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

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

PERU

The following communication, dated 16 May 1997, has been received from the Permanent Mission of Peru.

The Permanent Mission of Peru to the United Nations Office and other International Organizations at Geneva presents its compliments to the Secretariat of the World Trade Organization (WTO) and, pursuant to Article 18 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, and Article 32 of the Agreement on Subsidies and Countervailing Measures, has the honour to notify Supreme Decree No. 043-97-EF: "Regulations on Dumping and Subsidies" a copy of which is appended hereto.

EL PERUANO, TUESDAY, 29 APRIL 1997, PAGES 148858 - 148863

ECONOMY AND FINANCE

REGULATIONS ON DUMPING AND SUBSIDIES

SUPREME DECREE NO. 043-97-EF

THE PRESIDENT OF THE REPUBLIC

CONSIDERING:

That by virtue of Legislative Decision No. 26470, published in the Official Journal *El Peruano* on 18 December 1994 and in effect since 1 January 1995, the Democratic Constituent Congress approved the Agreement Establishing the World Trade Organization (WTO) and the Multilateral Agreements on Trade in Goods contained in the Final Act of the Uruguay Round signed at Marrakesh, Morocco, on 15 April 1994;

That the aforementioned Multilateral Agreements on Trade in Goods include the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 (Anti-Dumping Measures), the Agreement on Subsidies and Countervailing Measures, and the Agreement on Agriculture;

That pursuant to Article 18.4 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 and Article 92.5 of the Agreement on Subsidies and Countervailing Measures, governments approving the Agreement Establishing the WTO shall take all necessary steps, of a general or particular character, to ensure the conformity of their laws, regulations and administrative procedures with the provisions of the aforementioned two Agreements;

That it is the State's responsibility to facilitate and monitor free competition, combating any restrictive practices, by establishing basic rules for action by economic agents in order to guarantee effective freedom of competition in markets;

That dumping and subsidies are unfair practices that distort competition in markets, which is guaranteed within the market social economy provided for in Peru's 1993 Political Constitution;

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

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

DECREES:

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

TITLE I

General Provisions

Article 2. For the purposes of these Regulations, the following definitions apply:

- I. Anti-Dumping Agreement: the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, which forms part of the Multilateral Agreements on Trade in Goods contained in the Final Act of the Uruguay Round, approved by the Democratic Constituent Congress in Legislative Decision No. 26407.
- II. Subsidies Agreement: the Agreement on Subsidies and Countervailing Measures, which forms part of the Multilateral Agreements on Trade in Goods contained in the Final Act of the Uruguay Round, approved by the Democratic Constituent Congress in Legislative Decision 26407.
- III. The Commission: the Dumping and Subsidies Commission of the National Institute for the Defence of Competition and the Protection of Intellectual Property (INDECOPI).
- IV. Secretariat: the Technical Secretariat of the Commission.
- V. Court: the Court for the Defence of Competition and the Protection of Intellectual property of the National Institute for the Defence of Competition and the Protection of Intellectual Property (INDECOPI).
- VI. TUPA: the sole text of administrative procedures of the National Institute for the Defence of Competition and the Protection of Intellectual Property (INDECOPI), the section corresponding to the Dumping and Subsidies Commission.
- VII. WTO: the World Trade Organization.

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

TITLE II

Dumping

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

The export price, the normal value or the comparable price referred to in the preceding paragraph shall be determined in conformity with Article 2 of the Anti-Dumping Agreement.

Article 5. A particular market situation in the sense of Article 2.2 of the Anti-Dumping Agreement shall mean the following situations:

- I. Where the level of openness in the country of origin resulting from tariff or para-tariff barriers does not permit a proper comparison because it causes distortion of domestic prices.

- II. Where other special factors exist in the domestic market of the country of origin which, in the opinion of the Commission, do not permit a proper comparison because they cause distortion of domestic prices.

