

ORGANIZATION

(95-0840)

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

Original: Spanish

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

The following communication, dated 15 March 1995, has been received from the Permanent Mission of Venezuela.

In accordance with Article 18.5 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 and Article 32.6, Part XI, of the Agreement on Subsidies and Countervailing Measures, I enclose herewith the text of the laws and regulations in force in Venezuela relating to the aforementioned Agreements.

Venezuela's legislation relating to anti-dumping and countervailing measures is composed of the following texts:

- (a) Law approving the Marrakesh Agreement Establishing the World Trade Organization (WTO), the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994¹ and the Agreement on Subsidies and Countervailing Measures.

As Venezuela is a signatory to the Marrakesh Agreement and as all the procedures laid down in the Constitution of the Republic of Venezuela have been observed, the text of this Agreement forms part of domestic legislation, in other words, it has force of law and must be complied with by all inhabitants and authorities in Venezuela. It prevails over any contrary or different provision contained in previous laws. The text of this Agreement is not attached to this communication.

- (b) Law on Unfair Foreign Trade Practices.²

This Law regulates all aspects of internal procedures related to anti-dumping measures. In principle, the text does not contain any provisions contrary to the Marrakesh Agreement. In general, its provisions grant the Administration broad powers to interpret and apply anti-dumping measures in conformity with the provisions contained in the Marrakesh Agreement.

- (c) Regulations under the Law on Unfair Foreign Trade Practices.³

In order to implement the provisions contained in the Marrakesh Agreement and the Law on Unfair Foreign Trade Practices, the Government of the Republic of Venezuela is considering the

¹Official Gazette of the Republic of Venezuela, No. 4.829, Special Edition, 29 December 1994.

²Official Gazette of the Republic of Venezuela, No. 4.441, Special Edition, 18 June 1992.

³Official Gazette of the Republic of Venezuela, No. 4.567, Special Edition, 26 April 1993.

possibility of adopting new regulations to facilitate the administration and application of anti-dumping legislation.

(d) Decision 283 of the Commission of the Cartagena Agreement.⁴

This Decision applies to trade relations among countries of the Andean subregion. Member States of the Cartagena Agreement will have to consider the possibility of including some amendments to the prevailing regional regulations.

Decree No. 2.883

5 April 1993

CARLOS ANDRES PEREZ
PRESIDENT OF THE REPUBLIC

By virtue of the power granted to him in paragraph 10 of Article 190 of the Constitution, in the Council of Ministers

DECREES:

The following:

REGULATIONS UNDER THE LAW ON UNFAIR
FOREIGN TRADE PRACTICES

TITLE I

DUMPING

CHAPTER I

LIKE GOODS

ARTICLE 1: The provisions of this Chapter shall apply both to cases of dumping and to cases in which the Law or these Regulations refer to like goods.

ARTICLE 2: For the purposes of comparing like goods, the greatest possible number of elements shall be taken into account, for example, their nature, physical characteristics, components, technical specifications, origin, source, utilization, function, market behaviour, quality, trademark and reputation, this last being understood in the context of the advertising used and their degree of acceptance by the relevant category of consumers.

ARTICLE 3: In calculating the normal value and other determinations, identical goods shall be taken as like goods, or, if this is not possible, goods which closely resemble the good allegedly dumped or subsidized, or, in their absence, substitute goods.

ARTICLE 4: In conformity with the previous Article, like goods shall mean:

1. Identical goods, i.e. which are alike in all respects;
2. Goods which closely resemble the good allegedly dumped or subsidized when the goods are not only used for very similar purposes but their other characteristics are equally similar;
3. Goods which are substitutes for the good allegedly dumped or subsidized when their use or function leads to results identical to those of the dumped or subsidized good.

⁴Official Gazette of the Republic of Venezuela, No. 4.284, Special Edition, 28 June 1991.

For the purposes of making the corresponding comparisons, the procedure shall be that outlined in Article 2 of these Regulations. The Commission shall investigate the end use of the dumped or subsidized good, at the industrial, commercial or final consumption levels and shall determine its specific utilization.

ARTICLE 5: The application of the comparison criteria shall not mean that goods imported in the form of inputs or components of finished goods may not be considered as like goods when there are sufficient grounds for considering the importation in the component form is economically senseless and that its fundamental purpose is to avoid the treatment given to the finished product. In such cases, it shall be determined that the good in the form of inputs or components and the finished good are like goods.

ARTICLE 6: The Commission shall consider that goods allegedly dumped or subsidized are like goods when, if it were not for differences in the trademark, they would be deemed to be alike to goods sold in the country of export or of origin, in any of the following cases:

1. Imported goods with a trademark that so resembles the trademark of a good sold in the country of export or of origin that it is liable to mislead consumers;
2. Goods without a trademark, where there is evidence that they are being imported for the purpose of distribution or resale in Venezuela with the same trademark as, or a trademark similar to, that of the good sold in the country of export or of origin;
3. Where there is evidence that the purpose of the difference in the trademark is to prevent determination of the normal value by taking into consideration the goods sold in the country of export or of origin.

CHAPTER II

NORMAL VALUE

ARTICLE 7: The determination of the normal value referred to in Article 5 of the Law shall be subject to the procedures and rules laid down in these Regulations.

ARTICLE 8: For the purposes of determining the normal value, the ordinary course of trade shall mean sales of like goods usually effected by the exporter or producer of the good allegedly dumped to buyers in the country of export or of origin which meet the following requirements:

1. The buyer is not an associated person, within the meaning of paragraph 16 of Article 2 of the Law and, to the extent that the Commission considers it relevant, the buyer is at a commercial level equivalent to that of the importer of the allegedly dumped or subsidized good within the corresponding line of trade.

Where the exporter or producer of the good allegedly dumped sells like goods to independent buyers in the country of export or of origin, through an associated person, the Commission may consider that sales to such buyers constitute sales made in the ordinary course of trade, provided that the other conditions mentioned in this Article obtain;

2. The individual volumes of sales to buyers in the country of export or of origin correspond to the volumes of sales of the good allegedly dumped;
3. The exporter or producers of like goods sell in the country of export or of origin a volume equivalent to at least 20 per cent of the total volume of global sales, including those to Venezuela.

Nevertheless, in cases where, due to the characteristics of the market or of the good, it is shown that a lower volume of sales permits an adequate comparison, the Commission may accept a lower percentage;

4. The sales to buyers in the country of export or of origin are made under sufficient conditions of free competition on the market of export or of origin. The fixing of prices by the State, the existence of practices which prevent or restrict the exercise of free competition and transactions between related persons through associations, agreements or compensatory arrangements, even when such persons cannot be deemed to be associated persons, shall be considered as conflicting with such conditions.
5. The sales were made within a period not exceeding two months immediately prior to or following the allegedly dumped sales.

In exceptional cases, where the nature of the good sold or of the trade cycles affecting it means that such a time-limit is impractical, inappropriate or contrary to international trade usage, the Commission may take into account sales over a longer period; it must then justify doing so in its decision on the application.

ARTICLE 9: For the purposes of calculating the normal value, the comparable price referred to in paragraph 14 of Article 2 of the Law shall be net after deduction of the discounts, refunds and other reductions granted to the buyer, provided that the exporter or producer requests the corresponding adjustment and proves to the Commission's satisfaction that such discounts have actually been made.

ARTICLE 10: The Commission shall calculate the normal value using the comparable price actually paid or payable, in the ordinary course of trade, for the good allegedly dumped which is intended for consumption in the country of export or of origin. When sales cannot be considered as being in the ordinary course of trade in accordance with the provisions of Article 8 of these Regulations, the Commission shall calculate the normal value according to the following sequence of priority:

1. By using the compared export value method;
2. Where the compared export value is not suitable, by using the computed value method.
3. Where the normal value cannot be determined using the methods mentioned in paragraphs 1 and 2 of this Article, the Commission may calculate it on the basis of sales in the country of origin by producers or sellers of like goods to buyers in the country of export or of origin, for which purpose it may use statistical information available in that country.

Where sales of like goods by the exporter or producer are at a real price below the production costs mentioned in paragraph 1 of Article 12 of these Regulations, the normal value shall be calculated according to the methods provided for in the said Article.

In the case of imports originating in or coming from countries with centrally-planned economies, the Commission shall calculate the normal value according to the methods provided for in paragraphs 1 and 2 of this Article, on the basis of sales by producers or sellers of like goods in a third country with a market economy and a similar level of development to that of the former. If the aforementioned methods are not sufficient, the Commission may adjust the price actually paid or payable in Venezuela to include a reasonable margin of profit.

ARTICLE 11: The compared export value is the price of sales by the exporter of the allegedly dumped good to buyers in a country other than Venezuela or the country of export or of origin. In such cases, the Commission may take into account the highest price, provided that it is representative, and shall ensure that the conditions laid down in Article 8 of these Regulations are fulfilled with reference to the country of export selected.

ARTICLE 12: The computed value is the total of the following elements related to the allegedly dumped good or a like good:

1. Production costs, meaning the total of fixed and variable costs for the inputs utilized and the manufacturing process, in the ordinary course of trade in the country of origin, with a reasonable margin for selling, administrative and other general costs;

2. A reasonable margin of profit, calculated in relation to the respective costs and earnings of the producer or exporter, for sales for profit to persons other than associated persons in the country of origin or of export.

If the Commission considers that this information is not reliable or is insufficient, it shall use the production costs and the related profit of other producers or exporters in the country of origin or of export for sales for profit of a like good. If such information is still not sufficient, the value may be calculated on the basis of sales of other goods by the exporter or other manufacturers within the same economic sector in the country of origin or of export, or on any other reasonable basis determined by the Commission.

ARTICLE 13: In the case of sales of like goods by the exporter of the allegedly dumped good to buyers in the country of export or of origin where it is shown that the real selling price is below production costs as specified in paragraph 1 of Article 12 of these Regulations, the Commission may consider that such sales have not been made in the ordinary course of trade and calculate the normal value using the method it deems most appropriate among the following:

1. Other sales to buyers in the country of export or of origin which have been made at prices that are not lower than production costs;
2. The compared export value in accordance with Article 11 of these Regulations;
3. The computed value in accordance with Article 12 of these Regulations;
4. Adjustment of the price below production costs so as to eliminate losses and provide for a reasonable margin of profit.

ARTICLE 14: For the purposes of the previous Article, sales in which the price is lower than production costs shall have been made over a period of not less than six months nor more than 18 months in quantities exceeding 80 per cent of total sales and at prices which do not allow recovery of all costs within a reasonable period. This last circumstance shall be established when below-cost prices at the time of sale are higher than the weighted average costs during the period of the investigation.

CHAPTER III

EXPORT PRICE

ARTICLE 15: For the purposes of Article 6 of the Law, the export price means the price actually paid or payable for the good allegedly dumped, in cash or in kind, actually transferred or transferable against the sale, exchange or any other form of transfer for value of the said good.

The Commission shall calculate the export price on the following basis, as appropriate:

1. Direct export price;
2. Indirect export price;
3. Export price for subsequent processing.

ARTICLE 16: The discounts, refunds and other reductions to be taken into account in calculating the net value constituting the export price referred to in Article 6 of the Law shall be directly related to the sales transactions concerned and shall only be taken into account if the interested party requests the corresponding adjustment and provides justification therefor to the Commission.

ARTICLE 17: In the case of the direct export price, the following deductions shall be made:

1. Any tax paid in Venezuela or abroad resulting from the export or import of the allegedly dumped good;

2. The costs of preparing, packing or packaging the allegedly dumped goods for dispatch, provided that they are distinct from the costs related to sales to buyers in the country of export or of origin;
3. Costs related to the export and transport to Venezuela of the allegedly dumped goods and entry costs. These shall include freight, maintenance, insurance, loading and unloading, handling and other related costs incurred for the transport of the good from the exporter's warehouse until it is delivered to the buyer in Venezuela.

