

WORLD TRADE G/ADP/N/1/ARG/1
G/SCM/N/1/ARG/1
ORGANIZATION 12 June 1995

(95-1540)

Original: Spanish
Committee on Anti-Dumping Practices

Committee on Subsidies and Countervailing Measures

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

ARGENTINA

The following communication, dated 30 March 1995, has been received from the Permanent Mission of Argentina.

LAW No. 19,549

Buenos Aires, 3.4.72

Under the powers conferred by Article 5 of the Constitution of the Argentine Revolution,

THE PRESIDENT OF THE ARGENTINE NATION APPROVES AND
PROMULGATES WITH THE FORCE OF LAW:

ADMINISTRATIVE PROCEDURES

TITLE I

Administrative Procedures: Scope of Application

Article 1: Rules of procedure to be used in relation with the National Public Administration, both central and local, including autonomous bodies, except for military, defence and security agencies, shall comply with the provisions of the present law and the following requirements:

General Requirements: Ex Officio Instigation and Conduct of Proceedings

(a) Proceedings shall be instigated and conducted ex officio without prejudice to the participation of interested parties therein:

Speed, Economy, Simplicity and Efficiency of Proceedings

(b) Speed, economy, simplicity and efficiency shall govern the proceedings, and the Executive shall be empowered to regulate the disciplinary regime to ensure decorum and good order in the proceedings. The regime includes the power to apply fines of up to 100 pesos - unless otherwise provided in the specific law - by decisions which, when confirmed, shall be enforceable;

Informality

(c) Failure by interested parties to comply with non-essential formal requirements which can be fulfilled subsequently shall be excused;

Working Days and Hours

(d) Actions and proceedings shall take place during official working days and hours, but other days and times may be permitted ex officio or at the request of a party;

Time-Limits

(e) Time-limits:

1. Shall be binding on interested parties and the Administration;
2. Shall be counted in official working days subject to contrary legislation or authorization ex officio or at the request of a party;
3. Shall be counted from the day following notification. In the case of time-limits concerning acts subject to the requirement to publish, the provisions of Article 2 of the Civil Code shall apply;
4. In cases where no specific time-limit has been set for proceedings, notifications and summons, compliance with notifications and summons and replies to notifications, hearings and reports, the time-limit shall be 10 days;
5. Prior to the expiry of a time-limit the administration, ex officio or at the request of the interested party, may extend the time-limit for such time as it deems reasonable, giving grounds for its decision and provided that it is not prejudicial to the rights of third parties. A refusal shall be notified at least two days prior to the expiry of the time-limit for which an extension was requested;

Lodging of Appeals Out of Time

6. Once the time-limits established for lodging administrative appeals have expired, the right to submit them shall be lost. This shall not prevent the appeal being considered by a higher authority as a complaint of illegality, unless the higher authority shall resolve otherwise for reasons of legal safety or, having exceeded reasonable time-limits, it is deemed to constitute a voluntary waiver of that right;

Interruption of Time-Limits for Lodging of Appeals

7. Without prejudice to the provisions of Article 12, the lodging of administrative appeals shall interrupt the running of time-limits, even where such appeals have been improperly defined, contain insignificant formal flaws or were made through an excusable error to a body that was not competent;

Loss of Right Due to Failure to Exercise it Within the Time-Limit

8. The administration may deem a right which has not been exercised within the corresponding time-limit to have lapsed, without prejudice to the prosecution of the appropriate proceedings at its own instance and without repeating any stage in the proceedings provided that the matter does not fall within the provisions of the following paragraph;

Lapse of Proceedings

9. After 60 days from the time when proceedings have stopped for reasons attributable to the party concerned, the competent body shall notify that party that if a further 30 days elapse without any action being taken, the authorities shall declare the proceedings lapsed, and file the case. Exceptions are proceedings concerning social security and those that the Administration considers should continue due to the particular circumstances or because they are of public interest. Once the proceedings have lapsed, the interested party may, however, exercise his claims in new proceedings, in which he may rely on the evidence already produced. Actions involving the competent body shall result in the suspension of legal and regulatory time-limits, including those concerning prescription, which shall recommence from the date when the order declaring the proceedings lapsed is confirmed;

Due Process

(f) Right of the parties to due process, including the opportunity:

Right to be Heard

1. To set out the grounds for their claims and defences before acts relating to their civil rights or legitimate interests are issued, to lodge appeals and to be professionally assisted or represented. When an express rule allows representation in the administrative headquarters to be exercised by persons who are not professional lawyers, qualified legal assistance shall be mandatory in cases where legal questions are raised or debated;

Right to Offer and Produce Evidence

2. To offer evidence and to have it produced if pertinent, whereupon the administration shall request and produce reports and opinions necessary to clarify the facts, taking into account the interested parties and their representatives, who may submit pleas and rebuttals once the period for the presentation of evidence has been concluded;

Right to a Reasoned Decision

3. That decision itself shall expressly set out the principal arguments and issues put forward, in so far as they led to a decision of the matter.

Special Procedures Excluded

Article 2: Within a time-limit of 120 days counted from the entry into force of the procedural rules to which Article 1 refers, the Executive Power shall determine which special procedures currently applicable shall continue in force. It is also empowered to:

Progressive Adaptation of Special Regimes to the New Procedure

(a) Substitute legal rules and regulations of a strictly procedural nature under any remaining special regimes, with a view to adapting them progressively to the new system of procedures and administrative remedies introduced therein, to the extent that this does not affect the

substantive law to which the aforementioned special regimes refer or apply;

The present law shall be of suppletory application in the administrative proceedings for which there remain special regimes;

(b) to decide the administrative procedure to govern military bodies and, defence and security agencies, as proposed by them, adopting the basic principles of the present law and its corresponding regulations;

Reserved or Secret Proceedings

(c) to determine the circumstances and competent authorities to qualify as reserved or secret such actions, measures, reports or opinions which should have such a character, even though included in public proceedings.

TITLE II

Competence of the Organ

Article 3: The competence of administrative organs shall be that drawn, as applicable, from the National Constitution, laws and regulations issued thereunder. Exercise of such competence constitutes an obligation on the part of the corresponding authority or organ and cannot be delegated or substituted except where expressly authorized; removal to a higher authority shall apply unless expressly otherwise provided by law.

Questions of Competence

Article 4: The Executive Power shall resolve issues of competence arising between Ministers and those arising between authorities, agencies or other autonomous bodies exercising their activity within different Ministries. Heads of such Ministries shall resolve issues of competence arising between authorities, bodies or autonomous agencies acting within their respective Departments of State.

Negative and Positive Contentions

Article 5: When an organ, ex officio or at the request of a party, declares itself incompetent, it shall refer the proceedings to the body it considers competent. If the latter, in turn, refuses to take proceedings, it shall submit them to the authority competent to resolve the conflict. If two bodies consider themselves competent, the latest to have the case referred to it shall submit the matter, ex officio or at the request of a party, to the authority who is responsible for deciding it.

The final decision on issues of competence shall be taken, in both cases, without any substantiation other than the opinion of the corresponding judicial service and, if absolutely necessary, the technical opinion required by the case. The time-limits envisaged in this Article for the submission of proceedings shall be two days, and for production of opinions and decisions, five days.

Challenging and Excusal of Officials and Employees

Article 6: Officials and employees may be challenged for the reasons and on the occasions laid down in Article 17 and 18 of the National Civil and Commercial Procedures Code, and their immediate superior must intervene within two days. The prior involvement of the official or employee in the matter shall not be considered a cause for challenge. If the challenged official admits the grounds, his immediate superior shall designate a replacement, if appropriate. In the contrary case, his superior shall decide the matter within five days. If it is considered necessary to produce evidence, the time-limit may be extended for a further five days. The excusal of officials and employees shall be governed by Article 30 of the above-mentioned code and shall be immediately referred to the official's direct superior, who shall decide the matter within five days without substantiation. If he accepts the excusal, a replacement shall be appointed. If he does not accept it, he shall return the proceedings to the inferior official to continue dealing with the matter.

Decisions given in relation to cases of challenge or excusal and those resolving them shall be without appeal.

TITLE III

Essential Requirements of Administrative Acts

Article 7: The following are essential requirements of an administrative act:

Competence

(a) it must be issued by a competent authority;

Grounds

(b) it must be supported by facts and precedence serving as grounds and by the applicable law;

Subject

(c) the subject must be certain, and physically and legally possible; it must decide all the applications formulated, but may involve others which were not proposed, following a hearing of the interested party and provided that it does not affect acquired rights;

Proceedings

(d) prior to issue of the act, the essential and substantial procedures provided for or implicit in the judicial order must be fulfilled. Without prejudice to the provisions of any other special provisions that may be established, the opinion of the permanent legal advisory services must be considered essential when the act might affect civil rights or legitimate interests;

Justification

(e) the act must set out the grounds on which it is based, specifically expressing the reasons for issuing the act, including, in addition, the safeguards set out in subparagraph (b) of the present Article;

Purpose

(f) the purpose ensuing from the legislation granting the relevant powers to the issuing entity must be fulfilled, and other ends, public or private, distinct from those which justify the act, its grounds and subject must not be covertly pursued. Measures invoked by the act shall be correspondingly appropriate to that purpose.

Contracts concluded by the State, licences and administrative concessions shall be governed by their respective special laws, without prejudice to the analogous application of the rules under this Title, if applicable.

Form

Article 8: Administrative acts shall be published expressly and in writing; they shall state the place and date of issue and shall contain the form of authority issuing them; only exceptionally and if circumstances so permit may an alternative form be used.

Flagrant Irregularity

Article 9: The Administration shall refrain from:

(a) behaviour involving flagrant administrative irregularity injurious to a constitutional right or guarantee;

(b) implementing an act while there remains pending any of the administrative remedies which by law expressly involve suspension of the execution of the act, or which has not been notified following the decision.

Silence or Ambiguity of the Administration

Article 10: Silence or ambiguity of the administration in relation to claims which require a specific decision on its part shall be interpreted as negative.

Only by express provision may silence be deemed consent.

If the special rules do not provide for a specific time-limit for a decision, this shall not exceed 60 days. On the expiry of the appropriate time-limit, the interested party shall require immediate action and if a further 30 days elapse without any decision being taken, the administration shall be deemed to be silent.

Effectiveness of the Act: Notification and Publication

Article 11: In order for any particular administrative act to become effective it must be notified to the interested party and be the subject of general publication. Those subject to the decision may, however, prior thereto, seek execution of those acts if such acts do not injure the rights of third parties.