Article 6. Where imports come from or originate in countries where there are distortions in the economy that do not permit them to be considered market economy countries, the normal value shall be determined on the basis of the comparable price in the ordinary course of trade at which the like product is actually sold in a third country with a market economy for domestic consumption, or, failing that, for export, or on the basis of any other method deemed appropriate by the Commission.

For the purpose of determining the normal value, the Commission shall take into account the following criteria *inter alia*:

- I. The production processes in the country with a free market economy and the country whose economy has distortions.
- II. Scale of production.
- III. Quality of the products.

Bearing in mind the foregoing factors, the choice of the country must not entail disadvantages for the producer or exporter in the country of origin.

TITLE III

Subsidies

Article 7. For the purposes of the Subsidies Agreement, a subsidy shall be deemed to exist if:

1. There is a financial contribution by a government or any public body within the territory of a Member, which involves a direct transfer of funds, potential direct transfer of funds or liabilities or, when government revenue that is otherwise due is foregone or not collected, or if a government provides goods or services - other than general infrastructure - or purchases goods at prices higher than the market price, or if the government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions illustrated above which would normally be vested in the government and the practice, in no real sense, differs from practices normally followed by governments and benefit is thereby conferred.
2. There is any form of income or price support in the sense of Article XVI of the General Agreement on Tariffs and Trade 1994 and a benefit is thereby conferred.

Article 8. A subsidy as defined in the preceding Article may be specific or non-specific.

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

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

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

Article 9. Subsidies may be prohibited, actionable or non-actionable.

Prohibited subsidies shall be subsidies contingent, in law or in fact, upon export performance, including those illustrated in Annex I to the Subsidies Agreement; or those contingent upon the use of domestic over-imported goods. All prohibited subsidies shall be deemed specific.

Actionable subsidies shall be subsidies which cause injury to the domestic industry, nullify or impair benefits accruing directly or indirectly from the WTO Agreements, or cause serious prejudice or threat of prejudice to the interests of domestic producers.

Non-actionable subsidies shall be subsidies which are not specific within the meaning of Article 8 of these Regulations and subsidies which are specific, have been established to provide assistance for industrial research activities, pre-competitive development, assistance to disadvantaged regions or certain types of assistance to promote adaptation of existing facilities to new environmental requirements imposed by law and/or regulations.

Prohibited, actionable and non-actionable subsidies shall be subject to the procedures established in the WTO's Subsidies Agreement.

Article 10. Systems for the reduction of indirect taxes on the production of exports and drawback systems for charges on the import of products consumed or utilized in the production of exports shall only be deemed specific subsidies if the amount of the reduction or drawback exceeds the amount of the indirect taxes and import charges actually paid in the production process.

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

Article 11. The Commission may impose a provisional countervailing duty on the import of a foreign product that benefits from a prohibited or actionable subsidy. In such cases, the countervailing duty shall only be established if there is reason to believe that the subsidy may cause injury to domestic production, nullify or impair the advantages directly or indirectly resulting from the WTO Agreements, or seriously prejudice or threaten to prejudice the interests of Peru.

TITLE IV

Determination of Injury or Threat of Injury

Article 12. The Commission shall determine injury, threat of injury, or material retardation of the establishment of a domestic industry caused by dumped or subsidized imports. In the case of actionable subsidies, the Commission may assume that there is injury to domestic industry in conformity with the criteria laid down in Article 6 of the Subsidies Agreement.

Article 13. A determination of injury shall be based on 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.

Article 14. For the purposes of the preceding Article, the Commission shall take into account the following criteria:

- I. (a) With regard to the volume of the dumped or subsidized imports: a significant increase in the volume of dumped imports in absolute terms or relative to production, sales or consumption.