For the deductions referred to in this Article to be applicable, the costs mentioned in the previous paragraphs must be included in the direct export price.

ARTICLE 18: The Commission shall determine the export price of the allegedly dumped good using the indirect export price mentioned in Article 19 of these Regulations when there is no direct export price or, if one exists, it cannot be used because it concerns a transaction between associated persons or persons who may be related through associations, agreements or compensatory arrangements concerning the price, sale, profits or costs for the allegedly dumped good.

ARTICLE 19: The indirect export price is the price calculated on the basis of that at which the importer sells the allegedly dumped good, in the condition as imported and in representative quantities, to the first independent buyer in Venezuela. Independent buyer means a person who is not deemed to be associated or related to the importer, exporter or producer, through associations, agreements or compensatory arrangements concerning the price, sale, profits or costs for the allegedly dumped good.

ARTICLE 20: For the purpose of calculating the indirect export price, the following costs shall be deducted from the price at which the importer sells the allegedly dumped good to the first independent buyer in Venezuela:

1. The costs listed in paragraphs 1, 2 and 3 of Article 17 of these Regulations;
2. The direct and indirect selling costs incurred by the importer after the good has been imported and before it is sold to an independent buyer. In determining these costs, the Commission shall be guided by the provisions of Article 33 of these Regulations;
3. The general and administrative costs incurred by the importer after the good has been imported and before it is sold to an independent buyer;
4. A reasonable margin for profit on the sale by the importer, calculated in relation to sales for profit by producers and sellers of like goods or, in their absence, goods of the same economic sector.

For the deductions referred to in this Article to be applicable, the costs mentioned in the previous paragraphs must be included in the selling price to the first independent buyer in Venezuela.

ARTICLE 21: When the export price cannot be determined using the indirect export price provided for in Article 19 of these Regulations, the Commission shall calculate the price in accordance with the following guidelines:

1. Where the allegedly dumped good has been processed after its importation and before its sale to the first independent buyer in Venezuela, the Commission shall determine the export price using the EXPORT PRICE FOR SUBSEQUENT PROCESSING, provided for in Article 22 of these Regulations. The allegedly dumped good is considered as having been processed when it has been subject to or incorporated in assembly, packaging or manufacturing processes in Venezuela.
2. In cases where it is not possible to proceed in accordance with the provisions of the preceding paragraph, the Commission shall determine the export price on the basis of other criteria and shall clearly specify these criteria in the relevant decision.

ARTICLE 22: EXPORT PRICE FOR SUBSEQUENT PROCESSING means the price paid for the finished product by the first independent buyer in Venezuela in accordance with the provisions of paragraph 1 of the previous Article, after deduction of the following items:

1. The amounts referred to in paragraphs 1, 2 and 3 of Article 17 of these Regulations, relating to the good processed;
2. Costs and expenses directly related to the assembly, packaging or manufacturing processes;
3. Any direct or indirect selling costs in addition to those referred to in the previous paragraphs incurred by the importer after the good has been imported and before it is sold to an independent buyer. In determining these costs, the Commission shall be guided by the provisions of Article 33 of these Regulations;
4. The general and administrative costs in addition to those mentioned in the preceding paragraphs incurred by the importer after the good has been imported and before it is sold to an independent buyer in Venezuela;
5. A reasonable margin of profit on the sale by the importer, calculated in relation to sales for profit by producers and sellers of like goods or, in their absence, of goods of the same economic sector.

For the deductions referred to in this Article to be applicable, the costs mentioned in the previous paragraphs must be included in the selling price to the first independent buyer in Venezuela.

CHAPTER IV

ADJUSTMENTS RESULTING FROM PRICE COMPARISON

SECTION ONE

GENERAL PROVISIONS

ARTICLE 23: The adjustments provided for in this Section shall apply, as appropriate in each case, to the normal value or the export price calculated in conformity with the provisions of the previous Chapters.

ARTICLE 24: For the purposes of the price comparison referred to in Article 7 of the Law, the first step shall be to identify the level of trade at which the sale used to determine the export price occurs, normally but not necessarily at the ex-factory level. Secondly, it shall be determined whether there are appropriate sales to calculate the normal value at a level of trade equivalent to the level used as a basis for the calculation of the export price, in accordance with the rules laid down in Chapter 2 of this Title. Thirdly, if there are no appropriate sales to calculate the normal value at the same level of trade, it shall be calculated on the basis of sales at the level of trade deemed to be most appropriate.

ARTICLE 25: When, in accordance with the provisions of the previous Article, the normal value is calculated on the basis of sales at a level of trade distinct from the level of the sales used to calculate the export price, the level which is the nearest and most closely resembles that of the export sales, taking into account the volume of sales, the type of buyer, the use made of the goods sold or the services supplied by the seller, shall be identified.

SECTION TWO

ADJUSTMENTS FOR DIFFERENCES IN PHYSICAL CHARACTERISTICS

ARTICLE 26: For the purposes of the adjustment provided for in Article 7 of the Law relative to differences in the physical characteristics of the good allegedly dumped and those of the like good used to determine the normal value, the criteria referred to in Article 2 of these Regulations shall be followed. When the comparison has been made, the normal value of the like good shall be adjusted

in accordance with the specific value attributed to each of the differences, on the basis of market information obtained in the relevant place of sale.

Where no market information is available and provided that the differences relate strictly to the physical characteristics, the Commission may calculate the amount of the adjustment according to the share of the costs, expenses and profit margin which could reasonably be attributed to each of the differences identified.

ARTICLE 27: In cases where the adjustment for differences referred to in this Section exceeds 20 per cent of the export price, it shall be considered that the good which is the subject of the calculation of the normal value cannot be deemed to be a like good in accordance with the definition given in paragraph 11 of Article 2 of the Law and the provisions of these Regulations.

SECTION THREE

ADJUSTMENTS FOR DIFFERENCES IN DUTY

ARTICLE 28: For the purposes of the adjustment provided for in Article 7 of the Law, the Commission shall deduct from the normal value any tax, countervailing or anti-dumping duty imposed on the like good or on materials incorporated therein if they have been imported into the country of the sale which has resulted in the determination of the normal value, as well as any tax levied on the production or marketing of the like good in that country, whether or not imported. There shall be no adjustment in cases where the taxes, countervailing or anti-dumping duties have not actually been collected.

ARTICLE 29: The Commission shall deduct from the export price any tax, countervailing duty or anti-dumping duty imposed on the allegedly dumped good or on materials incorporated therein prior to their export to Venezuela, provided that such export has not led to the refund of the taxes, countervailing duties or anti-dumping duties imposed on the said good.

SECTION FOUR

ADJUSTMENTS TO SELLING COSTS FOR DIFFERENT LEVELS OF TRADE

ARTICLE 30: When the Commission has to calculate the normal value on the basis of sales at a level of trade different to that of the sales used to calculate the export price, the normal value shall be adjusted for the direct selling costs specifically related to the level used for its calculation. Such a relation shall be considered to exist when it is proved to the Commission that the costs incurred would be different if the sales used to calculate the normal value were at the same level of trade as the sales used to calculate the export price.

SECTION FIVE

ADJUSTMENTS TO SELLING COSTS FOR DIFFERENT QUANTITIES

ARTICLE 31: For costs related to sales of different quantities, the Commission shall determine whether, in the market where the sales used as a basis to calculate the normal value were made, there is a commercial policy or usage of discounts, deductions, rebates or refunds, based on the quantities of like goods sold. If this is the case, it shall be determined whether the quantities and sales used to calculate the export price meet the same conditions and an amount equivalent to the discount, deduction, rebate or refund in question shall be deducted from the normal value.

ARTICLE 32: For the deduction referred to in the previous Article to be applicable, the commercial policies or usage concerned must be evidenced by discounts, deductions, rebates or refunds freely granted on the market used as a reference for the calculation of the normal value and in the ordinary course of trade over a representative period of not less than six months prior to the sale of the allegedly dumped good or different periods in the case of cyclical or periodic discounts. Such discounts, deductions, rebates or refunds must also represent at least 20 per cent of the total volume of sales of like goods in this market and be generally and uniformly applied at the time of the sale that is allegedly the subject of dumping.

SECTION SIX

ADJUSTMENTS TO SELLING COSTS FOR DIFFERENT CONDITIONS

ARTICLE 33: For costs related to sales under different conditions, the Commission shall distinguish between direct and indirect costs. Direct costs means the variable costs and costs specifically related to the sales in question, for example, financing of sales, commissions, advertising specifically aimed at promoting the goods that are the subject of such sales, guarantees and technical services. Indirect costs means the fixed costs incurred by the seller independently of the sales made, but related to them, for example, provision for bad debt, general promotion costs, remuneration of sales staff, etc.

General and administrative costs shall not be considered indirect costs.

ARTICLE 34: The Commission may adjust the normal value by the differences which, as a result of different terms of trade, occur between the direct costs in the sales used as a basis to calculate the normal value and the direct costs used as a basis to calculate the export price.

ARTICLE 35: For sales financing costs, the Commission shall determine the amount of the adjustment in accordance with procedures which reasonably reflect the cost of money corresponding to the price during the period between the dispatch of the goods by the seller and their payment by the buyer, calculated according to the currency of payment.

ARTICLE 36: For guarantee costs, the Commission shall determine the amount of the adjustment according to the costs borne by the seller in order to honour the guarantees on the goods sold and in conformity with their terms. For the purposes of this adjustment, the guarantees must have been given in writing at the time of sale or correspond to the practices required by law in the place of sale or by trade custom, use or generally accepted practices in the market in question.

ARTICLE 37: For technical service costs, the Commission shall determine the amount of the adjustment according to the costs borne by the seller for the provision of assistance, provided that this is in fulfilment of contractual obligations in writing and is included in the price paid at the time of sale.

ARTICLE 38: For indirect costs, the Commission may only adjust the normal value by the difference between the costs of the sales to calculate the export price and the costs used to calculate the normal price in the following cases:

1. Where the price comparison involves the indirect export price referred to in paragraph 2 of Article 20 of these Regulations;
2. Where the price comparison involves the export price for subsequent processing referred to in paragraph 3 of Article 22 of these Regulations;
3. In the other special cases referred to in paragraph 2 of Article 21 of these Regulations when the Commission takes into account indirect selling costs in order to determine the export price.

The deduction made for indirect costs from the normal value may not under any circumstances exceed the amount of the deduction of indirect costs when calculating the export price in conformity with the preceding paragraphs.

TITLE II

SUBSIDIES

ARTICLE 39: For the purposes of determining the subsidies referred to in paragraph 13 of Article 2 of the Law, it shall be considered that a government or public or mixed body confers an advantage on certain enterprises or industries in any of the following cases:

1. Where the legislation establishing the subsidy expressly restricts the specific advantages to certain enterprises, groups of enterprises or industries, legislation meaning a regulation with general scope issued by the competent authority, independently of the government sector involved;
2. Where the legislation establishing the subsidy imposes general conditions that must be fulfilled which, even if they do not distinguish between enterprises or industries, have the practical effect of discriminating among types of enterprises, groups of enterprises or industries, as a result of the production structure in the country whose authorities grant the subsidy;
3. Where, despite the general nature of the legislation establishing the subsidy, the authority responsible for applying it has developed practices which manifestly confer advantages on specific enterprises, groups of enterprises or industries rather than others which would also be entitled to the subsidy.