Presumption of Legitimacy and Executive Force

Article 12: An administrative act enjoys a presumption of legitimacy. Being enforceable, the administration is empowered to execute it by its own means - unless the law or the nature of the act require judicial intervention - and any appeal introduced by those subject to the decision shall not suspend its execution and effects, unless it is expressly otherwise provided.

Nevertheless, the administration may, ex officio or at the request of a party and by a reasoned decision, suspend the execution for reasons of public interest or to avoid serious injury to the interested party or where there are justified claims for absolute nullity.

Retroactivity of Acts

Article 13: An administrative act may have retroactive effects - provided that acquired rights are not injured - when it is issued in substitution for another act which has been revoked or when it is to the advantage of the parties subject to the decision.

Nullity

Article 14: An administrative act is absolutely and irrevocably null in the following cases:

(a) When the will of the administration has been thwarted by fundamental error; fraud, in that non-existent or false grounds are held as existing facts; physical or psychological violence exercised against the agent; or absolute misrepresentation;

(b) when it has been issued by an incompetent authority either in terms of territory, time or level of authority except, in the latter case, if the delegation or substitution were permitted; lack of grounds where the facts or the law invoked did not exist or were false; or violation of the applicable law, of the essential forms or of the purpose which gave rise to the act.

Voidability

Article 15: If there has been a minor irregularity or omission or an error which does not prevent the existence of one of its essential elements, the act may be annulled by a court.

Invalidity of Incidental or Accessory Clauses

Article 16. The invalidity of an incidental or accessory clause of an administrative act shall not result in its nullity, provided that the clause in question is separable and does not affect the essential substance of the act.

Revocation of a Void Act

Article 17. An administrative act which is deemed absolutely null and void shall be considered irregular and must be revoked or substituted on the grounds of illegitimacy at administrative level. However, if the act has given rise to measures which are in progress, the maintenance of such

measures and their outstanding effects can only be stopped by a judicial declaration of nullity.

Revocation of a Regular Act

Article 18. A regular administrative act which has given rise to civil rights may not be revoked, amended or substituted at administrative level once it has been notified.

Nevertheless, it may be revoked, amended or substituted *ex officio* at administrative level if the interested party was aware of the defect, if the revocation, amendment or substitution of the act is beneficial to him without causing injury to third parties and if the right was expressly and validly granted on doubtful authority. It may also be revoked, amended or substituted for reasons of expediency, merit or convenience, with indemnification of damages caused to parties subject to the measure.

Legitimization

Article 19. A voidable administrative act may be legitimized by:

Ratification

(a) ratification by a higher authority, when the act was issued by an authority which lacked competence due to its level and provided that the referral, delegation or substitution were appropriate;

Confirmation

(b) confirmation by the authority which issued the act, correcting the error contained in it.

The effects of the legitimization shall be retroactive to the date of issue of the ratified or confirmed act.

Conversion

Article 20. If the valid elements of a void administrative act permit them to be included in another act which is valid, it may be converted to the latter with the consent of the party subject to the measure. The conversion shall take effect from the moment when the new act is complete.

Lapse of an Administrative Act

Article 21. The Administration may unilaterally declare an administrative act to have lapsed when the interested party does not meet the conditions established therein, but shall allow a delay prior thereto and grant a reasonable additional time-limit for the purpose.

Review

Article 22. A confirmed act may be reviewed at administrative level:

(a) When there are contradictions in the substantive part, whether or not their clarification has been requested;

(b) when subsequent to issue of the act, decisive documents are recovered or discovered, the existence of which was unknown or which could not be submitted as evidence on grounds of force majeure or the act of a third party;

(c) when it was issued on the basis of documents which were not known to have been declared false or incorrect or which have been declared false or incorrect after the issue of the act;

(d) when it had been issued under coercion, deception, violence or any other proven fraudulent device or serious irregularity.

The application shall be made within 10 days of notification of the act in the case of subparagraph (a). In the remaining cases, application for review shall be made within 30 days of recovery or discovery of the documents or the cessation of force majeure or the act of a third party; or when the matters indicated in subparagraphs (c) and (d) are legally proven.

TITLE IV

Judicial Challenge of Administrative Acts

Article 23. An act of individual scope may be challenged by judicial process:

- (a) When it is definitive and all administrative processes have been exhausted;
- (b) when, although no decision has been taken on the substance of the issue, it totally prevents the processing of the claim submitted;
- (c) in the case of the silence or ambiguity to which Article 10 refers;
- (d) when the Administration violates the provision of Article 9.

Article 24. An act of general scope may be challenged by judicial process:

- (a) When the civil rights of an interested party who is or may be subject to the act are certainly and imminently affected, and that party has made an appeal to the issuing authority and the result was adverse or there arose one of the outcomes provided for in Article 10;
- (b) when the authority executing the act of general scope has implemented it through definitive measures and administrative remedies against those acts have been exhausted without success.

Time-Limits Within Which the Challenge Must be Entered (By Action or Appeal)

Article 25. An action against the State or its autonomous agencies shall be initiated within the mandatory period of 90 days, counted as follows:

- (a) In the case of acts of individual scope, from date of notification to the interested parties;

(b) in the case of acts of general scope, against which a claim has been made which has been decided negatively by express decision, from the date of notification of the refusal to the interested party;

(c) in the case of acts of general scope subject to challenge through individual applications, from the time of notification to the interested party of the express measure which exhausts the administrative recourse;

(d) in the case of flagrant administrative irregularity or *fait accompli*, from the time it occurs.

When as a result of an express legal provision the challenge to an administrative act must be made by appeal, the time-limit for entering it shall be 30 days from notification of the final resolution which exhausts the administrative procedures.

Article 26. The application may be initiated at any time when the act acquires a definitive character after the expiry of the time-limit set out in Article 10 and without prejudice to the relevant rules of prescription.

Challenge of Acts by the State or its Autonomous Agencies; Time-Limits

Article 27. There shall be no time-limit for taking proceedings in cases where the State or its autonomous agencies are involved, subject to the related rules of prescription.

"Amparo" (Enforcement of Constitutional Rights) on Grounds of Delay by the Administration

Article 28. A party to an administrative expedient may conditionally request the issue of an order for immediate execution. Such an order shall be applicable when the administrative authority has allowed the fixed time-limits to expire - and in the absence of such time-limits, where a time exceeding what is reasonable has expired - without issuing the order or decision on procedure or substance required by the interested party. On presentation of the application, if the court deems it appropriate having

regard to the circumstances, it shall require the administrative authority concerned, within the time-limit set by the court, to inform it as to the cause of the delay in question. When the requirement has been answered or the time-limit has expired without compliance, the relevant matters concerning the delay shall be decided, and if appropriate an appropriate order shall be given to the administrative authority responsible to take measures within a reasonable time as established by the court depending on the nature and complexity of the order or outstanding proceedings.

Article 29. In the event of failure to comply with the order for prompt execution, the provisions of Article 17 of Decree Law No. 1285/58 shall apply.

Administrative Claim Prior to Judicial Application

Article 30. Except in the circumstances set out in Articles 23 and 24, the State may not be the subject of judicial application without prior administrative claim, directed to the Ministry or Commander in Chief concerned.

The claim shall be based on the same facts and rights as those to be invoked in a possible judicial application and shall be decided by the Executive Power or by the above-mentioned authorities if such power is delegated.

Article 31. The decision on the claim shall be made within 90 days of its submission. On the expiry of this time-limit, the interested party shall require immediate execution, and after a further 45 days may initiate an application at any time, without prejudice to any relevant provisions relating to prescription.

Article 32. The prior administrative claim to which the above Articles refer shall not be necessary if an express law so establishes and when:

(a) An ex officio act can be executed before the time-limits in Article 31 expire;

(b) before an act is issued ex officio by the Executive Power, the party subject to the measure has submitted a contrary claim;

(c) in the case of claiming repayment from the State for an amount paid pursuant to enforcement or reclaiming a charge paid that was not due;

(d) claims for damages and injuries against the State or an action for evacuation against it or an action that does not follow the normal procedures;

(e) there is clear conduct by the State that leads to the presumption of the certain failure of the procedure, so that the prior claim becomes a futile formality;

(f) the claim is against a decentralized agency with the right to take part in court proceedings.

Article 33. The present law shall enter into force 120 days following its publication in the Official Gazette.

Article 34. This law shall be proclaimed, published, transmitted to the National Directorate for Official Records and filed.

LANUSSE

Carlos A. Rey

Carlos G. N. Coda

Ismael E. Bruno Quijano

DECREE NO. 1759

Buenos Aires, 3.4.72

BEARING IN MIND AND CONSIDERING: the provisions of Law No. 19,549 and the proposals of the National Minister of Justice,

THE PRESIDENT OF THE ARGENTINE NATION

DECREES:

Article 1. The annexed provisions, which constitute Regulations under the National Law on Administrative Procedures, are approved.

Article 2. The approved regulations shall enter into force 120 days following their publication in the Official Gazette and shall apply to administrative proceedings initiated ex officio or at the request of a party with effect from that date.

Article 3. The Ministry of Justice shall immediately invite the heads of the various legal services of the central and local National Public Administration, including autonomous agencies, meeting in committee, for the purpose of proposing which special procedures currently applicable shall continue in force. Their conclusions shall be submitted to the Executive Power, together with the proposed regulations, 30 days after the end of the time-limit laid down in Article 2 of the law.

Article 4. Each of the heads of the above-mentioned legal services shall progressively propose to the Executive Power, through the Department of State or body of which they form part, the measures to which Article 2, paragraph (a) of the law refers. Likewise, the heads of the military, defence and security legal services shall make their proposals through the Commanders in Chief of their respective arms and agencies, concerning the administrative procedures to which paragraph (b) of the same Article refers.

Article 5. This Decree shall be proclaimed, published, transmitted to the National Directorate of Official Records and filed.

LANUSSE

Carlos A. Rey
Ismael E. Bruno Quijano
Carlos G. N. Coda

REGULATIONS UNDER THE NATIONAL LAW ON ADMINISTRATIVE PROCEDURES

TITLE I

Competent organs

1. Administrative proceedings shall be handled and resolved through the action of the organs to which a law or decree has assigned competence to do so. In the absence of such a law or decree, action shall be taken by the bodies determined by the internal regulations of the Ministry or the governing body of the decentralized agency, as appropriate.

Powers of the higher body

2. Ministers and governing bodies of decentralized agencies may direct or instigate action by lower bodies by means of orders, instructions, circulars and internal regulations, in order to ensure speed, economy, simplicity and efficiency of proceedings; delegate powers to them; intervene in them; and take over the proceedings from the lower body and decide on a matter unless exclusive competence is attributed by law to the lower body.