In considering whether the dumped or subsidized imports have increased significantly, the Commission shall take into account the following criteria *inter alia*:

- Whether the rate of increase of the dumped or subsidized imports has meant that these imports are not negligible in comparison with total imports during the period of the investigation, in conformity with Article 38 of these Regulations;
 - whether the rate or growth of the dumped or subsidized imports has meant that these imports came to represent an important proportion compared to production, sales or consumption during the period of the investigation.
- (b) The effect that is caused or may be caused by the import of goods at dumped or subsidized prices on the prices of like domestic goods on the domestic market, considering whether the imported product is sold on the domestic market at a price considerably lower than that for like domestic products, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases which otherwise would have occurred, to a significant degree.

II. With regard to the impact of the dumped or subsidized exports on the domestic industry concerned, there shall be an examination of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments.

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

No one or several of these economic factors and indices shall necessarily be sufficient to reach a definitive conclusion on the existence of injury.

Article 15. Determination of the causal relationship between the dumped or subsidized imports and the injury to the domestic industry shall also take into account other factors than the dumped or subsidized imports which at the same time are affecting domestic industry.

Article 16. A determination of a threat of injury shall be based on facts and not on allegation, conjecture or remote possibility. In making a determination regarding the existence of a threat of injury the factors mentioned in Articles 3.7 and 15.7 of the Anti-Dumping Agreement and the Subsidies Agreement respectively shall be taken into account *inter alia*.

TITLE V

Definition of Domestic Industry

Article 17. For the purposes of these Regulations, the term "domestic industry" shall include domestic producers as a whole of the like products or those of them whose collective output constitutes a major proportion of total domestic production of these products. In determining a domestic producer, the Commission shall take into account the following criteria *inter alia*:

- Whether the producers are related to the exporters of the allegedly dumped or subsidized product;
- whether the producers are themselves acting as importers of the dumped or subsidized product;
- the origin and characteristics of the inputs used in like goods, together with the value-added for the production process.

TITLE VI

Administrative Investigation Procedure

CHAPTER I

Application and Initiation of the Investigation

Article 18. Except as provided for in the following Article, an investigation to determine the existence of imports at dumped or subsidized prices, and the effects of these unfair international trade practices, shall be initiated upon a written application addressed to the Commission by an enterprise or group of enterprises accounting for at least 25 per cent of total domestic production of the product concerned, without prejudice to Articles 4 and 16 of the Anti-Dumping Agreement and the Subsidies Agreement respectively.

The application shall include evidence of the following:

- (a) The dumping or actionable or prohibited subsidy according to the definitions in the Agreement, as appropriate;
- (b) injury within the meaning of the Anti-Dumping Agreement or the Subsidies Agreement whichever is appropriate;
- (c) a causal link between the dumped or subsidized imports and the alleged injury or threat of injury.

The application shall contain the information requested in the questionnaires from the TUPA.

Article 19. In special circumstances, the Commission may decide to initiate an investigation ex officio, provided that it is in the national interest and in the opinion of the Commission the domestic industry affected is materially not able to submit the necessary application and there are indications of dumping or subsidies, injury and a causal relationship which justify the initiation of the investigation.

Article 20. In the special case of an application to apply countervailing duties, after receiving the application, providing that the requirements laid down in the TUPA have been met, before initiating the corresponding investigation, the Commission shall communicate directly with the government of the country of origin or export concerned for the purpose of holding consultations with a view to reaching a mutually satisfactory solution regarding the application for the imposition of duties.

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

Article 21. Within thirty (30) days from the date of submission of the application, the Commission may:

- (a) Accept the application and decide to initiate an investigation by means of a relevant decision; or
- (b) Allow the applicant fifteen (15) days in which to meet the requirements of the TUPA. This period shall be calculated from the day following the corresponding request and may be extended for a further 15 days.

After the requirements have been met, the Commission shall have a period of fifteen (15) days in which to take a decision, which may be extended for a further fifteen (15) days.

Where the necessary documents are not provided in an appropriate form within the time-limit, the Commission shall declare the application inadmissible and shall issue the corresponding decision, which shall be notified to the applicant.

- (c) Reject the application because it considers that it is unfounded, issue the corresponding decision and notify this to the applicant.