ARTICLE 40: In addition to the practices mentioned in Article 9 of the Law, related to exports, the following internal practices, *inter alia*, shall be considered to be subsidies:

1. Grants, allocations and other liberalities granted to exporters or producers of the subsidized good, including the cancellation or reduction of debt owed to public or mixed bodies, whether as the original or the secondary creditors;
2. The purchase of shares or other forms of capital investment by public or mixed bodies on terms that are less favourable to them than those prevailing in the market. In the case of subscription to shares in companies listed on the stock exchange, the market value shall be the average price in trading on the stock exchange on the day of purchase by the public or mixed body. In the case of shares or capital participation in companies not listed on the stock exchange, the market value shall be the value in the company's books, but if the Commission considers the book value to be inappropriate and has sufficient and reliable information, it may use valuations calculated by specialized companies or valuation methods based on the company's capacity to generate cash flows;
3. Any other form of internal subsidy, that is to say not related to exports, determined by the Commission in conformity with paragraph 13 of Article 2 of the Law.

ARTICLE 41: For the purposes of determining the amount of the subsidy in accordance with Article 10 of the Law, the Commission shall examine its nature and calculate its impact on the price of the subsidized good.

ARTICLE 42: The Commission shall distinguish between subsidies which relate specifically to export of the good concerned by the application and subsidies which depend on the export activity of the beneficiary company. In the latter case, it shall be calculated according to the proportion corresponding to the production of the subsidized good in relation to the production of other goods exported by the company benefiting from the subsidy. In the case of internal subsidies, that is to say subsidies not related to export activities, their impact shall be calculated on the basis of all the goods produced by the beneficiary company, independently of whether or not such goods are exported.

ARTICLE 43: In the case of recurrent subsidies, namely subsidies received whenever particular conditions recur over a period of time, their amount shall be calculated by dividing the benefit received among the total sales by the exporter or producer over the period during which the subsidy was received. If the period is two years or more, the provisions of Article 45 of these Regulations shall apply.

ARTICLE 44: For the purpose of calculating the amount of the subsidy in cases where it arises out of credits granted at lower rates or on more favourable terms than those which the beneficiaries could obtain on the corresponding markets, a distinction shall be drawn between short-term and medium-term or long-term credits. The amount of short-term credit shall be determined in conformity with the procedure laid down in the previous Article for recurrent subsidies to the extent that it is applicable. Medium-term or long-term credits shall be calculated as far as possible according to the procedure laid down in the following Article for non-recurrent subsidies.

SINGLE PARAGRAPH: Short-term credits means those for which the term for repayment of the capital is less than two years. Credits whose term is two years or more shall be considered medium-term or long-term credits. Credits with a term of less than two years may be considered medium-term or long-term credits if it can be satisfactorily proved that the creditor follows a constant and uncontested practice of automatically renewing or extending the term for the repayment of capital by additional periods which, taken together with the initial period, amount to two years or more.

ARTICLE 45: In the case of non-recurrent subsidies, the number of years over which their benefits have to be spread shall be calculated. For this purpose, a period of ten years shall be utilized as a benchmark, except in cases where it is demonstrated that the benefit consists in the use of a particular asset, when a shorter period may be used, based on the period of amortization or depreciation of the asset in conformity with generally accepted accounting principles in the country in which the subsidy is conferred.

When the period of application has been determined, the value of the benefit shall be discounted at a rate which reasonably reflects the capital costs for the exporter or producer at the time of receiving the benefit. For the purposes of determining the discount rate, the most appropriate financial methodology taking into account the information available shall be used.

TITLE III

INJURY

ARTICLE 46: For the purposes of the determination referred to in Article 11 of the Law, it must be demonstrated to the Commission's satisfaction that there is a causal relationship between the import of dumped or subsidized goods and any of the following:

1. The existence of material injury to the domestic industry producing like goods. Material injury means any significant and substantial damage to the domestic industry;
2. The threat of material injury to the domestic industry producing like goods, in accordance with Article 51 of these Regulations;
3. Appreciable material retardation of the start-up of the domestic industry producing like goods, in accordance with Article 52 of these Regulations.

ARTICLE 47: For the purposes of Article 14 of the Law, the major proportion of domestic industry shall mean those producers representing at least 30 per cent of domestic industry. Exceptionally, if the special circumstances of the production structure in question so require, the Commission may use as a benchmark a higher percentage, which may not under any circumstances exceed 40 per cent, or a lower percentage, which may not be less than 20 per cent.

ARTICLE 48: For the purposes of determining injury or threat of injury, the following producers shall not be included among domestic producers constituting domestic industry:

1. Producers associated with exporters;
2. Producers who themselves import the dumped or subsidized good;
3. Producers whose industrial activity does not result in the actual processing of the inputs constituting the like good. In excluding such producers, the Commission shall take into account the origin and characteristics of the inputs used in the like good, as well as the value added by the production process.

SINGLE PARAGRAPH: In cases where it is determined that the domestic industry is insignificant in relation to the Venezuelan market for like goods, it may be concluded, as an exception, that there is no injury or threat of injury to domestic industry. The domestic industry shall be considered insignificant when, after having excluded the producers mentioned in this Article, it does not represent more than 5 per cent of the consumption of like goods in the country, except where, in cases of a lower percentage, it is demonstrated to the Commission's satisfaction that the domestic industry has

experienced significant and sustained growth over a period which allows it to be reasonably inferred that there will be a similar growth trend in the future.

ARTICLE 49: Where the interested party claims that in the country of export or of origin proof of injury is not required, he must submit proof of this claim together with his application; without detriment to the Commission's power to decide whether or not there is injury or threat of injury or material retardation of the start-up of the domestic industry, in conformity with the single paragraph of Article 11 of the Law.

ARTICLE 50: It shall be determined that there is material injury to the domestic industry producing like goods when at least two of the following conditions are met:

1. The volume of dumped or subsidized imports is significant and has increased in absolute terms or relative to the domestic production of like goods. The volume of imports of dumped or subsidized goods shall be considered significant when it represents at least five per cent (5%) of the domestic production of like goods. The Commission may base its decisions on different percentages when, in its view, the circumstances of the case so require;
2. Imports of dumped or subsidized goods are sold at prices considerably lower than those for like goods produced in the country, or have the effect of depressing prices or preventing increases which, if such goods had not been imported, would have occurred in a natural and competitive manner;
3. Imports of dumped or subsidized goods have an adverse impact on producers of domestic like goods, taking into account their relative position under the following headings: units produced; sales; market share; profits; return on investment; utilization of installed capacity; cash flow; inventories; growth, prices of domestic inputs, investment plans; ability to obtain credit, as well as any other relevant element. The Commission may determine which of the aforementioned headings apply to an investigation.

Fulfilment of the requirements laid down in this Article are to be understood within the concept of the domestic industry.

ARTICLE 51: The Commission shall determine that there is a threat of material injury to the domestic industry producing like goods when it considers that the threat is real and certain and that the injury is imminent. In doing so, it shall take into account the following factors:

1. The nature of the subsidy in the case of imports of subsidized goods. The Commission shall take into account direct subsidies and subsidies related to exports, especially those which exceed five per cent (5%) ad valorem;
2. Increases in production capacity, or idle capacity, in the country of origin, provided that there are sufficient indications that such increases may result in an increase of exports to Venezuela;
3. Accelerated increases in the share of the domestic market of dumped or subsidized goods which have not yet resulted in injury, in accordance with Article 50 of these Regulations;
4. Over-production or the build-up of inventories in the country of origin of the dumped or subsidized goods, with the likelihood that they will be exported to Venezuela;
5. The building up of inventories of dumped or subsidized goods in Venezuela, even if they have not yet been sold there;
6. The ability of the producer abroad to replace the production of goods subject to anti-dumping or countervailing duties in Venezuela by the production of dumped or subsidized goods not subject to anti-dumping or countervailing duties;

7. Any trend in sales and exports of dumped or subsidized goods which point to an increase in the export of such goods to Venezuela;
8. Other circumstances which the Commission sees fit to consider.

ARTICLE 52: A determination of appreciable material retardation in the start-up of the domestic industry producing like goods shall be based on evaluation of the potential of the domestic industry at the time when import of the dumped or subsidized goods commences or is imminent, in order to establish whether or not such imports had an adverse effect on the probable development of this potential. For this purpose, the following factors concerning the domestic industry shall be taken into account:

1. Projected performance compared with actual performance;
2. Utilization of production capacity;
3. The situation of orders and deliveries;
4. The financial situation;
5. Other circumstances which the Commission sees fit to consider.

TITLE IV

ANTI-DUMPING AND COUNTERVAILING DUTIES

ARTICLE 53: The provisional anti-dumping or countervailing duties referred to in Article 19 of the Law shall be imposed when the need to prevent injury to the domestic industry during the period of the investigation has been determined. For this purpose, there shall be a preliminary verification of fulfilment of the conditions referred to in Articles 50, 51 and 52 of these Regulations, as appropriate.

ARTICLE 54: Provisional or definitive anti-dumping or countervailing duties shall also be imposed on goods imported in the form of inputs or components of finished goods referred to in Article 5 of these Regulations when the Commission determines that the purpose of importing them in this form is to avoid such duties.

ARTICLE 55: Anti-dumping or countervailing duties shall be applied independently of customs duties and other levies on the import of goods into Venezuela and shall be payable by the person liable for paying the customs charges.

For the additional duties referred to in Article 22 of the Law to be applicable, there shall not have been any increase in the selling price to the first independent buyer to compensate for the duties paid by the exporter, without prejudice to the absence of an increase in the said price constituting the indication referred to in the single paragraph of the said Article.

TITLE V

UNDERTAKINGS

ARTICLE 56: In conformity with Article 24 of the Law, the Commission shall evaluate any undertaking submitted to it and shall decide on its acceptance and approval within a period not exceeding thirty (30) working days from the date of submission of the corresponding application. In order to facilitate the evaluation to be made, the Commission may take part in the negotiations on the undertaking.

ARTICLE 57: An undertaking may be rejected in the following cases:

1. Where the domestic producers party to the undertaking do not represent fifty per cent (50%) of domestic production. When the percentage is not very representative of domestic producers as a whole, it may also be required that the domestic producers

should represent a proportion equivalent to eighty per cent (80%) of those involved in domestic production, in conformity with Article 14 of the Law;

2. Where the Commission considers that the undertaking is impractical or impossible to apply effectively, for example, if the number of actual or potential exporters is too high;
3. Where it is determined that the undertaking goes beyond the objective of offsetting the dumping or subsidy related to the imports under investigation;
4. In any other case in which the Commission so decides, according to the circumstances.

ARTICLE 58: In all cases where the undertaking submitted to the Commission involves modification of the prices of the dumped or subsidized products or a reduction in exports of such goods to Venezuela, the views of the Department for the Promotion and Protection of Free Competition may be sought.

ARTICLE 59: Undertakings which restrict or eliminate subsidies shall not be accepted without prior consultation and evidence that the competent authorities in the country granting the subsidy are aware of and have approved the undertaking. Wherever possible, the evidence shall include a declaration by the aforesaid authorities undertaking not to grant the subsidy or to restrict it to the extent agreed.

ARTICLE 60: Undertakings which have been accepted and approved by the Commission may be amended following an application by an interested party or when the Commission considers necessary, at the intervals specified in the decision approving the undertaking, which may not be less than one (1) year. Nevertheless, acceptance and approval may be cancelled by the Commission before one year has expired when it considers that the causes which gave rise to the undertaking have ceased to exist or when it notes that the undertaking is not being applied.

TITLE VI
PROCEDURE

CHAPTER I
GENERAL PROVISIONS

SECTION ONE

ADMISSIBILITY OF THE APPLICATION

ARTICLE 61: In order to meet the requirement laid down in paragraph 2 of Article 39 of the Law, the application for the opening up of an investigation shall contain a full description of the good allegedly dumped or subsidized. The description shall show the name and any additional identifying data, as well as information on the following elements by marketing unit: size, volume and weight; inputs or components; use or end use; quality; technical specifications, if any; and tariff classification.

