in the cases specified in Articles 93 and 95, and shall be collected independently of any liability of a fiscal nature attaching to the importation of the products concerned.

Article 90. When the resolution orders that the proceeding be concluded without the application of anti-dumping duties, the amount paid as provisional duties shall be expeditiously refunded or the guarantees provided during the period of application of provisional measures expeditiously released, as appropriate.

Article 91. Where a final determination of a threat of injury or material retardation of the establishment of an industry is made but no injury has occurred, the amount paid as provisional duties shall be expeditiously refunded or the guarantees provided during the period of application of provisional measures shall be expeditiously released, as appropriate, unless it has been found that, in the absence of provisional measures, the dumped imports would have led to a determination of injury.

Article 92. Where the definitive anti-dumping duty was preceded by the assessment of a provisional duty the following criteria shall be applied:

- (a) If the definitive duty is lower than the amount collected provisionally or taken into account for the purpose of the security, the surplus shall be refunded or released, as appropriate;
- (b) if the definitive duty is higher than the amount collected provisionally or taken into account for the purpose of the security, the difference shall not be collected;

- (c) if the definitive duty is equal to the amount collected provisionally or taken into account for the purpose of the security, the latter shall be converted into a definitive duty.

Article 93. A definitive anti-dumping duty may be levied on products which were entered for consumption not more than 90 days prior to the date of application of provisional measures, when it is determined for the dumped product in question that:

- (a) There is a history of dumping which caused injury or the importer was, or should have been, aware that the exporter practises dumping and that such dumping would cause injury; and
- (b) 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 seriously to counteract the remedial effect of the definitive anti-dumping duty to be applied, provided that the importers concerned have been given an opportunity to comment.

Article 94. No duties shall be levied retroactively pursuant to the preceding Article on products entered for consumption prior to the date of initiation of the investigation.

Article 95. In case of violation of a price undertaking, definitive anti-dumping duties may be levied retroactively for up to 90 days prior to the date of entry into force of the provisional anti-dumping measures, except on products imported before the violation of the undertaking.

## CHAPTER VII

### Duration and Review of Anti-Dumping Duties and Price Undertakings

Article 96. Anti-dumping duties and price undertakings shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury.

Article 97. Any definitive anti-dumping duty shall be terminated within a maximum of five years from its imposition or from the date of the order for it to be reviewed, provided that the review included an analysis of dumping and injury.

Article 98. The period specified in the preceding Article may be extended *de officio* or upon a duly substantiated request made by or on behalf of the domestic industry if it is concluded that the expiry of the duty will lead to continuation or recurrence of dumping and injury.

To this end, the domestic industry may submit a written request for the extension of the resolution imposing the anti-dumping duties no later than five months before it expires.

Article 99. A review, complete or partial, of the decisions relating to the application of an anti-dumping duty, at the request of the interested parties or *de officio*, shall be carried out only if at least one year has elapsed since the imposition of the definitive anti-dumping duties, and only if sufficient evidence is submitted to show that:

- (a) The application of the measure is no longer necessary to offset dumping;
- (b) the injury would be unlikely to continue or recur if the measure were removed or varied; or
- (c) the existing measure is not or is no longer sufficient to counteract the dumping which is causing injury.

In exceptional cases, where there has been a radical change in circumstances or the national interest so requires, decisions relating to prices may be reviewed within less than one year, at the request of an interested party or *de officio*.

Article 100. When a request has been received from an interested party, the implementing authority shall, within 30 days of the request being made, give its opinion on the initiation of the procedure for the review or extension of anti-dumping duties and promptly refer it to the Advisory Committee.



Article 101. Interministerial resolutions ordering the initiation of the corresponding review or extension procedure shall be published in the Official Journal and notified to the interested parties appearing in the proceedings; resolutions which do not give rise to such initiation shall be notified solely to the requesting party.

Article 102. The review or extension procedure referred to in the preceding Articles shall be governed by the provisions of Section III of Chapter V and may not take more than 12 months from the date of the resolution ordering its initiation.

Article 103. Anti-dumping duties shall not be varied during the review or extension procedure.

Article 104. Depending on the outcome of the review, the anti-dumping duty may be terminated, maintained or varied. When it is found that the duty in force is higher than necessary to offset the injury to the domestic industry or is not warranted, the appropriate restitution shall be made.

Article 105. Resolutions, affirmative or negative, which close review or extension procedures shall be published in the Official Journal and notified to the interested parties.

Article 106. The provisions of this Chapter shall apply, where appropriate, to price undertakings accepted under Article 67.

Article 107. When a product is subject to anti-dumping duties, a summary review shall be carried out, upon request, for the purpose of determining individual margins of dumping for any exporters or producers in the exporting country in question who have not exported products to Uruguay during the period of investigation, if these exporters or producers can show that they are not related to the exporters or producers in the exporting country who are subject to the anti-dumping duties applied to the product.

No anti-dumping duties shall be levied on imports from the exporters or producers specified in the preceding paragraph while the summary review is being carried out.

When a summary review is initiated, measures shall be taken to ensure that, in the event of an affirmative determination of dumping, anti-dumping duties can be levied on imports from the producers in question from the date of initiation of the review.

Article 108. Anti-dumping duties may be suspended for one year, extendible for a further year, if market conditions temporarily change, provided that injury does not reappear or continue as a result of the suspension.