The above is without prejudice, where applicable, to hearing the appropriate appeals which may be entered in the matter.

Initiation of proceedings. Interested party

3. Administrative proceedings may be initiated ex officio or at the request of any natural or legal person, whether public or private, who invokes a civil right or a legitimate interest. Such persons shall be considered interested parties in the administrative proceedings. Other interested

parties are those whose civil rights or legitimate interests may be affected by the act to be issued and who have participated in the proceedings at the request of the original interested party, whether spontaneously or having been summoned by the body concerned when it becomes aware of their existence during the course of those proceedings.

Adult minors shall have full capacity to intervene directly in administrative procedures as interested party to defend their own civil rights or legitimate interests.

Instigation ex officio and at the request of an interested party

4. All administrative actions shall be instigated ex officio by the competent body, which shall not prevent the interested party also instituting proceedings. Excepted from this principle are proceedings concerning only the private interest of the parties subject to the measure unless, notwithstanding, the resolution to be issued could in any way affect the general interest.

Duties and powers of the competent organ

5. The competent organ shall direct the proceedings and endeavour:

(a) To transact proceedings in order and decide them as soon as they are in a position to be resolved. The order of proceedings and decision may be changed only by a reasoned resolution;

(b) To include in a single resolution all proceedings which, by their nature, can be instigated simultaneously and concentrate in a single act or hearing all the relevant proceedings and evidence;

(c) To indicate, before proceeding with any request, any defects it contains, and order that they should be corrected ex officio or by the interested party within such reasonable time-limit as it shall determine, dealing in the same manner with proceedings necessary to prevent them being void;

(d) To require at any time the personal appearance of the interested parties, their legal representatives or those holding power of attorney to require such explanations as it deems necessary and to reduce discrepancies which might exist on matters of fact or law, keeping records thereof. The summons shall state the specific purpose of the hearing.

Disciplinary powers

6. In order to maintain order and decorum in the proceedings, the competent body may:

(a) Strike out any insulting phrase or any phrase couched in offensive or impolite terms;

(b) Exclude any person disrupting a hearing;

(c) Caution or take of those responsible;

(d) Apply the fines authorized under Article 1(b) "in fine" of the law, and any other sanctions including financial sanctions, set out in other laws in force. The confirmed fines shall be executed by the respective judicial representatives of the State following the procedure under Article 604 and 605 of the National Civil and Commercial Procedures Code;

(e) Dismiss those with powers of attorney for failure to act or for clearly delaying the proceedings, indicating to the principal that he should participate directly or through a new attorney, subject to notice of suspension of the proceedings or continuing them without his participation, as appropriate. Infractions committed by agents of the administration shall be governed by their special laws.

TITLE II

Concerning proceedings: identification

7. The identification under which a record of proceedings is initiated shall be retained throughout successive proceedings regardless of the bodies

participating them. It shall be prohibited to assign another number or identification system to a record of proceedings other than the one allocated by the initiating body.

Compagination

8. Records of proceedings shall be compaginated in numbered documents not exceeding 200 pages, except where such a limit would require division of written material or documents constituting a single text.

FOREIGN TRADE

Decree No. 766/94

Establishing the National Commission for Foreign Trade. Functions. Composition and Rules of Procedure. Investigations, Reports, Opinions and Activities. General and Transitional Provisions

Buenos Aires, 12 May 1994

BEARING IN MIND the Customs Code (Law No. 22,415) and its regulations, Law No. 16,834 on the Accession of the Argentine Republic to the General Agreement on Tariffs and Trade and Law No. 24,176 approving the Agreement on Implementation of Article VI and the Agreement on Interpretation and Implementation of Articles VI, XVI and XXIII of the General Agreement, Law No. 20,744, and

CONSIDERING:

That the Argentine Republic has in recent years operated a policy of opening up of the economy by reducing customs tariffs and eliminating many non-tariff barriers, in a context of freedom to fix prices and salaries.

That the objective of the policy has been to increase competition in the Argentine domestic market and ensure supply of goods in conditions similar to those of the international market with regard to price and quality.

That it is a function of the National Government to take all necessary steps to ensure that producers established in the country do not suffer material injury as a result of imports under conditions of unfair competition, including dumped and subsidized imports.

That situations may also arise in which events unconnected with the country's trade policy, and unconnected with acts of unfair competition may give rise to a significant increase in imports which makes it desirable to introduce measures to safeguard domestic production.

That in administering trade policy instruments against unfair trade practices and those relating to safeguard measures, maximum efficiency and transparency should be sought in order to ensure that prices paid by consumers do not exceed those which would have obtained under conditions of normal competition in the international market.

That the analysis and investigation of cases of unfair competition at international level and the imposition of safeguard measures should be carried out in conformity with the recommendations of the General Agreement on Tariffs and Trade (GATT), to which the Argentine Republic has been a signatory since 1965, and under the terms of the Agreements approved by Law No. 24,176.

That Article 3 of the aforementioned Law and Article 722 of the Customs Code authorize the implementing authority to delegate to a competent body the functions related to the implementation of regulations on unfair international competition, except for the power to take decisions which establish anti-dumping and countervailing duties, which is vested solely in the Minister of the Economy and Public Works and Services.

That it is desirable to delegate to different bodies the powers of the implementing authorities concerning investigation of material injury to domestic industry and investigation into the margin of dumping and subsidization on imports under conditions of unfair competition, or into the significant increase in imports, in the evaluation of safeguard measures.

That, for that purpose, it is desirable to establish a special body in the form of a National Commission, to undertake analysis of material injury to domestic industry drawing, for that purpose, on the best international experience in this area, and retain investigations concerning the margin of dumping and rate of subsidization in the Under-Secretariat for Foreign Trade.

That as a body specializing in the analysis of injury, it is appropriate for the National Commission for Foreign Trade, hereby established, to permanently review the effects of international competition on domestic industry and identify situations for which provision might be made in existing legislation or which might be of interest to the economic authorities.

That it is desirable for this body also to be empowered to act in an advisory capacity to the Secretariat for Trade and Investment of the Ministry of the Economy and Public Works and Services, in its specialist area, on those parts of legislation on international trade and foreign trade policy not directly related to GATT rules on unfair competition and safeguards, but which involve aspects concerning the analysis of material injury or threat of material injury to domestic production.

That the Commission should also act as the competent national body for this matter in cases deriving from international treaties.

That to ensure the proper functioning of the Commission, it is desirable to establish it as a decentralized agency having legal personality.

That the establishment of such bodies by the National Executive Power has been accepted, as evidenced by the most authoritative doctrine and the case law of the Attorney General of the Nation.

That, for the proposed objectives to be met, it is desirable that the staff of the Commission be governed by Labour Law No. 20,744 (1976) and its amendments.

That, likewise, it is necessary to adjust the distribution of administrative resources and credits under item 5000-Ministry of the Economy and Public Works and Services in the General Budget of the National Administration for the year 1994, in order to permit the Commission to become operative, without changing the source of funding.

That the Executive Committee of the Comptroller for Administrative Reform and the Technical Advisory Committee on Public Sector Wage Policy have taken the appropriate action in accordance with their attributions.

That its functions, attributions and operational procedures are consistent with the restructuring by the State of the organization of international trade, the regulations of Law No. 24,176 and international agreements arising from the Uruguay Round of the General Agreement on Tariffs and Trade (GATT), to the extent that the Argentine Republic accedes thereto.

That the National Executive is competent to issue the present decree, under the provisions of Article 86, paragraph 1 of the National Constitution.

Wherefore

THE PRESIDENT OF ARGENTINA

DECREES:

CHAPTER I

Establishment and Functions

Article 1. The National Commission for Foreign Trade is hereby established as a decentralized agency under the Secretariat for Trade and Investment of the Ministry of the Economy and Public Works and Services.

The Commission shall be the specialized agency of the National Government, which shall act as the authority responsible for analysis, investigation and regulation in the determination of material injury to domestic production in the circumstances laid down in the legislation on international trade of the Argentine Republic.

Article 2. The National Commission for Foreign Trade shall have full legal capacity to act under both public and private law. Its assets shall consist of those transferred to it and those acquired by it in the future from whatever source.

Article 3. The Commission shall have the following functions:

(a) To conduct investigations and analysis of injury to domestic production as a result of imports effected under conditions of unfair competition as defined by Article VI of the General Agreement on Tariffs and Trade (GATT), in the framework of the laws and regulations governing its implementation in the Argentine Republic;

(b) to analyse the injury that a significant increase in imports might cause to domestic production and assess whether it is appropriate to introduce safeguard measures, in accordance with Article XIX of the General Agreement on Tariffs and Trade, in the framework of the laws and regulations governing its application in the Argentine Republic;

(c) at the request of the Secretariat of Trade and Investment, to analyse the aspect of injury to domestic production, in connection with the evaluation of foreign trade policy measures resulting from the application of the Customs Code and other relevant legislation;

(d) to propose appropriate measures, whether provisional or final, to alleviate injury as set out in the foregoing paragraphs, including voluntary price agreements, and to review them periodically and assess whether they should be continued;

(e) to undertake continuous monitoring of trends in international trade and the effects of foreign competition on domestic production, identifying cases of actual or potential injury;

(f) to apply the provisions contained in international treaties on matters relevant to its missions and functions, acting as the competent national body for that purpose;

(g) to undertake such other studies, analysis and advice as falls within its areas of competence, or as specifically requested by the Secretariat of Trade and Investment.

Article 4. The definition of injury used in the present Decree shall include:

(a) Material injury or damage caused to a domestic industry;

(b) threat of material injury or damage to a domestic industry;

(c) material retardation of the establishment of a domestic industry.

CHAPTER II

Composition and Rules of Procedure

Article 5. The National Commission for Foreign Trade shall be directed by a Board whose Members shall hold the rank of Under-Secretary and which shall consist of one Chairman and four Members, whose remuneration is set out in Annex I to the present Decree, appointed by the National Executive Power on the recommendation of the Ministry of the Economy and Public Works and Services. The Members shall serve for a term of four years, which may be renewed.

Article 6. The Members of the Board of the Commission shall be Argentine citizens and have the appropriate qualifications, professional background and experience in economics, law and foreign trade, to ensure that they are able to carry out their tasks effectively.

Membership of the Board shall be incompatible, without prejudice to the other cases established under legislation governing the civil service, with:

(a) The exercise of any other remunerated activity in any department of the National, Provincial or Municipal Public Administration, including the Legislature and the Judiciary, other than teaching and study commissions;

(b) other posts, tasks or professional consultancies in areas directly or indirectly linked with persons who are or may be involved in practices or situations covered by the present Decree;

(c) judicial or extrajudicial representation, counsel or action against the National State, the Provinces, Municipal Authorities or any other official body.