Article 22. Following publication of the decision to initiate an investigation in the Official Journal, *El Peruano*, the Secretariat shall notify the parties cited in the complaint so that within thirty (30) days from the date following the notification they may submit their answers in writing and reply to the corresponding questionnaires.

The notification shall be accompanied by a copy of the application submitted and of the annexes containing non-confidential information or, where appropriate, the documents relevant to an ex officio investigation, together with the questionnaires concerning the investigation.

The time-limits applicable to foreign producers or exporters shall be counted from the date of receipt of the questionnaire, which shall be deemed to have been received one week from the date on which it was sent to the respondent in the country of origin or export.

The Commission may extend the period of thirty (30) days for parties cited in the complaint which request an extension in order to prepare their explanations. A request for extension shall be based on reasons or facts that justify its granting.

Article 23. The Commission may require the data and information it deems relevant to allow it to fulfil its task directly from the parties cited in the complaint, customs agents, surveillance, transport and other companies and public or private sector bodies, which must provide this information within the time-limits fixed, on pain of liability.

Where there is no response to the request referred to in the preceding paragraph, the Commission shall take a decision based on the information available.

Article 24. All the documents submitted to the Commission in the course of the procedure shall be accompanied by sufficient copies for the other parties, unless the information is confidential.

Article 25. The authorities shall have nine (9) months to conclude their investigation. This period shall be calculated from the date of publication of the Commission's decision to initiate an investigation in *El Peruano*.

Provided that in the opinion of the Commission there are grounds for doing so, the period may be extended for one further period of three months.

Article 26. The decision to initiate an investigation, the decisions fixing provisional or definitive anti-dumping or countervailing duties, decisions lifting or modifying the duties or terminating or suspending the investigation shall be published in *El Peruano* once only.

CHAPTER II

Evidence

Article 27. Unless the information is confidential, evidence presented in writing by one interested party shall be made available to other interested parties participating in the procedure. The Commission shall also send copies to any person who so requests and who proves a legitimate interest.

Article 28. The Dumping and Subsidies Commission shall ex officio or at the request of a party decide that information presented by the parties is by nature confidential.

Article 29. Confidential information presented by the parties to an anti-dumping or subsidies investigation shall be accompanied by a non-confidential summary thereof and, upon good cause, shall be treated as such by the authorities.

Where information is deemed confidential either by its nature or at the request of one of the parties and the interested party has not shown good cause or submitted the corresponding non-confidential summary, the Commission's Technical Secretariat shall request it to justify the confidential nature of the information and provide the corresponding non-confidential summary within three (3) days.

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

Article 30. Where the parties which provided confidential information do not present the relevant justification or the corresponding non-confidential summary within the time-limit fixed, the Commission may decide not to take this information into account, unless it can be convincingly demonstrated by an appropriate source that the information is correct, or it may order its return, whichever is appropriate.

Article 31. At the request of one of the parties, the Commission shall hold hearings to allow the parties to explain their position. No party shall be obliged to attend a hearing and its absence shall not be detrimental to its cause.

The Commission shall only take into account oral information given at the hearings if, within five (5) days following the hearing, it is presented in writing to the Commission.

Article 32. In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within the time-limit fixed or significantly impedes the investigation, the Commission may decide to apply provisional or definitive duties pursuant to Article 6.8 of the Anti-Dumping Agreement and 12.7 of the Subsidies Agreement.

Article 33. The form and amount of the provisional measures shall be regulated by the relevant provisions of the sole amended text of the Code of Civil Procedure.

CHAPTER III

Undertakings

Article 34. Where, during the course of an investigation, an exporter or government of a country exporting the dumped or subsidized goods voluntarily undertakes commitments in order to eliminate the injury to domestic industry, the Commission shall require the other interested parties to transmit their comments on the substance of the undertakings within fifteen (15) days.

Article 35. Where the Commission accepts the undertaking made by the exporter or government of the exporting country, it shall issue a decision declaring the investigation suspended or terminated.