ARTICLE 62: In order to meet the requirement laid down in paragraph 3 of Article 39 of the Law, the application for the opening up of an investigation shall contain a full description of the like good produced in Venezuela, including all the information required for the allegedly dumped or subsidized good in accordance with the previous Article, with particular emphasis on the following:

1. Description and source of the components and inputs incorporated in the like good;
2. Description of the production process for the like good, with an indication of any known aspects of the process that differ from those used by the producers of the allegedly dumped or subsidized good;
3. The application shall also indicate the market price of the good, its factory price and its production cost.

ARTICLE 63: In order to meet the requirement laid down in paragraph 4 of Article 39 of the Law, in the case of dumping, the application for the opening up of an investigation shall contain the following information:

1. With regard to the normal value, an indication of the selling price of like goods to buyers in the country of export or of origin. This indication shall be accompanied by quotations, price lists, commercial invoices or any other instrument which, in the opinion of the Technical Secretariat, confirms the price indicated by the applicant;
2. With regard to the export price, an indication of this price or, in its absence, of the f.o.b. (free on board) price of the allegedly dumped good, confirmed by quotations, commercial invoices, price lists or any other instrument which is acceptable in the view of the Technical Secretariat. Where it is not possible to obtain such information, the applicant may estimate the export price, deducting the necessary elements from the selling price in Venezuela of the allegedly dumped good, based on the concepts set out in Article 20 of these Regulations or in Articles 21 and 22 if applicable. In such cases, the price in Venezuela shall be authenticated by the means indicated.

Where the requirements provided for in Article 8 of these Regulations are not fulfilled, the application shall contain information on the compared export value, or in its absence, the computed value.

ARTICLE 64: In order to meet the requirement laid down in paragraph 4 of Article 39 of the Law, in the case of subsidies, the application for the opening of an investigation shall indicate the following: the type of subsidy; if it is among those mentioned in Article 9 of the Law; and the elements which determine that the exporter or the producer is entitled to the subsidy. For these purposes,

the application shall include the legal or administrative instrument conferring the subsidy and showing its characteristics.

ARTICLE 65: In order to meet the requirement laid down in paragraph 4 of Article 39 of the Law, with regard to injury, the application for the opening of an investigation shall include evidence on:

1. Production of the applicant over the previous two (2) years and a projection for the current year as at the time when the application is made;
2. Decrease in the share of the domestic industry in the Venezuelan market affected by the goods allegedly dumped or subsidized;
3. Decrease in profits from sales by the applicant which compete with the goods allegedly dumped or subsidized;
4. Deterioration in the prices of the applicant's goods which compete with the goods allegedly dumped or subsidized;
5. Decrease in the volume of the applicant's sales which compete with the goods allegedly dumped or subsidized.

ARTICLE 66: The application for the opening of an investigation shall contain the information needed to identify and notify the importers and exporters concerned. The lack of this information shall be considered a defect in the application for the opening of an investigation, with the effects provided for in the single paragraph of Article 40 of the Law.

ARTICLE 67: In all cases where the applicant does not respect the time-limit of fifteen (15) working days fixed in the single paragraph of Article 40 of the Law for remedying any omissions or inadequacies noted by the Technical Secretariat, the application shall be considered inadmissible without it being necessary to issue any decision to that effect.

ARTICLE 68: A request for reconsideration and an appeal to a higher body, as provided for in the Basic Law on Administrative Procedure, may be made against a decision taken by the Technical Secretariat in accordance with the single paragraph of Article 40 of the Law.

SECTION TWO

INVESTIGATION PROCEDURE

ARTICLE 69: The Commission shall immediately notify the applicant and the importers of the decision to open an investigation. The announcement containing an extract from the decision shall be published in two (2) newspapers with broad national circulation at the expense of the applicant, who shall provide the Technical Secretariat with copies of the newspapers in which the announcement has been published. When this formality has been completed, the Technical Secretariat shall initiate the investigation.

ARTICLE 70: For the purposes of collecting the information referred to in Article 43 of the Law, the Technical Secretariat shall send questionnaires and forms to the interested parties, who shall furnish the information requested within the time-limit laid down in the aforesaid documents. Failure to meet this obligation shall give rise to the procedure laid down in Article 46 of the Law.

The questionnaires and forms referred to above may also be given to the public bodies mentioned in Article 34 of the Law, which shall collaborate with the Commission and the Technical Secretariat in providing information.

ARTICLE 71: At the request of a party, the Technical Secretariat may determine that the information provided is confidential, in accordance with Article 48 of the Law, placing it in a separate part of the file.

ARTICLE 72: Where the Technical Secretariat declares that there are no grounds for treating the information as confidential, it shall order that the information be included in the relevant file, after notifying the interested party so that he may withdraw the information if he sees fit to do so. An appeal to reconsider this decision may be made to the Technical Secretariat and an appeal to a higher body may be made to the Commission in accordance with the provisions of the Basic Law on Administrative Procedure.

ARTICLE 73: The time-limit for concluding the investigation shall be one (1) year from the date on which it was initiated in accordance with Article 69 of these Regulations.

ARTICLE 74: The Commission's decisions shall be published in the Official Gazette of the Republic of Venezuela and in the biannual bulletin of the Commission.

SECTION THREE

DEFINITIVE DUTIES

ARTICLE 75: The Commission's decision to impose anti-dumping or countervailing duties shall immediately be notified to the Sectoral General Directorate of Customs of the Ministry of Finance, together with the text of the decision. Copies of the decision shall also be sent to the Ministers for Finance and Development, and to the President of the Foreign Trade Institute.

ARTICLE 76: As soon as the notification referred to in the previous Article has been received, the Sectoral Director-General of Customs shall issue the necessary instructions for the collection of the anti-dumping or countervailing duties in conformity with Article 54 of the Law.

ARTICLE 77: The Ministry of Finance, through the Sectoral General Directorate of Customs, shall give the Commission each month a breakdown of the following information relating to the goods subject to the duties:

1. The amount collected on account of provisional and definitive anti-dumping or countervailing duties during the previous month;
2. A list of the securities lodged for the provisional duties that have been imposed.

The information referred to in this Article shall be specified according to the volume of imports, and the importer or consignee accepting the goods.

CHAPTER II

PROVISIONAL DUTIES

ARTICLE 78: An interested party may submit a request for the imposition of provisional anti-dumping or countervailing duties, at the same time as an application for the initiation of an investigation or at any time during the investigation.

ARTICLE 79: The Commission shall decide whether to impose provisional anti-dumping or countervailing duties within the time-limit laid down in Article 60 of the Basic Law on Administrative Procedure calculated from the date of the decision to open an investigation into dumping or subsidies, without prejudice to the subsequent imposition of provisional anti-dumping or countervailing duties when, in the course of the investigation, additional evidence justifying such duties is obtained.

ARTICLE 80: In the case of the agricultural products referred to in the single paragraph of Article 60 of the Law, the request for the imposition of provisional countervailing duties shall be made at the time of submitting the application for the opening of an investigation and shall include the information necessary to identify and notify the importers concerned, together with what the Technical Secretariat considers is sufficient evidence of the following:

1. That the subsidy is fully effective in the country of origin or of export;

2. That, in accordance with the legal facts of the case, the subsidy would be applicable to the exporter or producer of the good investigated;
3. That the corresponding official publications do not raise doubts concerning the form, amount and effects of the subsidy.

When the application has been received, the importers shall be notified of the imposition of provisional duties.

ARTICLE 81: The duration of provisional anti-dumping or countervailing duties shall not exceed four (4) months from the date of publication of the decision to impose such duties in the Official Gazette. Nevertheless, the Commission may extend the duration of the duties by additional periods which, as a whole, shall not exceed one (1) year from the date of initiation of the investigation provided that during the course of the investigation evidence is obtained to support the serious presumption which gave rise to the imposition of such duties.

ARTICLE 82: When the provisional anti-dumping or countervailing duties have been imposed, the procedure laid down in Articles 75 *et seq* of these Regulations shall be followed.

TITLE VIII

FINAL PROVISION

ARTICLE 83: These regulations shall apply from the date of their entry into force, and shall also apply to procedures already initiated.

Done at Caracas, on the fifth day of the month of April of the year one thousand nine hundred and ninety three. The 182nd year of independence and the 134th year of the Federation.

(Signed) CARLOS ANDRES PEREZ

Countersigned by:

Minister for Internal Relations, JESUS R. CARMONA BORJAS
Minister for External Relations, FERNANDO GERBASI
Minister for Finance, PEDRO ROSAS BRAVO
Minister for Defence, IVAN JIMENEZ SANCHEZ
Minister for Development, FRANK DE ARMAS MORENO
Minister for Education, PEDRO AUGUSTO BEAUPERTHUY
Minister for Health and Social Welfare, RAFAEL ORIHUELA
Minister for Agriculture and Livestock, PEDRO LUIS URRIOLA BARRIOS
Minister for Labour, JESUS RUBEN RODRIGUEZ V.
Minister for Transport and Communications, FERNANDO MARTINEZ M.
Minister for Justice, JOSE FRANCISCO CUMARE NAVAS
Minister for Energy and Mines, RAFAEL M. GUEVARA
Minister for the Environment and Renewable Natural Resources, ENRIQUE COLMENARES FINOL
Minister for Urban Development, DIOGENES MUJICA
Minster for the Family, TERESA ALBANEZ BARNOLA
Minster for the Secretariat of the Presidency, CELESTINO ARMAS
Minister of State, RICARDO HAUSMANN
Minister of State, LEOPOLDO SUCRE FIGARELLA

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CONGRESS OF THE REPUBLIC

LAW ON UNFAIR FOREIGN TRADE PRACTICES

The Congress Of The Republic Of Venezuela

Decrees

The following:

CHAPTER I

GENERAL PROVISIONS

ARTICLE 1: This Law regulates the policies, guidelines and measures aimed at forestalling and preventing the adverse effects on domestic industry of imports of goods under dumping conditions or of goods whose production, manufacture, storage, transport or export has been subsidized, or whose raw materials or inputs have been subsidized, in all cases where the provisions of the Cartagena Agreement on distortions in competition arising out of dumping or subsidy practices are not applicable.