Article 7. Members may only be removed from office by the National Executive Power on serious grounds, following application of the procedure which guarantees due process. The National Executive Power may remove the Chairman, without having to give the grounds for so doing.

Article 8. Members of the Board and staff of the Commission are not permitted to hold discussions or negotiations concerning a current investigation outside the relevant proceedings with persons who have an interest in the case. Failure to obey this rule shall be justifiable grounds for dismissal of staff, without prejudice to any other liabilities that they may have under general legislation.

Article 9. The functions of the Board shall be:

(a) To interpret and apply the rules to which Article 3 of the present decree refers, within the competence of the Commission;

(b) to prepare the annual budget of expenses and calculation of resources of the Commission;

(c) to approve annually the report and balance sheet, prior to its presentation to the relevant supervisory bodies; and

(d) to carry out all other acts specifically assigned to the Commission and in general such acts as are necessary to fulfil its functions and the objectives of the present decree.

Article 10. The Chairman shall be responsible for the administrative functions of the Commission and shall be its legal representative; should he be prevented from doing so or temporarily absent, he shall be replaced by one of the members appointed for that purpose by the Board.

The Chairman of the Commission shall be responsible for appointing, promoting, suspending and dismissing staff.

Article 11. Except for the purpose of adopting decisions to which Article 14, 19, 21, paragraph 2 and 22 of the present decree refer, when the presence of all members is required, the Board may meet with a minimum three members and adopting decisions by a majority of the votes of those present. In the case of equality of votes, the Chairman's vote shall count double.

CHAPTER III

Investigations, Reports, Opinions and Activities

Article 12. In investigations concerning imports under conditions of unfair competition, reports shall contain, as a minimum, the following information:

(a) Description of the industry and its international situation;

(b) trends in the factors determining the relationship between imports under conditions of unfair competition and injury to the domestic industry, in particular:

(I) Value and physical volume of imports under conditions of unfair competition;

(II) effects of such imports on prices in the local market;

(III) effects of such imports on, inter alia, employment, utilization of capacity, rate of return on investment and other factors which could be indicators of injury;

(IV) effects of other factors on the competitive situation of the industry, including cyclical factors, entrepreneurial capacity, regulations and any other cause unconnected with unfair trade which may be a determining factor;

(V) prospects for market trends in the absence of countervailing measures; and

(VI) probable behaviour of the market following application of the recommended measures. Effects of those measures on consumers.

The test of injury to the domestic industry shall be based on facts and objective information and not on mere conjecture or remote possibility.

(c) Recommendation on whether it is appropriate to apply or maintain trade measures in the form of anti-dumping or countervailing duties to offset the injury to the domestic industry.

Article 13. In investigations concerning evaluation of safeguard measures, reports shall contain, as a minimum, the following information:

(a) A report of the facts which led to the investigation and description of the industry and its international situation;

(b) report of the factors which show injury to domestic production, such as imports, employment, industrial capacity utilization, rate of return on investment and any other factor which allows adequate evaluation;

(c) economic impact on consumers, as a result of the application of safeguard measures; and

(d) recommendation as to the most appropriate safeguard measures for the case in question.

Article 14. The Commission may approve and publish guides, examples and detailed instructions for investigations, in order to inform the public and interested parties concerning the methods and features of its analyses, reports and recommendations.

Article 15. In order to fulfil its functions, the Commission may, as necessary, engage specialists or special consultants, subject to the current regulations to supplement its permanent technical team. It may also conclude technical cooperation agreements with bodies in the country or abroad, specializing in areas related to its functions.

Article 16. In analysing and recommending measures, the Commission shall be guided by the criteria of preventing injury and shall avoid using legislation for protectionist purposes. In particular, it shall not propose measures similar to those considered by the Under-Secretariat for Foreign Trade if it concludes that the injury can be remedied by other measures which have a less restrictive effect on imports. In no case, shall the proposed duties be higher than the margin of dumping or the rate of subsidy estimated by the Under-Secretariat for Foreign Trade.

Article 17. The Commission may require any data and information that it considers relevant to complete its investigation, in which case the provisions of Article 707 of the Customs Code apply. It may also carry out investigations in other countries when circumstances so require.

Article 18. When appropriate for the purposes of conducting investigations, the Commission may hold hearings with the participation of the parties concerned.

Article 19. Decisions on investigations shall be adopted by the Board of the Commission in meetings convened for the purpose with all members

present. Records of each meeting shall be prepared, setting forth the votes of the directors, the reasons therefor, and the final decision as approved, which shall be notified to the Secretary for Trade and Investment.

Decisions shall be adopted by a majority vote of the Board, which shall be accounted for, and the opinions of the minority shall also be presented.

Article 20. Reports of the National Commission for Foreign Trade and the decisions of its Board shall be the only means of establishing the existence or non-existence of injury to domestic industry in cases concerning imports under conditions of unfair competition and evaluation of safeguard measures.

When the Commission concludes that there is no injury, the Minister of the Economy and Public Works and Services shall not take measures relating to imports.

In cases where the Commission finds sufficient injury to justify measures, its recommendations concerning the level of anti-dumping and countervailing duties and the adoption of safeguard measures shall take the form of advice to the Minister of the Economy and Public Works and Services.

CHAPTER IV

General and Transitional Provisions

Article 21. The Commission shall fulfil its functions within the time-limits established by the legislation to which Article 3 of the present decree refers, and it must coordinate its activities with the investigations carried out by the Under-Secretariat for Foreign Trade and issue its reports in a timely manner so as not to delay the relevant formalities, procedures and resolutions.

The Commission shall issue its own rules of procedure and shall have the power to issue rules of interpretation and clarification concerning matters within its competence, as well as the form, time-limits and other

arrangements for its internal procedures, in accordance with current legislation.

Article 22. The Commission shall take precautions to protect confidential information, concerning its use and storage, and shall establish appropriate responsibilities and sanctions for staff who break any rules established to this end.

Article 23. Once every six months, the Commission shall publish a summary of its activities, and any other additional information on measures adopted by third countries concerning exports by the Argentine Republic.

Each year, it shall prepare and publish the Annual Report of the Commission.

Article 24. In order to renew the Board on a gradual basis, the National Executive Power shall, when establishing the Board for the first time, establish two posts of members to be renewed at the end of the second year.

Article 25. The functions to which Article 722 of the Customs Code (Law No. 22,415) and Article 3 of Law No. 24,176 are delegated to the National Commission for Foreign Trade, subject to the limitations established therein, within the competence and functions conferred by the present decree and in the framework of the implementing regulations of those Laws. The delegation of powers to the Under-Secretariat of Foreign Trade by Resolution No. 104 of 24 May 1989 of the Ministry of the Economy and Public Works and Services, is limited to functions not assigned by the present decree to the National Commission for Foreign Trade. The Secretariat for Trade and Investment, at the request of the National Commission for Foreign Trade and considering the process for starting up the new entity, shall establish the date from which this delegation of powers shall operate.

Article 26. The National Commission for Foreign Trade shall, within 180 working days from the date of the present Decree, submit to the National

Executive Power for approval, the organizational structure of the agency, which must aim to form a highly qualified specialist group. The employment relationship of the staff shall be governed by Labour Law No. 20,744 (1986) and its amendments.

Article 27. Until such time as the organizational structure of the Commission is approved, the Chairman and Members of the Commission are assigned the responsibilities of Cabinet Advisers as set out in Article 1 of Decree No. 736/92 for Under-Secretaries of the National Executive Power, such advisers being subject to the Basic Terms and Conditions of Employment of the Civil Service approved under Law No. 22,140 and its regulations, to the extent applicable.

Article 28. The distribution of administrative resources of the General Budget of the National Administration for the year 1994 - Human Resources - Item 5000 - Ministry of the Economy and Public Works and Services, Programme 17 - Definition of Investment, Trade and Public Services Policies and Programme 21 - Regulation of the Postal Services shall be amended, as set out in detail in the tables annexed to the present Article which form an integral part thereof.

Article 29. The General Budget of the National Administration for 1994, Item 5000 - Ministry of the Economy and Public Works and Services, Programme 17 - Definition of Investment, Trade and Services Policies and Programme 21 - Regulation of the Postal Services shall be amended, in accordance with the details set out in the tables annexed to the present Article which form an integral part thereof.

Article 30. The operating expenses of the National Commission of Foreign Trade shall be charged for the year 1994 to the budget of the Secretariat for Trade and Investment, in the amounts established in the tables annexed to Article 29 of the present Decree. The draft budget law for 1995 shall make provision for the corresponding charges and credits for the entity which is being established.

Article 31. The Decree shall be promulgated, published, transmitted to the National Directorate for Official Records and filed. MENEM. Domingo F. Cavallo.

Note: The tables annexed to Articles 28 and 29 are not published.

ANNEX I

National Commission for Foreign Trade

Salary Scale

Post

Salary

Post allowance

Board members supplement*

Total

Chairman

1,900

1,900

4,000

7,800

Members

1,900

1,900

3,000

6,800

*Non remunerative and not subject to bonus.

FOREIGN TRADE

Decree No. 106/95

Substituting Article 77 of Decree No. 2121/94, Issuing the Regulations of Law No. 24,176

Buenos Aires, 24.1.95

BEARING IN MIND File No. 631,715/94 of the Registry of the Ministry of the Economy and Public Works and Services, and

CONSIDERING:

That Decree No. 2121/94 lays down the regulations of Law No. 24,176 and it is necessary to specify the scope of the rules for investigations initiated prior to the entry into force of the said Law.

That it is also necessary to provide stability in law and full protection of the general interest concerned and safeguarded by the relevant rules and the respective administrative acts issued under them while they were in force.

That the National Executive power is competent to issue the present act, by virtue of the provisions of Article 99, paragraph 2 of the National Constitution.

Wherefore,

THE PRESIDENT OF THE
ARGENTINE NATION

DECREES:

Article 1. Article 77 of Decree No. 2121/94 shall be replaced by the following text:

"Article 77. The present regulation shall enter into force 15 days from its publication in the Official Gazette. Investigations initiated prior to its entry into force shall be governed by the rules in force at the date when the investigation was commenced. Presentations made prior to the entry into force of the present Decree where the investigation has not been declared open shall be made to conform to the rules under the present Decree. The Under-Secretariat for Foreign Trade of the Secretariat of Trade and Investment in the Ministry of the Economy and Public Works and Services shall exercise the functions assigned by these rules to the National Commission for Foreign Trade of the said Secretariat, until such time as the Secretariat of Trade and Investment of the Ministry of the Economy and Public Works and Services shall determine the date of entry into force of the delegation of powers laid down in Article 25, in fine, of Decree No. 766/94. From that time, the National Commission for Foreign Trade shall exercise the functions assigned to it under the present regulations in respect of investigations which have not yet been ordered."