The aforementioned decision shall be based on the undertaking made.

Article 36. Fulfilment of these undertakings shall be subject to periodic review either ex officio or at the request of one of the parties. Where the Commission notes in the course of the review that the undertaking has not been respected or that there is unjustified delay in transmitting the information necessary to verify compliance, it shall give the interested party fifteen (15) days to present its arguments, at the expiry of which the Commission may immediately apply the relevant provisional duty, using the best information available.

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

CHAPTER IV

Establishment of Definitive Anti-Dumping or Countervailing Duties

Article 37. The Commission may only establish an anti-dumping or countervailing duty, whichever is appropriate, after it has verified the existence of dumping or a subsidy, injury or threat of injury and the causal relationship between the dumped or subsidized imports and the alleged injury.

Article 38. The Commission shall declare the application submitted inadmissible and shall terminate an investigation when it considers that there is not sufficient evidence of dumping or subsidies or of injury or threat of injury to justify proceeding with the case.

Where the Commission determines that the margin of dumping or the amount of the subsidy is *de minimis*, or that the injury or threat of injury is negligible, it shall terminate the investigation.

The margin of dumping shall be considered to be *de minimis* if it is less than 8 per cent expressed as a percentage of the export price. In the case of subsidies, the amount of the subsidy shall be considered *de minimis* if it is less than 3 per cent of the *ad valorem* f.o.b. price.

The volume of dumped imports shall normally be regarded as negligible if the volume from a particular country is found to account for less than 3 per cent of imports of the like product in that country. The volume of dumped imports shall not be considered negligible when they are imported from countries which individually account for less than 3 per cent of the imports of the like product in the importing country, provided that these collectively account for more than 7 per cent of such imports.

In the case of subsidies, the volume of subsidized imports shall normally be regarded as negligible if the volume from a particular country is found to account for less than 4 per cent of imports of the like product in the importing country. The volume of subsidized imports shall not be considered negligible when they are imported from countries which individually account for less than 4 per cent of the imports of the like product in the importing country, provided that these collectively account for more than 9 per cent of such imports.

Article 39. Both definitive anti-dumping and countervailing duties are deemed to be fines and do not in any way constitute a tax.

Article 40. Anti-dumping or countervailing duties shall not exceed the amount necessary to remove the injury or threat of injury determined and shall not exceed the margin of dumping or amount of the subsidy established.

The anti-dumping or countervailing duty shall remain in force as long as the causes of injury or threat of injury which led to their imposition persist, but pursuant to Article 11.3 of the Anti-Dumping Agreement and Article 21.3 of the Subsidies Agreement, this period shall not exceed five years.

Article 41. Where an anti-dumping or countervailing duty is imposed in respect of any product, it shall be imposed in the appropriate amount, irrespective of the subsequent importer.

Article 42. The Commission may only apply provisional duties if:

- (a) An investigation has been initiated in accordance with these Regulations and the interested parties have been given adequate opportunities to submit information and make comments;
- (b) a preliminary affirmative determination has been made of dumping or subsidies, injury or threat of injury and a causal relationship between the dumped or subsidized imports and the alleged injury or threat of injury; and
- (c) the Commission judges provisional duties necessary to prevent injury being caused to the domestic industry during the investigation.

The application of provisional duties shall be governed by Articles 7 and 17 of the Anti-Dumping Agreement and Subsidies Agreement respectively.

Article 43. Where the definitive duties are higher than the provisional duties paid or guaranteed, the amount in excess shall not be payable, except in the case referred to in the following Article of these Regulations. In the contrary case, the difference shall be refunded.

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

Article 44. In special circumstances, the Commission may levy definitive anti-dumping or countervailing duties on products marketed for consumption 90 days prior to application of provisional duties.

In the case of subsidies, such definitive duties may be determined if there is an injury which it is difficult to repair caused by massive imports in a relatively short period of time and where the Commission deems it necessary, in order to preclude the recurrence of such injury, it may assess countervailing duties retroactively on those imports.