ARTICLE 2: For the purposes of this Law, the following definitions apply:

1. Commission: The Anti-Dumping and Subsidies Commission established under this Law;
2. Anti-dumping duty: A provisional or definitive special levy established to counteract the prejudicial effects of imports under dumping conditions;
3. Countervailing duty: A provisional or definitive special levy established to counteract any direct or indirect subsidy granted for the manufacture, production, storage, transport or export of a good, including subsidies granted for its raw materials or inputs;
4. Dumping: The introduction of goods for marketing or consumption in Venezuela at less than their normal value;
5. Margin of dumping: The amount by which the normal value exceeds the export price;
6. Other interested parties:
 - (a) The foreign producer or exporter of the good investigated;
 - (b) The importer of the said good;
 - (c) Chambers or associations the majority of whose members are producers, exporters or importers of the said good or a like good;
 - (d) The government of the country of export or of origin, as appropriate;
 - (e) The producer of a like good in Venezuela;
 - (f) The industrial users of the good investigated;
 - (g) Consumer organizations in cases where the good is usually sold at the retail level; and

- (h) Other natural or legal persons whose direct personal and individual rights or legitimate interests might be affected by the procedure for determining dumping or subsidies or by its outcome, in the opinion of the Commission.
7. Country of export: Country from which the dumped or subsidized good is directly dispatched to Venezuela;
 8. Country of origin: Country in which the dumped or subsidized good originated;
 9. Export price: The price established in conformity with the guidelines in Article 6 of this Law;
 10. Dumped good: A good whose export price is less than its normal value;
 11. Like good: A good which is identical to or a substitute for the dumped or subsidized good, or any other good whose characteristics and utilization closely resemble those of the dumped or subsidized good;
 12. Technical Secretariat: The Technical Secretariat of the Commission;
 13. Subsidy: Any financial contribution, bounty, aid, form of subvention or premium established by a government or a public or mixed body in a foreign country, or any form of income or price support, through which a benefit is conferred on specific enterprises or branches of industry in addition to those conferred on other enterprises or branches of industry;
 14. Normal value: For the purposes of this Law, normal value means the comparable price actually paid or payable, in the ordinary course of trade, for the allegedly dumped good when destined for consumption in the country of export or of origin, as appropriate;
 15. Sale: For the purposes of this Law, leasing and a promise to sell or to lease shall be deemed to be a contract of sale; and
 16. ASSOCIATED PERSONS:
 - (a) Natural persons who are blood relations to the fourth degree or the second degree of relationship by marriage, as well as married couples;
 - (b) The common administrators of two legal persons, whatever their nature;
 - (c) Partners or associates of any legal persons;
 - (d) Employer and employee;
 - (e) Persons who directly or indirectly control the same person or are controlled by the same person;
 - (f) Two persons one of whom directly or indirectly controls the other; persons of whom one directly or indirectly owns, holds or controls at least fifty per cent (50%) of the voting stock or shares or other forms of equity participation with voting rights;
 - (g) Two persons one of whom directly or indirectly owns, holds, or controls at least fifty per cent (50%) of the other person's voting stock or shares or other forms of equity participation with voting rights; and
 - (h) Other persons specified in the Regulations.

SINGLE PARAGRAPH: The Regulations shall determine the characteristics which allow related persons and compensatory agreements to be identified.

ARTICLE 3: A good shall be considered as being dumped when the price of export to Venezuela is less than the normal value of a like good.

ARTICLE 4: Any product that is dumped when imported or in the process of being imported into Venezuela or which has received subsidies may be subject to the payment of anti-dumping or countervailing duties, as appropriate, if it causes or threatens to cause material injury to the domestic industry producing like goods.

SINGLE PARAGRAPH: No good shall be subject to both anti-dumping and countervailing duties to redress the same situation resulting from dumping or subsidization.

CHAPTER II

DUMPING

SECTION 1

NORMAL VALUE

ARTICLE 5: The normal value shall be calculated in the country of export. However, when the goods are merely transhipped through the country of export or there is no comparable normal value in the country of export, the normal value shall be determined in the country of origin of the allegedly dumped goods.

Where it is not possible to determine the normal value of the allegedly dumped goods in the country of export or country of origin because there is no domestic market, prices are fixed by the State or for any other reason, the normal value may be calculated by the Commission in accordance with the procedures established for this purpose in the Regulations.

SECTION II

EXPORT PRICE

ARTICLE 6: The export price shall be the price actually paid or payable for the good sold for export to Venezuela, net of taxes, discounts and reductions actually granted and directly related to the sales concerned.

Where the Commission considers that the export price is not representative of the market because of associations, agreements or compensatory arrangements between the exporters and importers of the said good, the export price may be calculated by the Commission in accordance with the rules laid down in the Regulations.

SECTION III

PRICE COMPARISON

ARTICLE 7: For the purposes of determining the existence of dumping and its margin, the normal value and the export price shall be compared fairly. The comparison shall be made at the same level of trade, usually at the ex-factory level, taking into account the nearest possible dates and making the adjustments which the Commission considers necessary for any differences in the physical characteristics of the goods, the import duties and indirect taxes, selling costs for sales at different levels of trade, in varying quantities or under different conditions.

FIRST PARAGRAPH: Any of the parties to an anti-dumping investigation may request an adjustment, furnishing evidence that the request is justified.

SECOND PARAGRAPH: The Regulations of this Law shall determine the adjustments to be made to the normal value or export price, as appropriate, in order to ensure a fair comparison.

ARTICLE 8: In comparing prices, where the prices vary, the Commission shall adopt the following guidelines, *inter alia*:

1. The normal value shall be calculated on a weighted average;
2. The export price shall be compared with the normal value on a transaction-to-transaction basis if the use of weighted averages materially affects the findings of the investigation; and
3. Sampling techniques may be used, for example, by taking into account the prices that most frequently occur or are deemed to be most representative, in cases where there is a large number of transactions.

CHAPTER III

SUBSIDIES

ARTICLE 9: For the purposes of this Law, the following shall be considered subsidies:

1. The provision by governments of direct subsidies to a firm or an industry contingent upon export performance;
2. Mechanisms for the granting of foreign currency or any similar practices which involve a bonus on exports;
3. Internal transport and freight charges on export shipments, provided or mandated by governments, on terms more favourable than for domestic shipments;
4. The provision by governments or their agencies either directly or indirectly of imported or domestic goods or services for use in the production of goods to be exported or sold on the domestic market on terms or conditions more favourable than for provision of like goods or services, if such terms or conditions are more favourable than those commercially available on world markets to their exporters;
5. The full or partial exemption, remission or deferral, specifically related to exports, of direct taxes or social welfare charges paid or payable by industrial or commercial enterprises;
6. The allowance of special deductions directly related to exports or export performance, over and above those granted in respect to production for domestic consumption, in the calculation of the base on which direct taxes are charged;
7. The exemption or remission, in respect of the production and distribution of exported goods, of indirect taxes in excess of those levied in respect of the production and distribution of like goods when sold for domestic consumption;
8. The exemption, remission or deferral of prior-stage cumulative indirect taxes on goods or services used in the production of goods destined for export in excess of the exemption, remission or deferral of like taxes on like goods when sold for domestic consumption. However, such exemption, remission or deferral shall not be considered a subsidy when the taxes that are the subject of such measures are applied to goods physically incorporated, making normal allowance, in the goods to be exported;
9. The remission or drawback of import charges in excess of those levied on imported goods that are physically incorporated in the good exported, making normal allowance for waste; however, in particular cases, a firm may use a quantity of home market goods equal to, and having the same quality and characteristics as, the imported goods as a substitute for them in order to benefit from this provision if the import and the corresponding export operations both occur within a reasonable time period, which shall not normally exceed two (2) years;

10. The provision by governments or special institutions controlled by governments of export credit guarantee or insurance programmes, of insurance or guarantee programmes against increases in the cost of exported products or of exchange risk programmes, at premium rates which are manifestly inadequate to cover the long-term operating costs and losses of the programmes;
11. The grant by governments or special institutions controlled by and acting under the authority of governments of export credits at rates below those which they actually have to pay for the funds so employed, or would have to pay if they borrowed on international capital markets in order to obtain funds of the same maturity and other credit terms and denominated in the same currency as the export credit, or the payment by them of all or part of the costs incurred by exporters or financial institutions in obtaining credits, in so far as they are used to secure a material advantage in the field of export credit terms; and
12. Any others as may be determined by the Commission in conformity with paragraph 13 of Article 2 of this Law.

ARTICLE 10: The amount of the subsidy shall be calculated in monetary units or ad valorem percentages per unit of the subsidized product imported.

For the purposes of this Law, the following deductions shall be made from the total subsidy:

1. Any cost necessarily incurred in order to be entitled to the subsidy or to benefit therefrom; and
2. Taxes, duties and other levies charged on export to Venezuela with the aim of offsetting the subsidy.

Any person requesting the above-mentioned deductions shall prove to the satisfaction of the Commission that there are grounds for making them.

CHAPTER IV

INJURY

ARTICLE 11: The Commission shall determine the existence or threat of material injury to the domestic industry producing like goods or material retardation of the start-up of such an industry due to the import of dumped or subsidized goods.

SINGLE PARAGRAPH: In exercising this responsibility, the Commission shall consider whether the country of export or of origin, as appropriate, requires or might require proof of injury, threat of injury or material retardation caused to Venezuelan exports. If such proof is not required, it may be presumed that injury, threat of injury or material retardation exist, within the meaning of this Article.

ARTICLE 12: In order to determine the injury referred to in the previous Article, the volume of dumped or subsidized imports and their effect on the prices of like goods on the domestic market as well as the effects of such imports on domestic goods, shall be considered.

SINGLE PARAGRAPH: In investigating the injury, imports coming from or originating in two or more countries may be cumulated to assess the effect of these imports on domestic industry, if the imports from the countries in question have been the subject of an anti-dumping or subsidy investigation during the year prior to the date of the initiation of the corresponding anti-dumping or subsidy procedure.

ARTICLE 13: A determination of a threat of injury shall be made only when a particular situation may become a situation of actual injury. Consequently, the determination shall not be based on allegation, conjecture or remote possibility.

ARTICLE 14: For the purposes of determining the existence or threat of injury, the expression "domestic industry" shall be interpreted as referring to domestic producers as a whole of like goods, or to those of them whose collective output constitutes a major proportion of the total domestic production of these goods. For the purposes of this determination, producers associated with exporters or who are themselves importers of the dumped or subsidized goods shall not be taken into consideration.

SINGLE PARAGRAPH: In exceptional cases, the Commission may consider that domestic industry is divided into two or more separate markets:

1. Where the major part of the production of a good in a particular region is sold in that region;
2. Where demand for the good in question in that region is not to any substantial degree supplied by producers located elsewhere in the country.

In such circumstances, injury may be found to exist even where a major portion of the domestic industry is not injured, provided that there is a concentration of dumped or subsidized imports destined to be marketed or consumed in the region in question, which are causing injury to all or a major part of the production of like goods in the region.

CHAPTER V

ANTI-DUMPING AND COUNTERVAILING DUTIES

ARTICLE 15: The Commission may impose anti-dumping or countervailing duties, as appropriate, where there is proof of the existence of dumping or the granting of subsidies which is causing or threatening to cause material injury to the domestic industry producing like goods or causing the material retardation of the establishment of such an industry.

ARTICLE 16: The anti-dumping or countervailing duties to be imposed shall under no circumstances exceed the margin of dumping or the amount of the subsidies respectively. Anti-dumping or countervailing duties may be less than the aforementioned limits when the Commission considers that they are sufficient to remove the injury or threat of injury.

ARTICLE 17: Anti-dumping and countervailing duties may be ad valorem specific or mixed, whichever method is deemed most appropriate by the Commission, and may be calculated in the foreign currency on the invoice for the good. The equivalent amount in Bolivars shall be paid, calculated according to the guidelines in the Law on the Central Bank of Venezuela concerning liabilities in foreign currency.

ARTICLE 18: Where an anti-dumping or countervailing duty is established with respect to a good, the duty shall be imposed in the amount appropriate to each case and without discrimination on imports of the good, from whatever source when it has been determined that they are dumped or subsidized and are causing injury, with the exception of imports from sources that have accepted undertakings as provided for in Chapter VI.

The Commission shall inform the supplier or suppliers concerned. However, if several suppliers belonging to the same country are involved and it is impossible to identify them all, the Commission may inform the country concerned. If several suppliers from more than one country are involved, the Commission may inform all the suppliers involved or, if this is not possible, all the supplier countries involved.

ARTICLE 19: In the terms provided for in this Law, the Commission may establish provisional anti-dumping or countervailing duties on the basis of the elements available to it, provided that it has previously determined the existence of dumping or the granting of subsidies, as appropriate, and that there is sufficient proof of injury. The Commission may also change the amount of the provisional anti-dumping or countervailing duties established, notifying the interested parties of the change by publishing the corresponding decision.