Article 2. The present Decree shall take effect from the day following its publication in the Official Gazette.

Article 3. This Decree shall be proclaimed, published, transmitted to the National Directorate of Official Records and filed. MENEM. Domingo F. Cavallo.

FOREIGN TRADE

Decree No. 2121/94

Dumping and Subsidization. Like Product and Domestic Industry. Injury and Causality. Normal Value. Export Prices. Comparison of Values. Adjustments. Countervailable Subsidies. Specificity. Calculation of the Subsidy. Consultations. Common Provisions. Implementing Authorities. The Application. Investigation. Preliminary Determination. Price Agreements. Final Determination. Collection of Duties. Duration of Duties. Reviews

Buenos Aires, 30.11.94

HAVING REGARD TO File No. 619,598/94 in the Registry of the Ministry of the Economy and Public Works and Services, the Customs Code (Law No. 22.415), Law No. 16.384, on the Accession of the Argentine Republic to the General Agreement on Tariffs and Trade and Law No. 24.176 approving the Agreement on the Implementation of Article VI and the Agreement on Interpretation of Articles VI, XVI and XXIII of the said General Agreement, and Decree No. 766, of 12 May 1994, establishing the National Commission for Foreign Trade, and

WHEREAS:

It is necessary to lay down rules and regulations for the effective implementation of the Agreements approved under Law No. 24.176.

It is necessary to supplement the existing statutory provisions on anti-dumping and countervailing duties in the light of progress made in that area in the Uruguay Round of the General Agreement on Tariffs and Trade, within the framework of Law No. 24.176.

The definitions included in those agreements must be clearly set out in the regulations in order to facilitate their application to specific cases.

It is necessary to establish a system of appeals in respect of measures taken in anti-dumping and countervailing proceedings, which is compatible with the limits set by Law No. 24.176 to the duration of such proceedings.

The Law in question provides that the implementing authority shall be Minister for the Economy and Public Works and Services, who is authorized to delegate to other bodies the functions assigned to him by the Law, except for the taking of decisions which establish anti-dumping or countervailing duties, whether provisional or definitive.

The National Commission for Foreign Trade, a decentralized agency of the Secretariat for Trade and Investment of the Ministry of the Economy and Public Works and Services, is responsible for carrying out

investigations to determine injury caused by dumped or subsidized imports.

It is the responsibility of the National Commission for Foreign Trade to propose appropriate measures to alleviate the injury in cases of dumping or subsidization.

With regard to dumping and subsidies, the Under-Secretariat for Foreign Trade, a unit of the Secretariat for Trade and Investment of the Ministry of the Economy and Public Works and Services, has the responsibilities and functions not expressly assigned to the National Commission for Foreign Trade under Decree No. 766/94.

The National Executive Power is competent to issue the present act, by virtue of the provisions of Article 99, paragraph 2 of the National Constitution.

Therefore,

THE PRESIDENT OF THE ARGENTINE NATION

DECREES:

TITLE I

DEFINITIONS

Chapter 1

Dumping and Subsidization

Article 1. A product shall be considered as being dumped when it is introduced into the domestic market at less than the normal value of a like product when destined for consumption in the country of origin or exporting country in the ordinary course of trade.

Article 2. For the purpose of these regulations, a subsidy shall be deemed to exist if there is a financial contribution by a government or a public body of the exporting country or country of origin, such that it confers a benefit on the producer or exporter. Without prejudice to the generality of the foregoing, such contributions will exist if:

(a) The practice of a government or public body involves a direct transfer of funds, such as grants, loans and equity infusion, or potential direct transfers of funds or liabilities, e.g., loan guarantees;

(b) government revenue that is otherwise due is foregone or not collected (e.g. fiscal incentives such as tax credits);

(c) a government provides goods or services other than general infrastructure or purchases goods; and

(d) there is any form of income or price support.

There will also be subsidization when the financial contribution comes from a private body which is used by a government or public body to effect contributions which do not differ in practice from those normally granted by governments or public bodies.

The exemption of an exported product from duties or taxes borne by the like product when destined for domestic consumption, or the remission of such duties or taxes in amounts not in excess of those which have accrued, shall not be deemed to be a subsidy.

Chapter II

Like Product and Domestic Industry

Article 3. The term "like product" shall be interpreted to mean a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.

Article 4. The terms "national industry", "domestic production", "national production" and "domestic industry" shall be taken to refer to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products, as determined by the competent implementing authority.

Article 5. For the purposes of investigating the product, the national territory may be divided into two or more competitive markets and the producers within each market may be regarded as a separate industry. This procedure may be used only in exceptional circumstances and if the following conditions obtain:

(a) The producers within the market concerned sell all or almost all of their output of the product under investigation in that market; and/or

(b) the demand in that market is not to any substantial degree satisfied by producers of the product under investigation located elsewhere in the territory.

In such circumstances injury may be found to exist even where a major portion of the total domestic industry is not injured, if it is established that there is a concentration of dumped or subsidized imports into such an isolated market and provided further that the imports under investigation are causing injury to the producers of all or almost all of the production within such market.

Article 6. For the purpose of the present regulations producers whose activity does not consist of the actual processing of inputs which form part of the like product or those who are related to producers or exporters of the product complained of, as defined in Article 14 of the present regulations, or those who produce the product under investigation and also import it from the country of origin or the country of export subject to investigation, may be deemed to be excluded from the domestic industry.

Chapter III

Injury and Causality

Article 7. Anti-dumping or countervailing duties shall not be applied if no injury is caused by imports of the product under investigation.

For the purposes of this article, injury shall be defined as:

- (a) Material injury or prejudice caused to a domestic industry;
- (b) threat of material injury to a domestic industry; and
- (c) material retardation of the establishment of a domestic industry.

Article 8. A determination of material injury caused to domestic production, for the purposes of the present regulations, shall be based on positive evidence and involve an objective examination of:

- (a) The volume of the dumped or subsidized imports and their effect on prices in the domestic market for like products; and
- (b) the consequent impact of these imports on domestic producers of such products.

With regard to the volume of the dumped or subsidized imports, the competent implementing authority shall consider whether there has been a significant increase in dumped or subsidized imports, either in absolute terms or relative to production or consumption in the importing country. With regard to the effect of the dumped or subsidized imports on prices, the competent implementing authority shall consider whether the dumped or subsidized imports have been priced significantly lower than a like product of the importing country, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to the same degree. No one or several of these factors can necessarily give decisive guidance.

Article 9. The competent implementing authority shall consider that there is a threat of material injury to a domestic industry when such threat is real and certain and when the injury is imminent. For that purpose it shall take into account the following circumstances, while not excluding other possibilities:

(a) An increase in the share of the imports under investigation in the domestic market even if there is not yet any material injury to the domestic industry;

(b) overproduction, excess capacity or accumulation of inventories of the product under investigation in the country of origin or export, which may possibly be exported to the Argentine Republic; and

(c) accumulation in the Argentine Republic of inventories of the product under investigation, even if they have not yet been sold in the country.

Article 10. For the purpose of determining whether or not there exists a material retardation of the establishment of a domestic industry, the competent implementing authority shall evaluate the potential of the domestic industry at the time when the imports began or were imminent, with the object of ascertaining whether such imports had a negative effect on the development of that potential. The competent implementing authority should, inter alia, consider such factors as:

(a) Effective capacity under construction;

(b) certainty of financing for the capacity under construction;

(c) status of orders and dispatches; and

(d) the general financial situation.

Article 11. For the purposes of the present regulations, it must be shown to the satisfaction of the competent implementing authority, in accordance with the law and these regulations, that there is a causal link between the import of the product under investigation and any of the following factors:

(a) Existence of material injury to the domestic industry of the like product as set out in Article 8 of these regulations;

(b) threat of material injury to the domestic industry of the like product as set out in Article 9 of these regulations; and

(c) material retardation of the establishment of a domestic industry as set out in Article 10 of these regulations.

The competent implementing authority shall ensure that injury caused by factors other than dumping and subsidization of the product under investigation are not attributed to imports of that product.

Chapter IV

Normal Value

Article 12. The normal value is the price paid or payable for a like product to the imported product when the imported product is sold in the domestic market of the country of origin or export in the ordinary course of trade. The normal value shall be calculated net of discounts, rebates and other price reductions directly applied to the operations concerned. The exporter or producer may request such adjustments upon showing to the satisfaction of the competent implementing authority that such discounts, rebates and price reductions actually took place.

Article 13. A sale shall be considered as having been made in the ordinary course of trade, either by the producer in the country of production or by the exporter in the country of export, when either of the following situations applies:

(a) The price is not affected by any of the associations or relationships defined in the following articles; or

(b) the sale price is not lower than the cost of production, as described in Article 19 of these regulations.

Article 14. Two or more enterprises shall be considered related for the purposes of an investigation into dumping or subsidies:

- (a) If one of them directly or indirectly controls the other;
- (b) if both are directly or indirectly controlled by a third enterprise; or
- (c) if together they directly or indirectly control a third enterprise, provided that there are grounds for believing or presuming that the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers or exporters.

For the purposes of this Article, one enterprise shall be considered to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

Article 15. In cases where sales made in the country of origin or export cannot be considered as sales in the ordinary course of trade as described in Article 13 of these regulations, the competent implementing authority may calculate the normal value on the basis of the price to a third country, as described in Article 16, or may use the method of constructing the value described in Article 17.

Article 16. The price to a third country is the sale price of the product under investigation, realized by the producer or exporter to a third country other than the country of origin or export. The competent implementing authority should take the most representative price, applying, when it deems necessary, the adjustments to which Article 26 of these regulations refers.

Article 17. The construction of the value of the product under investigation, to which Article 15 of these regulations refers, shall be carried out on the basis of the following factors:

- (a) Production costs, meaning the sum of the variable and fixed costs necessary to the manufacturing process, in the ordinary course of trade in

the country of origin, with reasonable adjustments for sales, administrative and general costs; and

(b) a reasonable level of profit, calculated in relation to costs and profits associated with sales to non-related parties in the country of export or origin.