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

In case of violation of an undertaking, the Commission may levy immediate provisional duties using the information available. In such cases, definitive duties may be levied on products entered for consumption not more than 90 days before the application of such provisional measures, but under no circumstances before violation of the undertaking.

Article 45. The anti-dumping and countervailing duties referred to in these Regulations are paid on the invoiced f.o.b. value, in accordance with the rules of the General Customs Law on the payment of import duties.

Provisional duties shall be paid or guaranteed by means of irrevocable, binding, unconditional and immediately cashable security issued by a banking or financial entity or by guarantee funds, expressed in United States dollars, pursuant to the rules of the aforementioned General Customs Law.

Under no circumstances may the import of the goods for consumption be hindered by the investigation taking place and no authority may hinder their entry for consumption.

Article 46. The Commission may, at the request of one of the parties, fix the administrative, procedural and other costs to be paid by the plaintiff to the importers and/or exporters if the application has been rejected.

Article 47. After at least six months have elapsed since the conclusion of the investigation, at the request of any interested party or ex officio, the Commission may review the need for the continued imposition of the definitive anti-dumping or countervailing duties in effect. In considering the application, the Commission shall take into account whether there is adequate evidence of a significant change in the situation that warrants a review of the duties imposed.

The review procedure shall be governed by the provisions of Articles 18 to 53 of these Regulations where applicable.

Article 48. The Commission may apply provisional or definitive anti-dumping or countervailing duties on the import of spare parts or components imported from the country of origin of the final product subject to definitive duties if there is proof that such goods are being imported for the purpose of circumventing the application of anti-dumping or countervailing duties imposed on the final product. For this purpose, the Commission shall take the following factors into account, *inter alia*:

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

The review procedure shall be governed by the provisions laid down in Articles 18 to 53 of these Regulations, where applicable.

CHAPTER V

Appeal

Article 49. For the purpose of challenging a final decision, recourse may be had to an application for reconsideration and an appeal.

The aforementioned appeals must be made within 15 days from the day following notification of the Commission's decision.

Article 50. Precautionary decisions establishing provisional anti-dumping or countervailing duties or decisions rejecting applications shall not be subject to appeal.

Article 51. The Commission shall take a decision on an application for reconsideration within 90 days from the date of its submission.

Article 52. Appeals shall automatically be accepted by the Commission and the file transmitted to the courts within a period not exceeding 10 days.

Article 53. The decision by the courts exhausts administrative remedies.

Supplementary Provisions

First: The Peruvian authorities shall apply the provisions of Supreme Decree No. 133-91-EF, amended by Supreme Decree No. 051-92-EF and supplemented by the present Supreme Decree, to countries that are not members of the WTO.

Second: Without prejudice to the provisions of the Anti-Dumping Agreement, the Subsidies Agreement and this Supreme Decree, on the basis of the principle of reciprocity, Peru may apply to products exported from or originating in other countries the same treatment given by these countries in relation to dumping and subsidies to products exported from or originating in Peru.

Third: For the purposes of this Supreme Decree, the provisions of the Law on General Rules of Administrative Procedure also apply.

Fourth: The penalties provided for in this Supreme Decree shall be governed by the provisions of paragraph (c) of Article 48 of Decree Law No. 25868.

Fifth: This Supreme Decree shall be endorsed by the Minister for the Economy and Finance, and the Minister for Industry, Tourism, Integration and International Trade Negotiations, and shall enter into force on the day following its publication in *El Peruano*.

Done at Government House, Lima, on the twenty eighth day of the month of April of the year one thousand nine hundred and ninety seven.

ALBERTO FUJIMORI FUJIMORI
Constitutional President of the Republic

JORGE CAMET DICKMANN
Minister for the Economy and Finance

GUSTAVO CAILLAUX ZAZZALI
Minister for Industry, Tourism, Integration and
International Trade Negotiations