ARTICLE 20: Provisional anti-dumping or countervailing duties shall be established through a decision by the Commission showing the amount and type of duty fixed, its duration, which shall not exceed the duration legally established for the rest of the procedure, the good concerned, the country of origin or of export, and the name of the producer or exporter.

ARTICLE 21: The anti-dumping and countervailing duties shall be reviewed at the intervals indicated in the Commission's decision, which shall not be less than one (1) year; however, the duty may be cancelled before the expiry of this period when the Commission considers that the causes which gave rise to the duty have ceased to exist.

ARTICLE 22: Where the exporter pays the provisional or definitive anti-dumping or countervailing duties, additional duties may be imposed to offset the amount paid by the exporter. For this purpose, any of the parties concerned may provide the Commission with evidence of such payment and, when it has undertaken the corresponding investigation and heard the arguments of those concerned, the Commission may impose the aforementioned additional anti-dumping or countervailing duties.

SINGLE PARAGRAPH: It shall be considered an indication that the exporter has paid the anti-dumping or countervailing duties if there is no increase in the selling price to the first independent buyer of the good subject to anti-dumping or countervailing duties in an amount equivalent to the duties, unless it is proved that the absence of any increase in the selling price is due to a reduction in costs or in the importers' profits from the product concerned.

CHAPTER VI

UNDERTAKINGS

ARTICLE 23: The Commission may suspend or conclude a dumping or subsidy investigation before taking a final decision on the need to impose the corresponding duties when the domestic producers and the importers of like goods being investigated enter into an undertaking for the revision of prices, the elimination or limitation of subsidies, or the reduction or elimination of the margin of dumping, as well as the harmful effects of such practices on the domestic industry.

When the Commission has approved such an undertaking, it shall order its publication in the Official Gazette of the Republic of Venezuela.

ARTICLE 24: In cases where an undertaking is accepted, the injury investigation shall, nevertheless be completed if the Commission so decides or receives a request to that effect from exporters representing a significant proportion of the trade involved or from the government of the country of export or of origin, whichever is appropriate. If it is determined that there is no injury, the investigation shall be definitively concluded and the undertaking shall be declared null and void.

ARTICLE 25: The Commission, through the Technical Secretariat, may request parties to an undertaking to furnish the information necessary to verify compliance with it. Failure to furnish this information shall be considered as non-fulfilment of the undertaking.

ARTICLE 26: Where the Commission has grounds for considering that an undertaking has not been fulfilled, it shall give the interested party thirty (30) working days to present his arguments and, at the expiry of this period, it may apply anti-dumping or countervailing duties based on the facts established as at the time when the undertaking was accepted.

CHAPTER VII

COMPETENT AUTHORITIES

ARTICLE 27: The Anti-Dumping and Subsidies Commission is hereby established as a decentralized body under the Ministry of Development with responsibility for considering and deciding upon procedures related to dumping and subsidies that do not come under the Board of the Cartagena Agreement in conformity with the Andean legal system.

The Commission shall have a Technical Secretariat with verificatory and executive functions.

The Commission shall take decisions which exhaust administrative channels and shall be published in the Official Gazette of the Republic of Venezuela. Pursuant to the provisions of the Basic Law on Administrative Procedure, they shall be notified to all interested parties involved in the respective procedure.

SECTION I

THE COMMISSION AND ITS FUNCTIONS

ARTICLE 28: The Commission shall be composed of one (1) Chairman, four (4) members and their respective alternates, who shall be appointed by the President of the Republic in the Council of Ministers. The members of the Commission shall be Venezuelan citizens of known probity and demonstrated expertise in the area of international trade or economics, whether as academics, university lecturers or professionals with five (5) years' experience in the area and subject of the Law's application.

SINGLE PARAGRAPH: The following may not be appointed members of the Commission:

1. Persons convicted of offences or misdemeanours against property or public property or of false swearing; and
2. Persons who are blood relations to the fourth degree of the President of the Republic, the Minister for Development or any member of the Commission or the second degree of relationship by marriage or are the spouses of one of the above.

ARTICLE 29: The Chairman of the Commission shall be appointed for four (4) years and may be re-elected. Members and alternates shall be appointed for two (2) years and may also be re-elected.

In the absence of the Chairman, the member appointed as Vice-Chairman by the Commission shall act as Chairman; if the absence is definitive, the chairman shall be replaced by a person appointed by the President of the Republic in the Council of Ministers for the remainder of his term of office. The respective alternates shall replace members during temporary absences. Members whose absence is definitive shall be replaced by persons appointed by the President of the Republic in the Council of Ministers for the remainder of their terms of office.

ARTICLE 30: Members of the Commission shall be appointed permanently for their respective terms of office and may only be removed by the President of the Republic through a reasoned decision in the following cases:

1. Physical incapacity to carry out their duties for more than six (6) months;
2. Conviction for a criminal offence; and
3. Duly proved inability or failure to discharge their functions, after having heard the opinion of the other members of the Commission.

ARTICLE 31: The Chairman of the Commission may not discharge any other public or private function, except for honorary or academic functions conferred on him because of his office.

ARTICLE 32: The Commission shall meet periodically or when convened by the Chairman. For its deliberations to be valid, at least four (4) of its members shall attend and decisions shall be taken by an absolute majority of votes.

The unjustified absence of any member of the Commission at two (2) consecutive sessions shall lead to the immediate convening of the respective alternate.

ARTICLE 33: The Commission shall have the following duties and responsibilities:

1. To decide on the initiation, suspension or conclusion of investigations on possible cases of dumping or subsidies;

2. To decide on the existence of dumping or subsidies and the injury they cause and, where appropriate, to impose provisional or definitive anti-dumping or countervailing duties;
3. Where appropriate, to accept the undertakings referred to in Chapter VI of this Law;
4. To adopt its own rules of procedure;
5. To publish a biannual bulletin showing the decisions taken during the previous six months, with any annotations necessary for their better understanding; and
6. Any other responsibilities assigned to it.

ARTICLE 34: In discharging the functions mentioned in the previous Article, the Commission and its Technical Secretariat shall receive the cooperation of other public bodies, including:

1. The Ministry of Finance, the Ministry of External Relations and the Foreign Trade Institute, in investigations to determine the existence of dumping or subsidies; and
2. The Ministries of Agriculture and Livestock, and of Energy and Mines in determining the aspects mentioned in Chapter IV, according to the type of goods investigated.

SECTION II

THE TECHNICAL SECRETARIAT AND ITS FUNCTIONS

ARTICLE 35: The Technical Secretariat shall be the Commission's verificatory and executive body and shall be directly subordinate to it. It shall be administered by the Chairman of the Commission and be given the staff necessary to discharge its responsibilities efficiently.

FIRST PARAGRAPH: The officials of the Technical Secretariat shall be Venezuelan citizens of known probity and experience in the matters dealt with in this Law and shall be subject to the ineligibility criteria specified in Article 28 of this Law.

SECOND PARAGRAPH: The officials and staff of the Technical Secretariat shall be governed by staff rules issued by the President of the Republic in the Council of Ministers. These rules shall specify:

1. The personnel administration system, including the procedure and conditions of recruitment, selection and employment; classification of posts, remuneration, permanency, promotion, disciplinary measures, responsibility and resignation, as well as other aspects related to the system. The Chairman of the Commission shall be responsible for personnel administration and, in this connection, shall ensure that the creation and filling of posts responds to the real operational requirements of the Technical Secretariat; and
2. Rights concerning dismissal, seniority, holidays, special end-of-year bonuses and social security shall only be granted to officials and staff of the Technical Secretariat individually.

ARTICLE 36: Responsibilities of the Technical Secretariat:

1. To receive of applications for investigation;
2. To carry out for the procedure to determine the existence of dumping or subsidies and the consequential injury, in conformity with this Law;
3. To coordinate of the related investigations;
4. To apply measures necessary to give effect to the Commission's decisions;

5. To maintain communication with interested parties;
6. To submit the relevant technical studies to the aforementioned Commission; and
7. Any other responsibilities assigned to it.

CHAPTER VIII
PROCEDURES

SECTION I

GENERAL PROVISIONS

ARTICLE 37: Any natural or legal person who produces in Venezuela goods identical or similar to those allegedly dumped or subsidized may submit to the Technical Secretariat of the Commission an application for the initiation of the corresponding investigation.

ARTICLE 38: The Commission may also initiate an investigation of dumping or subsidies *ex officio* when it considers that there are signs of such practices.

ARTICLE 39: An application to initiate an investigation into unfair foreign trade practices shall contain the following requisites:

1. The elements laid down in Article 49 of the Basic Law on Administrative Procedure;
2. The name, specifications, characteristics, use or end-use of the foreign good concerned;
3. The name, specifications, characteristics, use or end-use of the like good produced in Venezuela, together with its manufacturing cost, market price and production cost; and
4. Any other facts or evidence proving the alleged dumping or subsidies, the injury and the causal relationship between them.

SINGLE PARAGRAPH: To the extent possible for the applicant, the application shall also give the name and other information identifying the producer or producers of the allegedly dumped or subsidized good; information identifying the exporter or exporters of the said good to Venezuela, statistical data on such exports and their growth potential; the manufacturing cost and market price of the good concerned in the country of export to Venezuela and to third countries; information identifying the domestic producer or producers of the like good, as well as any other information considered useful in support of the application.

ARTICLE 40: Within five (5) working days following the receipt of an application for an investigation into unfair foreign trade practices, the Technical Secretariat of the Commission shall consider the documentation submitted in order to determine whether the application meets the requirements set out in the previous Article. If this is the case, it shall transmit the file to the Commission immediately. If the application does not meet the requirements, within the following three (3) working days it shall inform the applicant in writing of any omissions or shortcomings in the application in respect of the elements indicated in Article 39 of this Law.

SINGLE PARAGRAPH: If there are omissions or shortcomings in the application, the Technical Secretariat shall give the applicant a period of fifteen (15) working days to make good the omissions or shortcomings noted. If the applicant does not provide the supporting documentation required by the Technical Secretariat or if it is insufficient, the application shall not proceed. The Technical Secretariat shall take a decision within three (3) working days following the submission of the new information and shall notify its decision to the applicant immediately.

ARTICLE 41: When the Technical Secretariat considers that the application meets the requirements laid down in Article 39 of this Law, it shall transmit the file to the Commission immediately, together with the supporting documents and additional information it deems relevant.

Within ten (10) working days following the receipt of the file, the Commission shall decide whether to initiate an investigation. If it decides not to initiate an investigation, it shall give sufficient grounds for its decision and shall communicate it to the applicant immediately.

ARTICLE 42: The Commission shall order the initiation of an investigation through a decision which specifies the good, and the importers and exporters concerned, and the country of origin or of export. It shall also contain a summary of the other data referred to in Article 39 of this Law and shall state that any other information relevant to the investigation shall be communicated to the Technical Secretariat.

SINGLE PARAGRAPH: The decision to initiate an investigation shall be notified to the applicant, and to the importers of the allegedly dumped or subsidized goods. In addition, an announcement containing an extract from the said decision shall be published in two (2) newspapers with broad national circulation to be indicated by the Technical Secretariat for this purpose. The announcement shall state the time-limit for the presentation of arguments and evidence laid down in Article 45 of this Law.

ARTICLE 43: The duration of an investigation into dumping or subsidies shall not usually be less than six (6) months. Immediately prior to the date of initiating the investigation and during it, the Technical Secretariat shall collect all the information it deems necessary on the dumping or the subsidies and on the injury which they cause or might cause. For this purpose, the Technical Secretariat may, when it deems appropriate, examine the books of the importers, exporters or other traders involved in the transactions concerned.

The Technical Secretariat may also carry out investigations in third countries subject to the agreement of the enterprises concerned and provided that there is no opposition from the government of the country in question, which shall be officially informed of the intention to carry out such an investigation.