The method for calculating the constructed value and each of its components must be consistent with normally accepted practices in the industry or branch of production of the product under investigation and taking into account normal competitive behaviour. The implementing authority shall base its calculations on the records kept by the producer or exporter under investigation if such records are in accordance with generally accepted accounting principles and reasonably reflect the costs associated with the production and sale of the product under investigation.

If the implementing authority cannot obtain the information necessary to calculate the above-mentioned production costs and profits, for sales made in the country of export or origin, or if in its opinion, the information available is not reliable or cannot be used for any other justifiable reason, the competent implementing authority may calculate production costs and sales profits, on the basis of information concerning other producers or exporters from the country of origin or export for sales of like products, or it may calculate profit margins based on sales of other goods sold by exporters or by other producers or exporters operating in the same economic sector in the country of origin or export.

Article 18. Where there are no sales of the like product by the exporter of the product under investigation in the country of origin or export, or the sales volume is insignificant, making it impossible to evaluate transactions in the ordinary course of trade, the implementing authority shall calculate the normal value in accordance with the methods prescribed by Articles 15 to 17 of the present regulations.

Article 19. Notwithstanding the provisions of Article 13 of these regulations, in all cases where it has been shown that the exporter has made sales of the like product in the country of origin or export at less

than the production costs referred to in Article 17, paragraph (a), in substantial quantities, for a period of not less than six (6) months and at prices which do not provide for the recovery of all costs within a reasonable period of time, the competent implementing authority may consider such sales as having been made outside the ordinary course of trade and may calculate the normal value on the basis of other sales made in the country or origin or export, at prices no lower than the cost of production; or where such sales are sufficient:

(a) On the basis of prices to third countries as described in Article 16 of these regulations;

(b) on the basis of the constructed value as described in Article 17 of these regulations.

Where sales to a third country are used to calculate the normal value as described in Article 16 of these regulations, and it is determined that the sales were made at prices lower than the production costs described in Article 17 paragraph (a) of these regulations, the competent implementing authority may consider such sales as not having been made in the ordinary course of trade and may calculate the normal value in accordance with the most appropriate criterion selected from the following:

I. Other sales of like products made in the third country at prices not below the cost of production;

II. The constructed value as described in Article 17 of these regulations.

Article 20. When the products under investigation are exported or originate in countries with centrally-planned economies or with regulations of such scale that they produce effects equivalent to those of such economies, the competent implementing authority shall determine the normal value in the most appropriate and reasonable manner possible on the basis of any of the following criteria:

(a) The price at which a like product of a third market-economy country is actually sold for consumption in the domestic market of that country or to other countries, including the Argentine Republic itself; or

(b) the value determined for the like product in a third market-economy country; or

(c) the price actually paid or payable in the Argentine Republic for the like product, duly adjusted if necessary, to include a reasonable margin of profit, when neither the prices of a third country nor the constructed value as determined in accordance with the provisions of paragraphs (a) and (b) above, provide an adequate basis.

The competent implementing authority shall use the above criteria on an exceptional basis and only when the alternative methods laid down in Articles 16 and 17 of these regulations are inapplicable.

Chapter V

Export Price

Article 21. The export price to be used in determining dumping shall be the direct export price, meaning the price actually paid or payable in a sale, trade or exchange related to the entry of the product into the Argentine Republic, subject to the adjustments provided for in these regulations.

Article 22. The price actually paid or payable for the product subject to investigation is the value in money or in kind actually transferred or transferable in relation to the sale, trade or exchange of the product.

Article 23. In cases where there is no export price or where it appears to the competent implementing authority that the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported products are first resold to an independent buyer, or if the products are not resold to an

independent buyer, or not resold in the condition as imported, the export price shall be calculated on such reasonable basis as the authority may determine, based on the consideration received by the exporter.

Chapter VI

Comparison of Values

Article 24. In order to achieve a fair comparison between the export price and the price in the domestic market of the country of origin or export or, if applicable, the price determined under Article 15 et seq. of the present regulations, the two prices shall be compared at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time. Due allowance shall be made in each case, on its merits, for differences in conditions and terms of sale, taxation and other differences which affect price comparability. In the cases referred to in Article 23 of these regulations, allowance should also be made for costs, including duties and taxes, incurred between importation and resale, and for profits accruing.

Article 25. When there are variations in both the export prices and the prices in the domestic market of the country of origin to be analysed:

(a) The normal value shall generally be established on a weighted average basis;

(b) export prices shall normally be compared with the normal value on a transaction-to-transaction basis, when the use of weighted averages would produce substantially different results from those of individual transactions;

(c) sampling techniques may be used to establish the normal value and export prices in cases where there are a large number of transactions.

Chapter VII

Adjustments

Article 26. In order to carry out the comparison of values provided for in Chapter VI of these regulations, adjustments shall be made in accordance with the following provisions:

(a) Currency conversion. When comparison of the normal value and the export price requires a conversion of currencies, the rate of exchange on the date of the operation used for the comparison shall be utilized. If the export is related to a sale in foreign currency on a forward market, the forward exchange rate may be used.

(b) Level of trade. In order to compare the normal value with the export price, the competent implementing authority shall identify the level of trade at which the sales took place as a basis for comparison of prices.

The competent implementing authority is responsible for determining whether the volume of sales taken as a basis for calculating the normal value corresponds to the level of trade at which the export price was calculated. If the volume of sales concerned is insufficient for the purposes indicated, the normal value may be calculated at the level of trade considered most appropriate.

Where it is not possible to make a comparison at the same level of trade, the normal value shall be adjusted to correspond to the level of trade of the export price, taking into account the differences which normally exist between different levels of trade.

(c) Adjustments for physical differences. When there are differences between the physical characteristics of the product under investigation and the like product used to calculate the normal value, the competent implementing authority shall identify the relevant differences, following which the normal value of the like product shall be adjusted in accordance with the specific value attributed to each difference found in the product under investigation. This value may be based on information obtained in the market area where the product is sold.

(d) Adjustments for quantity discounts. As regards adjustments for differences in sales costs based on differences in quantities sold, the competent implementing authority shall determine whether this is a customary practice by the producers or exporters in the country of origin or export.

(e) Adjustments for financial costs of sales. In the case of financial costs of sales, the competent implementing authority shall calculate an adjustment figure which reasonably reflects the cost of money included in the export price and shall apply that figure for the purpose of adjusting the normal value of the like product.

(f) Adjustments for guarantee costs. In the case of guarantee costs, the competent implementing authority shall calculate an adjustment figure based on the costs actually incurred by the seller in complying with the guarantee requirements for goods sold and in accordance with the terms of the guarantees. In order to make the adjustment, the guarantee must have been offered in writing at the time of sale or be a guarantee required by the laws of the country where the sale took place or be in line with generally accepted commercial practices in the market concerned.

(g) Adjustments for technical assistance costs. In the case of costs of services or technical assistance, the competent implementing authority shall calculate the adjustment figure on the basis of costs actually incurred in providing the service or technical assistance, provided that such costs have been included in the transaction price.

Article 27. Discounts, rebates and other price reductions used in calculating the export price must be directly related to the operations to which they apply.

Article 28. Without prejudice to the foregoing, the following amounts must be deducted from the direct export price:

(a) Any import duty payable in the Argentine Republic and any export duty payable in a foreign country in relation to the product under investigation;

(b) costs incurred in preparing the product under investigation for transport to the Argentine Republic such as packaging costs, provided that such costs are not incurred in making sales in the country of origin or export;

(c) costs relating to the export and transportation of the product to the Argentine Republic and costs charged for the product's entry into the country. They include transport, maintenance, insurance, loading and unloading and handling costs, and other unforeseen costs incurred from the commencement of transportation at the point of export until delivery to the buyer in the Argentine Republic, as well as attendant charges.

To enable such deductions to be made, the above-mentioned costs must have been included in the direct export prices.

TITLE II

COUNTERAVAILABLE SUBSIDIES

Chapter I

Specificity

Article 29. In order to determine whether a subsidy as defined in Article 2 is specific to an enterprise or industry or group of enterprises or industries, within the territory of the country granting the subsidy, the following principles shall apply:

(a) Where the granting authority, or the legislation pursuant to which the granting authority operates, explicitly limits access to a subsidy to an enterprise or industry or group of enterprises or industries, such subsidy shall be specific;

(b) where the granting authority, or the legislation pursuant to which the granting authority operates, establishes objective criteria or conditions governing the eligibility for, and the amount of, a subsidy, specificity shall

not exist, provided that the eligibility is automatic and that such criteria and conditions are strictly adhered to.

"Objective criteria or conditions" shall be understood to mean criteria or conditions which are neutral, which do not favour certain enterprises and which are economic in nature and horizontal in application.

(c) if, notwithstanding any appearance of non-specificity resulting from the application of the principles laid down in subparagraphs (a) and (b), there are reasons to believe that the subsidy may in fact be specific, the factors set out in the following Article may be considered.

Article 30. For the purposes of the foregoing Article, the following factors shall be considered in determining specificity:

(a) Application of a subsidy programme to a limited number of enterprises or industries or a group of enterprises or industries;

(b) granting of disproportionately large amounts of subsidy to an enterprise or industry or a group of enterprises or industries;

(c) the manner in which discretion has been exercised by the granting authority in the decision to grant a subsidy; and

(d) export subsidies under Article 29 shall be considered specific. In applying subparagraph (c), the implementing authority shall take into account the extent of diversification of economic activities in the country granting the subsidy and the length of time during which the subsidy programme, has been in operation.

Chapter II

Calculation of the Subsidy

Article 31. In determining the value of the subsidy, the competent implementing authority shall distinguish between subsidies which are specifically aimed at exports of the product under consideration, and

subsidies aimed at the general export activity of the receiving company. In the latter case, the value of the subsidy shall be calculated by determining the relation between the general sales of the enterprise and the specific sales of the product under investigation.

The competent implementing authority shall also determine the relation between the subsidy received and the sales made by the producer or exporter in the period for which the subsidy was granted.

Article 32. When the subsidy involves loans granted at rates of interest or on terms more favourable than those that the beneficiary could obtain in freely negotiated agreements with commercial banks in the market concerned, the competent implementing authority shall distinguish between short-, medium- and long-term loans. The subsidy value of short-term loans shall be determined on the basis of the provisions of Article 31 of these regulations for actionable subsidies.

The subsidy value of medium- and long-term loans shall be determined using the most appropriate financial method for the purpose of establishing the real impact of the subsidy on the goods entering the Argentine Republic.

Loans shall normally be considered short-term when the repayment period is less than two years. Any loan with a repayment period of two (2) or more years shall be considered medium- or long-term.

The competent implementing authority may consider loans with a shorter repayment period as medium- or long-term if it is shown in good faith that the debtor's consistent practice is one of automatic renewal or extension of the repayment period to exceed a total of two (2) years.