The anti-dumping duties may be re-imposed, at any time, if suspension is no longer warranted.

## CHAPTER VIII

### Anti-Dumping Action on Behalf of a Third Country

Article 109. A third country, through its authorities, may make an application for the imposition of anti-dumping duties.

Article 110. The application mentioned in the preceding Article must include information to show that the imports are being dumped in Uruguay and that this is causing injury to the domestic industry in the third country.

Article 111. The analysis of the application shall take into account the effects of the alleged dumping on the domestic industry in the third country. Thus, the injury shall not be assessed in relation only to the effects of the alleged dumping on the industry's exports to Uruguay or on its total exports.

Article 112. If a decision is taken to initiate an investigation, the national authorities shall seek the approval of the Council for Trade in Goods of the World Trade Organization.

## Title II

### Special Procedures

#### CHAPTER I

##### Investigations Pursuant to Article 50

Article 113. Upon the initiation of an investigation, the authorities of the exporting country and the firms concerned shall be informed of the intention to carry out on-the-spot investigations.

Article 114. If in exceptional circumstances it is considered necessary for non-governmental experts to take part in the investigation, the firms and the authorities of the exporting country shall be so informed. Such experts shall be subject to the sanctions of Article 302 of the Penal Code for violation of confidentiality obligations.

Article 115. Before an on-the-spot investigation is carried out, the agreement of the firms concerned in the exporting country shall be obtained.

As soon as the agreement mentioned in the preceding paragraph has been obtained, the authorities of the exporting country shall be notified of the names and addresses of the firms to be visited and the dates agreed.

Article 116. Visits to explain the questionnaires mentioned in Articles 44 ff. shall only be made at the request of an exporting firm and only if the authorities of the exporting country, after being notified, do not object to the visit.

Article 117. On-the-spot investigations shall be carried out after the response to the questionnaire has been received, unless the firm agrees to the visit taking place beforehand and the authorities of the exporting country, having been notified, do not object.

Article 118. Prior to the visit, the firm concerned shall be advised, in general terms, of the information required, though this shall not preclude requests for further details being made on the spot.

Article 119. Whenever possible, enquiries by the implementing authority or firms of the exporting country which are essential to a successful on-the-spot investigation should be answered before the visit is made.

#### CHAPTER II

##### Best Information Available in Terms of Article 44

Article 120. Once the initiation of an investigation has been ordered, the implementing authority shall specify in detail the information required from any interested party, and the manner in which that information should be presented, together with the time-limits for compliance.

The party shall be notified that if the information is not supplied within the specified time, the implementing authority may make its determination on the basis of the facts available, including those contained in the application for the initiation of the investigation.

Article 121. For the purpose of making a determination, the implementing authority shall take into account verifiable information appropriately submitted so that it can be used without undue difficulties.

If the implementing authority does not accept the information supplied, it shall forthwith inform the party of the reasons for its rejection and shall grant the party a new time-limit within which to provide explanations, due account being taken of the time-limits for the investigation. If the explanations are not satisfactory, the reasons for their rejection shall be given in the resolutions adopted.

Article 122. If the information provided is incomplete, the implementing authority shall not reject it on those grounds if the interested party has acted with due diligence.

Article 123. When the implementing authority must base its determination on information from a secondary source, including information supplied in the application for the initiation of the investigation, it should check it against information from independent sources or other interested parties.

Article 124. The implementing authority may request that the information be provided in a computer medium.

If the interested party does not maintain computerized accounts or if a response in that system would entail unreasonable cost, it shall not be obliged to present its response in accordance with the preceding paragraph.

Article 125. When the implementing authority does not have the ability to process information provided in a particular medium, because it is not compatible with its operating systems, that information shall be provided in writing.

### CHAPTER III

#### General Provisions

Article 126. The applications and documentation submitted by interested parties shall comply with the provisions of this Decree and the instructions issued by the implementing authority; otherwise they shall not be incorporated in the proceedings.

Article 127. The implementing authority may directly request from the units and departments of the Public Service, whatever their legal nature or institutional status, the information it considers necessary for the investigation, which for its part the requested body shall provide.

Article 128. The time-limits specified in this Decree shall be counted in calendar days and may be extended once only for a like period, except where the conditions of extension are expressly established.

Article 129. The time-limits notified to interested parties shall be counted from the day following that on which the action in question was notified or published

Article 130. Notifications under this Decree shall be made in accordance with the provisions of Article 91 of Decree 500/991, dated 27 September 1991.

Article 131. Without prejudice to the notifications and publications required in each case, the resolutions of the Executive Power and interministerial resolutions referred to in this Decree may be published in two national newspapers, if the resolution in question so stipulates.

Article 132. The records of the proceedings shall be in writing and in Spanish.

Documents drawn up in other languages must be submitted in the form of a translation made by an official translator.

Article 133. This Decree shall enter into force on 1 July 1996.

Article 134. Proclaimed, published, etc.

SIGNATURE

ÁLVARO RAMOS, MINISTER OF EXTERNAL RELATIONS  
BY HAND

Dear Sir,

For your information and further action, I am sending you a copy of the Decree approved by the Executive Power on 23 April 1996.

Yours faithfully,

MIGUEL BRAGA  
GENERAL DIRECTORATE  
MINISTRY OF ECONOMY AND FINANCE