ARTICLE 44: The applicant, importers and exporters involved in an investigation and other interested parties shall have access to all the information provided to the Commission or the Technical Secretariat by any of the parties concerned, with the exception of the information declared confidential in accordance with this Law.

ARTICLE 45: The persons mentioned in the previous Article may present their arguments in writing to the Technical Secretariat within sixty (60) working days from the date of initiation of the investigation.

Within the same period, the Technical Secretariat shall give the said persons, if they so desire, the opportunity to meet in order to exchange views and make any replies. For this purpose, the Technical Secretariat shall take into account the need to preserve the confidential nature of the information and the interests of the parties. No person shall be obliged to attend such a meeting and their absence shall not be detrimental to their case.

SINGLE PARAGRAPH: For the purposes of this Law, the nature and evaluation of the evidence shall be governed by the provisions of the Code of Civil Procedure.

ARTICLE 46: If a party or a third country refuses to provide the necessary information or does not do so within the time-limit fixed by the Technical Secretariat or in any other way hinders the investigation, preliminary or definitive decisions may be adopted on the basis of the information available. If the Commission finds that the information submitted is false or misleading, it shall disregard the information and reject the applications by the person who submitted it.

ARTICLE 47: The existence of an anti-dumping or subsidy investigation shall not hinder the procedures of customs clearance of the goods investigated.

ARTICLE 48: The Commission and the Technical Secretariat shall not disclose any information received during the course of an anti-dumping or subsidy investigation when the party providing such information requests that it should be treated as confidential. For this purpose, the party concerned shall indicate the grounds for treating the information as confidential and shall attach a non-confidential summary or an explanation of the reasons why such a summary cannot be made.

SINGLE PARAGRAPH: A request for confidential treatment shall be dealt with according to whether disclosure of the information would be of significant advantage to a competitor or would have any other adverse effect upon the person providing the information or upon a third party.

ARTICLE 49: Where the Technical Secretariat considers that the request to treat information provided as confidential is not warranted, the information shall be attached to the file without prejudice to the informant's right to withdraw it if he so wishes.

ARTICLE 50: In the case of legal proceedings of whatever nature related to anti-dumping or subsidy investigations or its decisions, the Commission shall, upon request, transmit the confidential information available to it to the judges concerned; in such cases and in order to protect as far as possible the legitimate interest of the parties in non-disclosure of their trade secrets, the Commission shall inform the judge seeking such information of its confidential nature so that he may take the necessary measures.

ARTICLE 51: Within thirty (30) working days of the date of conclusion of the investigation, which must take place within one (1) year from the date of its initiation, the Commission shall adopt one of the following decisions:

1. Termination of the anti-dumping or subsidy investigation without the imposition of any duties and refund of any provisional duties paid or return of any security deposited; or
2. Imposition of definitive duties and the definitive levying of the provisional duties imposed. In this case, the type and amount of duties to be imposed shall be established.

ARTICLE 52: When the Commission has terminated an anti-dumping or subsidy investigation, it shall publish the corresponding reasoned decision ordering the refund of any provisional duties paid or the return of any security deposited.

ARTICLE 53: When the Commission decides to impose definitive anti-dumping or countervailing duties, it shall publish the corresponding reasoned decision containing the following elements:

1. Name, specifications, characteristics, tariff classification, use or end-use of the foreign good concerned;
2. Name and other information identifying the producer or producers of the said good, as well as the exporter or exporters to Venezuela;
3. Name and other information identifying the importer or importers of the said good into Venezuela;
4. Country of origin or of export of the said good;
5. Name, specifications, characteristics, tariff classification, use or end-use of the like good in Venezuela;
6. Name and other information identifying the producer in Venezuela of the said like good, where appropriate;
7. Margin of dumping, where appropriate, including a description of the method used to calculate it;
8. Description of the subsidies granted, where appropriate;
9. Description of the injury caused or likely to be caused to the domestic industry or an estimation of the material retardation of the establishment of the said industry;
10. Amount of the definitive anti-dumping or countervailing duties; and
11. Method by which the provisional duties imposed are to be collected, where appropriate.

SINGLE PARAGRAPH: Without prejudice to the single paragraph of Article 4, the decision may impose countervailing duties if both dumping and subsidization as well as the corresponding injury are alleged and proved. In such cases, only the higher duty shall be paid.

ARTICLE 54: The Customs Service shall be responsible for collecting provisional and definitive anti-dumping or countervailing duties and for the definitive collection of provisional duties. Provisional duties may be paid in cash or guaranteed by a security from a bank or insurance company, to the satisfaction of the customs authorities. If they are paid in cash, the amount in question shall be kept in a special account until the Commission decides on its definitive collection or its refund.

ARTICLE 55: Any interested party who submits evidence of a change in circumstances, sufficient to justify re-opening the proceeding under which definitive anti-dumping or countervailing duties were established, may request the Commission to re-open the investigation provided that at least one (1) year has elapsed since the conclusion of the investigation.

The Commission shall decide on the application to re-open the proceeding within thirty (30) working days following its receipt, by means of a reasoned decision.

If the Commission considers that the proceeding should be re-opened, it shall open an investigation in conformity with this Chapter. The re-opening of the investigation shall not affect the measures in force.

ARTICLE 56: If the importer shows to the satisfaction of the Commission that the anti-dumping or countervailing duties imposed exceed the actual margin of dumping or amount of the subsidies, the Commission shall order the refund of the excess amounts paid to the importer. For this purpose, the importer shall submit the relevant application to the Technical Secretariat, attaching the documentation he deems relevant.

The Commission, through its Technical Secretariat, shall carry out the relevant investigation and verification and shall take a decision within a period not exceeding four (4) months from the date of the application.

ARTICLE 57: Anti-dumping or countervailing duties shall remain in force only as long as necessary to counteract the injury caused by dumping or subsidies, unless on this basis the Commission decides to eliminate them, by means of a reasoned decision. Anti-dumping or countervailing duties and undertakings shall expire five (5) years after the date on which they entered into force or were last modified. Nevertheless, if any interested party considers that the expiry of the anti-dumping or countervailing duties or undertakings would result in renewed injury or threat of injury, it may submit its arguments to this effect to the Commission in writing within thirty (30) working days immediately prior to the period of thirty (30) working days before the expiry of the measures. The Commission may extend anti-dumping or countervailing duties or undertakings before their expiry for a single period not exceeding five (5) years from the date on which they should originally have expired.

ARTICLE 58: When anti-dumping or countervailing duties or undertakings expire, an announcement to that effect shall be published in the Official Gazette of the Republic of Venezuela, indicating the corresponding date of expiry.

ARTICLE 59: Where, after having carried out the procedure and declared unfounded an application for an investigation into unfair foreign trade practices, the Commission considers that the application was frivolous or malicious, it may impose a fine of up to 1 million Bolivars (Bs.1,000,000) on the applicant without prejudice to any civil action by the accused party.

SECTION II

PROVISIONAL DUTIES

ARTICLE 60: After the initiation of an investigation has been announced, provided there is evidence leading to a serious presumption of the existence of an unfair foreign trade practice causing injury to the domestic industry, the Commission may agree to impose provisional anti-dumping or countervailing duties on the allegedly dumped or subsidized goods, in conformity with Chapter V.

The imposition of provisional duties shall be notified immediately to the importer of the goods subject to the measure and to the customs authorities.

SINGLE PARAGRAPH: In the case of agricultural products for which the country of origin has granted subsidies whose nature, amount and effects can be determined on the basis of official publications and budgets of the country concerned, the Commission shall impose provisional countervailing duties to offset the margin of the subsidy fixed, as soon as it receives the relevant information.

ARTICLE 61: Provisional anti-dumping or countervailing duties may be paid in cash or guaranteed by a security issued by a bank or insurance company domiciled in the country, to the satisfaction of the Commission.

SINGLE PARAGRAPH: The imposition of provisional duties paid or guaranteed by a security shall not hinder the customs clearance of the allegedly dumped or subsidized goods.

CHAPTER IX

TRANSITIONAL PROVISION

ARTICLE 62: This Law shall enter into force sixty (60) successive days from its publication in the Official Gazette of the Republic of Venezuela.

Done, signed and sealed in the Palacio Federal Legislativo at Caracas on the twenty-sixth day of the month of May, one thousand nine hundred and ninety-two, the 182nd year of independence and the 133rd year of the Federation.

| | |
|--------------------|---|
| The President | Pedro Paris Montesinos |
| The Vice-President | Luis Enrique Oberto G. |
| Secretaries | Luis Aquiles Moreno Cirimele Douglas Estanga Fajardo |

Palacio de Miraflores, at Caracas, on the eighteenth day of June, one thousand nine hundred and ninety-two, the 182nd year of independence and the 133rd year of the Federation.

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|---|-----------------------|
| For implementation (L.S.) | Carlos Andres Perez |
| Countersigned: The Minister for Foreign Relations (L.S.) | Fernando Ochoa Antich |
| Countersigned: The Minister for Development (L.S.) | Frank de Armas Moreno |

Fifty-fifth Regular Session of the Commission
21-22 March 1991
Lima, Peru

DECISION 283

Rules to prevent or redress
distortions in competition
arising out of dumping or
subsidy practices

THE COMMISSION OF THE CARTAGENA AGREEMENT,

HAVING REGARD: To Chapter VIII of the Cartagena Agreement, Decisions 230, 258, 281 and Proposal 223/Rev.3 of the Board;

CONSIDERING:

That the Commission adopted Decision 230 establishing rules for preventing or remedying practices that may distort competition;

That Decision 258 establishes that the Commission, upon a proposal by the Board, shall revise the rules on trade competition;

That Decision 281 establishes that, at the latest on 31 March 1991, the Commission, upon a proposal by the Board, shall revise the rules on trade competition laid down in Decision 230;

That in order to achieve the objectives of the integration process within a framework characterized by openness, it is necessary to enhance subregional rules on competition, taking advantage of international experience, so that they constitute effective mechanisms to prevent or redress distortions caused by dumping or subsidies;

That because of their origin and scope, it is necessary to distinguish between dumping and subsidies, which are the subject of this Decision, and practices which restrict free trade, as well as export restrictions;

That the regulations on subsidies in this Decision shall be applicable while commitments on the harmonization of foreign trade promotion instruments are undertaken or if the incentives framework of such harmonization cause distortions in competition in certain special cases.

DECIDES:

I. SCOPE OF APPLICATION

ARTICLE 1: The objective of the rules in this Decision is to prevent or redress distortions in competition caused by dumping or subsidies.

ARTICLE 2: Member States or enterprises which have a legitimate interest may request the Board to authorize the application of measures to prevent or redress distortions in competition in the subregional market caused by dumping or subsidies in the following cases:

- (a) Where practices originating in the territory of another Member State threaten to cause or cause material injury to domestic production for the domestic market of the country concerned;
- (b) Where practices originating in a Member State threaten to cause or cause material injury to domestic production for export to another Member State;
- (c) Where practices originating in a country outside the subregion threaten to cause or cause material injury to domestic production for export to another Member State; and
- (d) Where practices originating in a country outside the subregion threaten to cause or cause material injury to its domestic industry; this applies to products subject to the Common External Tariff; and the corrective measures must be applied in more than one Member State. In other cases, the domestic regulations of each Member State may apply.

For the purposes of this Decision, threat of injury shall include material retardation in the establishment of a domestic industry.

II. DUMPING

ARTICLE 3: An import is dumped when the export price is less than the normal value for the like product when destined for consumption or use in the country of origin or of export in the ordinary course of trade.