Chapter III

Consultations

Article 33. Notification of the request to open a subsidy investigation shall be sent to the government of the country of origin or export of the product under investigation by the competent implementing authority, when in its

opinion the conditions for holding such an investigation obtain. Such notification should be effected ten (10) working days prior to the opening of the investigation.

Article 34. Together with the notification referred to in the foregoing Article, or at any time prior to the opening of the investigation, the competent implementing authority shall give the governments of the countries of origin or export of the product under investigation the opportunity to enter into consultations in order to clarify the facts set out in the request and reach a mutually agreed solution.

During the investigation, the governments of the countries of origin or export of the product under investigation may hold consultations for the same purpose.

TITLE III

GENERAL PROVISIONS

Chapter I

Implementing Authorities

Article 35. Implementation of the present regulations is the responsibility of the following authorities:

(a) The Ministry of the Economy and Public Works and Services, which shall issue decisions establishing anti-dumping or countervailing duties, whether provisional or definitive;

(b) the Secretariat for Trade and Investment of the Ministry of the Economy and Public Works and Services, which shall have the functions assigned to it in these regulations;

(c) the Under-Secretariat for Foreign Trade in the Secretariat for Trade and Investment of the Ministry of the Economy and Public Works and

Services, which shall be responsible for determining the existence of dumping or subsidization;

(d) the National Commission for Foreign Trade, a decentralized agency of the Secretariat for Trade and Investment of the Ministry of the Economy and Public Works and Services, which shall have responsibility for determining the existence of injury to domestic production.

Article 36. Proceedings for the imposition of anti-dumping and countervailing duties shall be initiated and conducted through the Under-Secretariat for Foreign Trade answerable to the Secretariat for Trade and Investment of the Ministry of the Economy and Public Works and Services, to which all background material on the existence of dumping or subsidization and of injury shall be submitted. The Under-Secretariat for Foreign Trade shall evaluate the formal admissibility of the application, prior to which it shall be submitted to the National Commission for Foreign Trade for the latter to give its opinion, within a period of ten (10) working days, on the degree to which the applicant is representative of the domestic industry/production. Once the conditions of admissibility are satisfied, the Under-Secretariat for Foreign Trade shall send to the National Commission for Foreign Trade all the elements of the application needed to determine the existence of injury.

Chapter II

The Application

Article 37. Applications for the initiation of an investigation concerning dumping or subsidies shall be submitted by or on behalf of the domestic industry which believes itself to be affected by the alleged dumping or subsidization, presenting sufficient evidence of the existence of dumping or subsidies, of the injury and the causal link between them.

For the purpose of evaluating applications, interested parties must complete the application form established for the purpose by the competent implementing authority, in order to enable the existence of the

basic requirements for the opening of an investigation into dumping or subsidies to be ascertained.

Once the formal admissibility of the application and the representative nature and legal capacity of the applicant have been established, as provided in Article 36 of these regulations, the Under-Secretariat for Foreign Trade and the National Commission for Foreign Trade under the Secretariat for Trade and Investment of the Ministry of the Economy and Public Works and Services, acting within their respective fields of competence, shall decide on the grounds for opening the investigation within thirty-five (35) working days and shall submit their conclusions to the Secretary for Foreign Trade for a decision on the opening of the investigation to be taken within ten (10) working days, unless the conditions laid down in Law No. 24.176 for rejecting the application are met.

The Secretariat for Trade and Investment of the Ministry of the Economy and Public Works and Services may in exceptional cases open the investigation ex officio when it has sufficient evidence to establish, under the provisions of Law No. 24,176 and this regulatory decree, the existence of dumping or subsidization, injury and the causal relationship between the dumping or subsidization and injury.

Article 38. The competent implementing authority shall notify the applicant of any error or omission in the application within thirty (30) working days of its submission. The applicant shall have fifteen (15) working days from the date of notification to supply corrections. If the applicant does not supply the required corrections within that period, the application shall be rejected without further proceedings.

Article 39. Prior to the initiation of the investigation, the competent implementing authority may hold consultations with domestic producers to check that there is sufficient support for opening the investigation.

Article 40. The competent implementing authority shall have a time-limit of forty-five (45) working days, from the date of acceptance of the

application by the Under-Secretariat for Foreign Trade of the Secretariat for Trade and Investment to decide on opening the investigation.

Chapter III

The Investigation

Article 41. Once it has been decided to initiate an investigation, the competent implementing authority shall have a period of ten (10) working days to publish its decision to open the investigation in the Boletín Oficial (Official Gazette). This decision must state the date of opening, the practice which is the subject of the investigation, the product under investigation, the country of origin or export and any other information that the implementing authority considers appropriate.

Article 42. For the purposes of the conduct of the investigation, the competent implementing authority may seek any information required by sending questionnaires to all interested parties. The recipients of such questionnaires must reply, giving all the required information, within the time-limit fixed by the implementing authority in each investigation.

The time-limit for returning questionnaires shall not be less than thirty (30) calendar days from the date of their receipt by the interested parties.

Due consideration should be given to requests for extensions and such extensions shall be granted whenever possible.

When the implementing authority does not obtain a reply to its request for information, it may use the best information available.

Article 43. For the purpose of verifying the information submitted by a party, or obtaining further information, the competent implementing authority may decide to carry out investigations in the country or abroad. Verifications abroad must have the prior consent of the firms involved and the government of the country in question, if necessary.

If a firm or government does not authorize verification or investigation or does not cooperate with the investigation, the competent implementing authority must use the best information available in order to complete its investigation and produce its recommendations to the Minister for the Economy and Public Works and Services.

In the case of verifications to be carried out in the national territory, the party concerned shall facilitate the verification requested by the competent implementing authority.

Article 44. The information received shall be made available to the interested parties within eight (8) working days of its receipt, except for information which it has been decided to treat as confidential, in accordance with the provisions of the present regulations.

Article 45. Any persons submitting information may request at the time of its submission that it be treated as confidential, provide evidence to the competent implementing authority of the need for such treatment, and make this need clear by means of the heading CONFIDENTIAL in the top right-hand corner of each page.

Confidentiality may not be requested for information which is not submitted voluntarily.

The implementing authority shall reach a decision within five working days. During this period the information in question shall be given confidential treatment, as described in these regulations.

If confidentiality is refused, the person submitting the information may withdraw it.

A condition of confidential treatment shall be compliance with the formal requirements laid down in this Article and the attachment of a non-confidential summary so that it can be included in the investigation. In the event that those submitting confidential information indicate that it may not be summarized, they must give the reasons why this is impossible and

the implementing authority shall consider whether or not to accept such reasons.

Article 46. In cases where the competent implementing authority decides that the information is confidential, the relevant pages shall not be included in the public proceedings and access to them shall be restricted to officials assigned to the investigation.

Article 47. The investigation shall be completed and the Under-Secretariat for Foreign Trade of the Secretariat for Trade and Investment of the Ministry of the Economy and Public Works and Services shall inform the Minister for the Economy and Public Works and Services of the results within one year of the date of initiation. If for exceptional reasons this time-limit is extended, the interested parties and the Minister for the Economy and Public Works and Services shall be informed of the reasons for such extension.

Article 48. If at any time during a dumping or subsidy investigation, the Secretariat for Trade and Investment of the Ministry of the Economy and Public Works and Services, in accordance with the opinion given by the Under-Secretariat for Foreign Trade or the National Commission for Foreign Trade of that Secretariat, as appropriate, concludes that there is not sufficient evidence of dumping or subsidization or injury, or that the margin of dumping or subsidization or the volume of actual or potential imports are negligible, the investigation shall be terminated immediately.

Chapter IV

Preliminary Determinations

Article 49. If it sees fit, the competent authority, in the form and manner established in Article 37 third paragraph, may submit to the Minister for the Economy and Public Works and Services, through the Secretary for Trade and Investment, its conclusions concerning the application of preventive measures, within four (4) months from the opening of the investigation. If the dumping investigations present unusual difficulties, the competent implementing authority may delay submission of its

conclusions to the Minister for the Economy and Public Works and Services for an additional period of two (2) months. Such preventive measures shall not be applied prior to the determination by the competent implementing authority of preliminary results supporting the presumption of the existence of dumping or subsidization, injury to domestic industry and a causal relationship between them.

Article 50. In his preliminary or final determinations, the Minister for the Economy and Public Works and Services may impose anti-dumping or countervailing duties which are less than the amount of dumping or the margin of subsidy found to exist, if in his opinion they are sufficient to eliminate the injury caused to domestic producers.

Article 51. In making his determination, the Minister for the Economy and Public Works and Services shall take into account the interests of the public at large, including consumers, users and purchasers of imported inputs, and users and purchasers of inputs produced locally whose prices may rise as a result of the imposition of anti-dumping or countervailing duties.

Article 52. Preventive anti-dumping and countervailing duties shall be imposed only when the competent implementing authority determines that they are necessary in order to prevent injury to domestic producers and their duration shall be subject to the limits fixed by Law No. 24.176.

Article 53. For the purpose of collecting preventive anti-dumping or countervailing duties which have been imposed, the procedure set out in Article 67 et seq. of this decree should be followed.

Article 54. When the Minister for the Economy and Public Works and Services issues a preliminary determination, the competent implementing authority shall notify all the interested parties of the grounds on which it is based. The interested parties shall have the opportunity to make known their views concerning the grounds for the preliminary determination up to fifteen (15) working days following the date of the determination.

Chapter V

Price Agreements

Article 55. The competent implementing authority shall evaluate any price agreement submitted for its consideration concerning an anti-dumping or anti-subsidy investigation and shall decide whether to accept it within thirty (30) working days from the time it received the request for consideration. The purpose of such price agreement shall be to eliminate the injury to domestic production in accordance with the terms of Article 7 of these regulations.

The competent implementing authority may also suggest price agreements on its own initiative, though non-acceptance by any of the parties shall not have a negative impact on the investigation.

For the purposes of accepting or rejecting price agreements, the competent implementing authority is the Secretariat for Trade and Investment of the Ministry of the Economy and Public Works and Services, which shall act after consulting the Under-Secretariat for Foreign Trade and the National Commission for Foreign Trade of the above-mentioned Secretariat on matters within their competence.

Article 56. If the agreement is accepted, the investigation into injury may be completed if the exporter so requests or the competent implementing authority considers it appropriate. In such cases, if it is finally determined that there is no injury, the agreement shall automatically lapse except in cases where the negative determination is due in large part to the implementation of the price agreement concerned. In such cases, the competent implementing authority may require the agreement to be maintained for a reasonable period of time consistent with the provisions of Law No. 24.176.