ARTICLE 4: A like product is a product which is alike in all respects to the product subject to the practice or in the absence of such a product another product which has very similar characteristics, taking into consideration elements such as its nature, quality, use and function.

ARTICLE 5: The export price is the price actually paid or payable for the product sold for export to a Member State.

In cases where there is no export price or where it appears to the Board that the 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. If the products are not resold to an independent buyer, or not resold in the condition as imported, the price may be constructed on such reasonable basis as the Board may determine.

In calculating the export price, the necessary adjustment shall be made to allow for all costs incurred prior to resale, including all duties and taxes and a reasonable margin of profit. The adjustments shall also take into account *inter alia* the costs of transport, insurance, maintenance and unloading; import duties and other taxes payable after export from the country of origin; a reasonable margin of general, administrative and selling costs; a reasonable margin of profit and any commission usually paid.

ARTICLE 6: For the purposes of this Decision, normal value means the amount actually paid or payable for a like product by comparison with the product imported into the Member State, when sold for consumption or use in the domestic market of the country of origin or of export, in the ordinary course of trade.

The ordinary course of trade shall mean transactions between associated parties or parties who are bound by a compensatory arrangement, provided that the prices and costs are comparable to those in trade between independent parties.

Where there are no sales of the like product in the ordinary course of trade in the domestic market of the country of origin or of export or where such sales do not permit a reliable determination of the normal value, it shall be determined:

- (a) By considering the highest export price for the like product exported to a third country, provided it is representative;
- (b) In the absence of such a price, by considering the constructed price of the like product. This shall be based on the cost of production in the ordinary course of trade in the country of origin, plus a reasonable amount for administrative and selling costs and profit. As a general rule, the addition for profit shall not exceed the profit normally realized on sales of products of the same category in the domestic market of the country of origin;
- (c) Where there is no export price to a third country that is representative or the price of a like product cannot be constructed, the normal value may be calculated on a reasonable basis to be determined by the Board;
- (d) In the case of imports coming from and originating in countries with centrally planned economies, 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 sold in a third country with a market economy and a similar level of development for domestic use or consumption. Where there is no comparable price, the normal value may be constructed on a reasonable basis to be determined by the Board.

In cases where products are not imported directly from the country of origin but from a third country, the price at which the products are sold from the country of export to a Member State 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 7: The margin of dumping is the amount by which the export price is less than the normal price. This margin shall be calculated per unit of product imported at the dumping price.

The export price and the normal value shall be examined on a comparable basis in respect of the physical characteristics of the product, the quantities and conditions of sale, taking into account differences in taxes and other criteria that might affect price comparison. The comparison shall be made at the same stage of the transaction, usually at the ex-factory level, and in respect of sales made at as nearly as possible the same time.

III. SUBSIDIES

ARTICLE 8: An import has been subsidized when the production, manufacture, transport or export of the imported good or of its raw materials or inputs has received directly or indirectly any bounty, aid, premium or subsidy in the country of origin or of export. In the case of transport, the geographic situation of Bolivia as a land-locked country shall be taken into account.

The existence of multiple currency practices relating to trade and financial transactions in the country of origin or of export may give rise to a subsidy and therefore be considered as such for the purposes of this Decision.

ARTICLE 9: The amount of the subsidy shall be calculated in monetary units or ad valorem per unit of the subsidized product imported.

The amount shall be established by deducting, *inter alia*, any expenditure that has had to be incurred in order to benefit from the subsidy and any taxes or other levies to which the export has been subjected.

In the case of multiple currency practices, the amount of the subsidy shall be determined on the basis of the rules established within the framework of harmonization of exchange policies. In the absence of such harmonization, the Board shall provide a technical estimation of the amount of the subsidy.

In determining the subsidy, like product shall mean a product which is alike in all respects to the product subject to the practice or in the absence of such a product, another product which has very similar characteristics, taking into consideration elements such as its nature, quality, use and function.

IV. PROCEDURE

ARTICLE 10: The following shall be entitled to submit an application:

- (a) Member States through their respective liaison bodies; and
- (b) The enterprise or enterprises which have a legitimate interest to the extent allowed by national legislation.

The application shall contain the following information:

- The nature of the practice and its duration;
- the characteristics of the products subject to the practice;
- the enterprises involved;
- the evidence giving rise to the presumption of the existence of a threat of injury or injury to domestic industry or exports, caused by imports of products subject to the

practice which are alike to those produced or exported and have been imported within the previous 12 months or are in the process of being imported;

- the levels of the duties requested.

When the Board has received the application, it shall transmit it to the liaison bodies where the enterprises involved in the investigation carry out their economic activity.

ARTICLE 11: The Board shall not initiate an investigation if the application is incomplete. In such cases, it shall notify the applicant, specifying the information that is lacking, within 20 working days following the submission of the application.

If the Board considers that the application is complete, within 20 working days from the date of its submission, it shall decide on the case in a reasoned resolution. The resolution shall also be communicated to the complainant enterprise or enterprises.

ARTICLE 12: During the investigation, the Board may request and collect evidence and information from the liaison bodies and, either through them or directly, from producers, exporters, importer or consumers with a legitimate interest in the investigation. The latter may also provide information or, as appropriate, present their arguments to the Board.

Where the Board requests, collects or receives evidence and information directly, it shall communicate it to the respective liaison bodies.

The Board may also request and collect evidence and information from exporters and authorities of countries outside the subregion whose products are being investigated. Such exporters or authorities may provide information or, where appropriate, present their arguments to the Board.

Investigations carried out in application of this Decision shall under no circumstances hinder the customs clearance of the respective products.

ARTICLE 13: The Board may, pursuant to its authority to request and collect evidence, treat the information received as confidential if the applicant requests and justifies such treatment, because the applicant is the source of the information and the disclosure of that information may have adverse effects for him.

Sections of internal documents prepared by the Board or Member States which contain confidential information may also be treated as confidential.

Where an applicant wishes evidence to be treated as confidential, he shall provide a summary of the information likely to be disclosed or an explanation giving the reasons why it is not susceptible of summary. In the latter case, the Board may reject the explanation and disregard the evidence.

Likewise, even if there are grounds for the request, the information may not be disregarded if the person submitting it does not provide a non-confidential summary thereof, provided that it is susceptible of summary.

The parties interested in the investigation may request in writing the information provided or prepared in application of this Decision, and it may be communicated provided it is not of a confidential nature.

This Article shall not prevent the disclosure of general information and, in particular, the grounds on which the resolutions referred to in this Decision are based if they are required for the purposes of legal proceedings. Such disclosure shall ensure that trade secrets of persons with a legitimate interest in the investigation are not revealed.

ARTICLE 14: During the investigation, the Board may convene meetings *ex officio* or at the request of one of the interested parties with a view to reaching a direct solution, the undertakings and outcome of which shall be contained in an Act.

No interested party shall be obliged to attend such a meeting and their absence shall not be detrimental to their case.

The Board shall decide on the case in a reasoned resolution indicating the undertakings entered into and whether it is decided to suspend the investigation or to continue it at the request of the person that is the subject of the complaint.

The exporters or the authorities in the country of origin of the practice shall provide the information required to verify compliance with the undertakings entered into. If these undertakings are not fulfilled or the relevant information is not provided, the Board shall resume the investigation and immediately establish anti-dumping or countervailing duties at the levels determined on the basis of the information available, or in its absence, at the levels requested by the enterprises concerned. In its definitive decision, the Board shall determine the continuation, modification or elimination of the duties concerned.

ARTICLE 15: The Board shall have a period of four months, from the date of publication of the Resolution referred to in Article 11 of this Decision, to carry out the investigation.

In special cases, this period may be extended by up to two months, and the Board shall so notify the applicant.

ARTICLE 16: In taking its decision, the Board shall take into account the existence of positive evidence regarding:

- (a) The dumping or subsidization practices which distort competition;
- (b) The threat of injury or the injury caused by such practices in accordance with Article 2 of this Decision; and
- (c) The causal relationship between the practices and the threat of injury or the injury.

ARTICLE 17: A determination of the threat of injury or injury and the causal relationship with the practices may be based, *inter alia*, on examination of the following:

- (a) The volume of imports subject to such practices, in particular to determine whether there has been a significant increase in absolute terms or relative to production and consumption in the Member State concerned or relative to imports from the complainant Member State;
- (b) Prices of imports subject to such practices, in particular to determine whether they are significantly lower than prices for like products in the absence of such practices. It shall also be determined whether the effect of such imports is to depress prices to a significant degree or likewise prevent price increases which otherwise would have occurred; and
- (c) The effects on the industry or exports of the Member State estimated on the basis of actual or potential trends in the relevant economic factors, for example, production, domestic sales, exports, market share, utilization of installed capacity, employment, inventories and profits.

ARTICLE 18: At the conclusion of the investigation the Board shall issue, within a period of 20 working days from the date provided in Article 15, a reasoned Resolution regarding its findings on the basis of the information available.

The Resolution shall indicate the levels of the duties established, the imports subject to the practices for which such duties shall be applied, the period for their adoption and their duration. Where appropriate, it shall also indicate the criteria used to determine the duration.

ARTICLE 19: When the Board, at the request of the liaison bodies or interested parties, has verified that the grounds for the Resolution referred to in the previous paragraph have changed or ceased

to exist, it shall declare the Resolution partially or totally without effect, amending or cancelling it. The Board shall have a period of three months in which to take its decision.

The Board may also verify *ex officio* that the grounds for the Resolution have changed or ceased to exist and amend or cancel it.

V. MEASURES

ARTICLE 20: In cases of dumping, anti-dumping duties shall be imposed on the dumped imports in an amount equal to the margin of dumping determined or less if the amount is adequate to remove the threat of injury or the injury that has been confirmed.

ARTICLE 21: In cases of subsidies, countervailing duties shall be imposed on subsidized imports in an amount equal to the amount of the subsidy or lower if the amount is sufficient to remove the threat of injury or the injury that has been confirmed.

ARTICLE 22: Corrective measures to prevent or redress distortions caused by both dumping and subsidies may not be applied simultaneously to the same imported product.

ARTICLE 23: Where the threat of injury or the injury is evident, the Member State or the enterprises which have a legitimate interest may request the Board to authorize the application of immediate corrective measures.

Where the Board considers that the request is admissible, it may authorize or determine the establishment of provisional measures, which may be in the form of anti-dumping or countervailing duties, or the deposit of security - either in cash or bonds - equal to the amount of the duty, within a period of 20 working days from the date of the request mentioned in the previous paragraph. Suspension of customs valuation shall be an adequate provisional measure provided that the normal duty and the estimated amount of the anti-dumping duty are indicated.

During the investigation, the Board may suspend the application of provisional measures and in its definitive decision shall determine the continuation, modification or elimination of the measures established.

Where the definitive duties are higher than the provisional duties paid or guaranteed, the amount in excess shall not be payable. In the contrary case, the difference shall be refunded or the reduced amount of the security shall be collected.

Where definitive duties are not established, the entire amount paid by way of provisional duty shall be refunded or the security shall be released.

ARTICLE 24: The Board may also apply definitive anti-dumping or countervailing duties on products marketed for consumption within 90 days prior to the date of the establishment of the provisional duties.

The aforementioned definitive duties may be applied in order to prevent renewed occurrence of the injury in cases where the Board determines the existence of an injury which is difficult to repair caused by massive dumped or subsidized imports in a short period of time. In the case of dumping, it must also be determined that there is a history of dumping which caused injury, or that the importer was, or should have been, aware that the exporter practised dumping.

VI. FINAL PROVISION

ARTICLE 25: This Decision replaces Decision 230 in respect of the rules to prevent or redress distortions in competition arising out of dumping or subsidy practices.

Done in the city of Lima on the twenty-first day of the month of March of one thousand nine hundred and ninety-one.