Article 57. The implementing authority may reject the agreement in the following circumstances:

(a) When in its judgement, the agreement is impracticable or impossible to implement, as occurs when the number of actual or potential participating exporters is very large;

(b) when the agreement contravenes legislation concerning protection of competition. In order to determine such cases, an opinion of the authority responsible for implementing such legislation shall be required; and

(c) when the agreement is not capable of eliminating the injury to domestic production.

If the price agreement arises from an investigation into subsidies, its acceptance by the competent implementing authority requires that the latter obtain the consent of the government granting the subsidy.

Article 58. The competent implementing authority may request the opinion of the authority responsible for implementing legislation on protection of competition, when it considers it necessary to determine whether an agreement is in contravention of such legislation. In such cases, the opinion shall be requested within ten (10) working days from the date when the price agreement was submitted for consideration and approval. The authority responsible for implementing legislation on protection of competition should reach a decision within ten (10) working days of receiving the request for its opinion.

Article 59. The competent implementing authority may request periodic submission of information necessary to evaluate compliance with price agreements which have been accepted. Such agreements shall be periodically reviewed as specified in the decision giving rise to the agreement. The period shall not be less than one (1) year. The competent implementing authority may revoke its acceptance of the arrangement at any time without taking into account the period of time specified if it considers that the causes which led to the arrangement no longer exist, or when the terms of the agreement have been broken.

In the event that the agreement has been broken, the competent implementing authority may immediately impose preventive measures on the basis of the investigation already carried out.

Chapter VI

Final Determination

Article 60. The Under-Secretariat for Foreign Trade in the Secretariat for Trade and Investment of the Ministry of the Economy and Public Works and Services shall submit its conclusions based on the report of the National Commission for Foreign Trade of the Secretariat for Trade and Investment of the Ministry of the Economy and Public Works and Services, its own report and causal relationship, to the Minister for the Economy and Public Works and Services, through the Secretary for Trade and Investment so that the latter may make a final determination concerning the results of the investigation within one hundred and twenty (120) working days of the issue of the preliminary determination. In the absence of any preliminary determination, the conclusions shall be submitted within the time-limit laid down by Article 47 of these regulations.

Article 61. The Ministry of the Economy and Public Works and Services shall publish in the Official Gazette all preliminary and final determinations under which anti-dumping and countervailing duties are imposed and decisions to suspend, refuse, revoke or terminate investigations.

The price agreements to which Article 56 et seq. refer should also be published in the Official Gazette when an investigation has been suspended or terminated or when an agreement expires.

Such publication should indicate the goods, the level of duties where appropriate, the country of origin or export and any other information at the discretion of the competent implementing authority and in conformity with Law No. 24.176.

Article 62. Preliminary and final determinations, and decisions to suspend, refuse, revoke or terminate investigations shall be subject to appeal. Other decisions taken during the investigation are not subject to appeal. Appeals

shall lie only for a transfer of jurisdiction and should be made within ten (10) working days of the notification of the measure appealed against. For this purpose, the official publication of a measure shall be considered sufficient notification, without prejudice to other possible forms of notification.

Article 63. Anti-dumping and countervailing duties shall apply until the date when such duties are modified or expire, subject to the time-limit provided for in Article 74 of the present regulations.

Article 64. Anti-dumping and countervailing duties and the preventive measures determined under Law No. 24.176 and these regulations shall apply from the date of publication of the respective determination in the Official Gazette.

If the final determination is based on the existence of material injury as defined in Article 8 of these regulations, or when a threat of injury is determined within the meaning of Article 9 or a material retardation within the meaning of Article 10 of these regulations, and at the same time imports of the product under investigation produce an effect which, in the absence of preventive measures, would have led to the conclusion that there was material injury within the meaning of Article 8, anti-dumping or countervailing duties may be applied retroactively for the period during which preventive measures were applied.

In the case of investigations into subsidies, when the implementing authority concludes that there is an injury which is difficult to remedy, caused by massive imports of the product under investigation, over a relatively short period of time, and when in order to prevent a repetition of the injury it is considered necessary to levy countervailing duties retroactively on such imports, the definitive countervailing duties shall be levied on products which have been destined for consumption, up to a maximum of ninety (90) days prior to the date of application of the preventive measures.

In the case of investigations into dumping, if the competent implementing authority determines:

(a) That there is a history of dumping causing injury or the importer should have known that the exporter or producer practised dumping and that the imports of such products under those conditions would produce injury to domestic production; and

(b) that the injury was due to sporadic dumping (massive imports of the product under investigation effected for a relatively short period of time) on a scale such that, in order to prevent repetition it is necessary to levy duties retroactively on such imports, the competent implementing authority may stipulate that such duties are to be levied on products destined for consumption up to ninety (90) days prior to the date of application of the preventive measures.

Article 65. If the anti-dumping or countervailing duty established in the final determination is higher than the preventive duty collected or guaranteed, the difference shall not be levied. If, on the other hand, the final duty is lower than the preventive duty collected or guaranteed, the difference or the guarantee shall be refunded.

Article 66. The competent implementing authority may include within the scope of the definitive anti-dumping or countervailing duty in force, imported parts and components intended for assembly or finishing in the Argentine Republic when it is established that:

(a) The product assembled or finished from such parts or components is a like product to the one subject to the definitive anti-dumping or countervailing duty;

(b) assembly or finishing in the country importing the product referred to in subparagraph (a) above is carried out by a party related to an exporter or producer whose exports of the like product to the Argentine Republic are subject to a definitive anti-dumping or countervailing duty or which acts on behalf of such exporter or producer;

(c) parts or components were obtained in the country of the exporter or producer subject to a definitive anti-dumping or countervailing duty, from

suppliers in the exporting country who traditionally have supplied parts or components to such exporter or producer, or from a third party supplying parts or components on behalf of such exporter;

(d) assembly or finishing operations in the Argentine Republic have undergone substantial growth and imports of parts or components for such operations have increased substantially since the initiation of the investigation which gave rise to the imposition of the definitive anti-dumping or countervailing duty;

(e) the total cost of the parts or components referred to in subparagraph (c) represents a substantial part of the total cost of the parts or components used in the assembly or finishing operation.

The competent implementing authority may impose preventive anti-dumping or countervailing duties in accordance with Article 49 et seq. of the present decree, on parts or components imported for use in assembly or finishing operations when it considers that there is sufficient evidence that the criteria established in subparagraphs (a) to (e) of the present article are fulfilled. The competent implementing authority may establish a definitive anti-dumping or countervailing duty when all the criteria set out in this Article are fully met. The definitive anti-dumping or countervailing duty that may be imposed may not be higher than the definitive anti-dumping or countervailing duty in force on imports of the finished product subject to investigation.

Chapter VII

Collection of Duties

Article 67. Anti-dumping and countervailing duties shall be collected on the basis of the final determination by the competent implementing authority.

Article 68. When the concept of domestic industry is interpreted as applying to the producers of a certain area, anti-dumping or countervailing

duties shall apply only to the products in question consigned for consumption in that area.

Article 69. Anti-dumping and countervailing duties shall apply in addition to all other current charges concerning the import under consideration. They shall also be governed by the rules applicable to import duties.

With the imposition of anti-dumping and countervailing duties, whether provisional or definitive, the other import duties and other taxes on imports shall be calculated on the basis of the normal value established for the products subject to anti-dumping and countervailing duties.

Article 70. No product imported into the Argentine Republic may be subject to both duties (anti-dumping and countervailing) as a result of a single situation of unfair practice.

Article 71. Within five (5) working days of the publication of a final or preliminary determination of countervailing or anti-dumping duties, the Minister for the Economy and Public Works and Services shall notify the National Customs Administration of the decision to impose anti-dumping or countervailing duties by providing a full copy of the resolution.

Article 72. On receipt of the notification of the resolution issued by the Minister for the Economy and Public Works and Services, the National Customs Administrator shall issue the necessary instructions to proceed with the collection, within ten (10) working days, of the anti-dumping or countervailing duty concerned or the preventive duties, as applicable.

Article 73. The National Customs Administration shall inform the competent implementing authority on a monthly basis of the following:

(a) Amount of the anti-dumping and countervailing duties collected during the previous month, by product;

(b) amount of the preventive anti-dumping or countervailing duties collected during the previous month, by product; and

(c) amount of the preventive anti-dumping or countervailing duties guaranteed, by product.

Chapter VIII

Duration of Duties - Reviews

Article 74. Anti-dumping or countervailing duties imposed by the implementing authority shall remain in force for a maximum of five (5) years from the date of final determination under which the duties were originally imposed subject to the provisions of Article 53 of these regulations.

Article 75. A final determination under which an anti-dumping or countervailing duty was imposed may be reviewed at any time on the initiative of the competent implementing authority or at the request of an interested party to the original investigation who presents evidence of the need for such review. Such an application may not be made more than once a year and normally in the anniversary month of publication of the final determination by the Ministry of the Economy and Public Works and Services.

In the review, the competent implementing authority shall consider whether the continued imposition of the duties is necessary to eliminate the effects of the dumping or the subsidy. The competent implementing authority may also consider whether there would be a recurrence of the injury if the duty were removed or varied. On the basis of this review and the recommendations of the competent implementing authority, the Minister for the Economy and Public Works and Services may review anti-dumping or countervailing duties, and amend or abolish them as he sees fit.

Article 76. The procedure for the application of anti-dumping and countervailing duties by the implementing authorities provided for in the present regulations shall in addition be governed by the Law on Administrative Procedures and the regulations thereto.

Article 77. The present regulations shall enter into force fifteen (15) days after their publication in the Official Gazette. They shall not apply to investigations that have been opened prior to such entry into force. Presentations made prior to the entry into force of the present decree, where the investigation has not been declared open, should conform to the provisions of the present decree. The Under-Secretariat for Foreign Trade of the Secretariat for Trade and Investment of the Ministry of the Economy and Public Works and Services shall exercise the functions assigned by these regulations to the National Commission for Foreign Trade of the said Secretariat, until such time as the Secretariat for Trade and Investment of the Ministry of the Economy and Public Works and Services determines the date when the delegation of powers provided for in Article 25, in fine, of Decree No. 766/94 comes into force. From that time, the National Commission for Foreign Trade shall exercise the functions assigned to it by the present regulations in respect of investigations which have not yet been declared open.

Article 78. This Decree shall be proclaimed, published and transmitted to the National Directorate of Official Records and filed. MENEM. Domingo F. Cavallo. Rodolfo C. Barra.