

WORLD TRADE

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ORGANIZATION

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Committee on Anti-Dumping Practices

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Committee on Subsidies and Countervailing Measures

NOTIFICATION OF LAWS AND REGULATIONS UNDER

ARTICLES 18.5 AND 32.6 OF THE AGREEMENTS

COLOMBIA

The following communication, dated 15 March 1995, has been received from the Permanent Mission of Colombia, a Signatory of the Final Act eligible to become an original Member of the WTO.

In accordance with the Agreement on Implementation of Article VI of the GATT 1994, and with the Agreement on Subsidies and Countervailing Measures, I enclose the full text of Decree 299 of 10 February 1995 which contains the provisions relative to anti-dumping and countervailing duties in Colombia, the authorities competent to initiate and conduct the investigations and the procedures governing said investigations.

MINISTRY OF FOREIGN TRADE

DECREE NO. 299

(10 FEBRUARY 1995)

"Regulating the Application of Anti-Dumping and Countervailing Duties"

THE PRESIDENT OF THE REPUBLIC OF COLOMBIA

In exercise of his constitutional powers, and in particular those conferred on him by Article 189, paragraph 25, of the Political Constitution, in conformity with Article 10 of Law 7 of 1991 and pursuant to the recommendation of the Higher Council for Foreign Trade,

CONSIDERING

That Article 10 of Law 7 of 1991 instructs the National Government to regulate the protection of domestic producers against unfair foreign trade practices and to fix requirements, procedures and factors for determining the imposition of duties as appropriate;

That it is necessary to bring domestic legislation into line with the changes in foreign trade, in the light of the technical and legislative progress on this matter, such as that provided for in the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 and the Agreement on Subsidies and Countervailing Measures, in order to avert injury to domestic producers stemming from dumping or from subsidies by imposing anti-dumping or countervailing duties, respectively.

DECREES

CHAPTER I

OBJECT

ARTICLE 1. - SCOPE OF APPLICATION. This Decree lays down the rules to be applied to imports of dumped or subsidized products originating in countries not members of the Cartagena Agreement which cause or threaten to cause material injury to a major proportion of domestic industry or material retardation of the establishment of an industry in Colombia. The investigations to which this Decree refers shall be undertaken by the Colombian Foreign Trade Institute, INCOMEX, in the public interest.

Anti-dumping or countervailing duties are imposed in the public interest, for the purpose of preventing and redressing injury, where an unfair trade practice exists, and are generally applicable to any person importing the goods on which such duties are imposed. The duties may be imposed on a country and, if appropriate, on specific producers or exporters in that country.

Investigations into under-invoicing of imports by the National Customs and Excise Directorate (DIAN) may be carried out at the same time as investigations into dumping or subsidies by INCOMEX.

If, in the course of administrative proceedings, INCOMEX has information that leads it to believe that under-invoicing may exist, it will send on its own initiative a copy of all relevant documents to the DIAN, without prejudice to the continuation of proceedings with regard to matters within its own competence. The DIAN shall apply the rules on confidentiality of documents provided for in Article 43 of this Decree.

CHAPTER II

DEFINITIONS

ARTICLE 2. - For the purposes of this Decree, the following definitions apply:

ANTI-DUMPING DUTY: A measure in the form of a customs duty on imports which restores the conditions of competition distorted by dumping, and in the procedure set out below.

COUNTERVAILING DUTY: A measure in the form of a customs duty on imports which restores the conditions of competition distorted by a subsidy, and in the procedure set out below.

DATE OF SALE: The date of the document in which the essential conditions of the sale are set down, such as the signature of the contract, purchase order, confirmation of purchase order or invoice.

MASSIVE IMPORTS: Imports of the product subject to investigation, from the date of initiation of the investigation in cases of dumping, from the date of the invitation to hold consultations in subsidy investigations, to the date of the imposition of provisional measures, whose volume and other circumstances such as the rapid accumulation of stocks seriously impair the remedial effect of the definitive anti-dumping or countervailing duty.

Massive imports shall be so qualified in the light of their behaviour during the period mentioned above, relative to the behaviour of the imports in a period of three years preceding the date of initiation of the investigation or the invitation to hold consultations as mentioned above. The size of the market for the product investigated shall also be taken into consideration in each specific case.

BEST INFORMATION AVAILABLE: The best information available means the information which is provided appropriately and in timely fashion for the investigation, automatically or by the interested party, and which can be verified.

ORDINARY COURSE OF TRADE: Transactions between independent parties, or between associated parties or parties who are bound by a compensatory arrangement, provided that the prices and costs are comparable to those in trade between independent parties.

ASSOCIATED OR RELATED PARTIES: A relationship or association between two or more enterprises shall be taken to exist when:

1. One of them directly or indirectly controls the other;
2. Both of them are directly or indirectly controlled by a third person;
3. Both of them directly or indirectly control a third person, provided that there are grounds for believing that the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers.

INTERESTED PARTIES: For the purposes of this Decree, "interested parties" shall mean the applicant, an exporter, foreign producer, importer of a product subject to investigation, a trade or business association a majority of the members of which are producers, exporters or importers of the product, the Government of the exporting Member, producers of the like product in Colombia or trade or business associations a majority of the members of which are producers of the like product in Colombia.

MAJOR PROPORTION OF DOMESTIC INDUSTRY: For the purposes of submitting the application, the major proportion of domestic industry shall be taken to mean at least 25 per cent thereof in terms of the volume of production of the identical or the like product. Nevertheless, for the purpose of initiating the investigation, evidence of support representing more than 50 per cent of the domestic production of the product shall be provided in writing.

INJURY: The generic concept of injury may refer to material injury, threat of material injury or material retardation of the establishment of an industry in Colombia.

DOMESTIC INDUSTRY: In determining injury, the term "domestic industry" shall be interpreted as referring 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 these products, except in the following cases:

1. When domestic producers are related to the exporters or importers of the allegedly dumped or subsidized products, the term "domestic industry" may be interpreted as referring to the rest of the producers.
2. In exceptional circumstances, in the case of regional markets, domestic industry may be divided into two or more separate markets. The producers within each market may be regarded as a separate domestic industry if they sell most of their production of the product in question in that market and if the demand in that market is not to any substantial degree supplied by the producers of the product in question located elsewhere in the territory.

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

LIKE PRODUCT: "Like product" means 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.

EVIDENCE OF INJURY: Evidence that the dumped or subsidized imports are causing or threatening to cause injury or are materially retarding the establishment of a domestic industry in the importing country. In cases where the country does not have international obligations requiring it to provide evidence of injury, corrective measures may be applied solely on evidence of the existence of the unfair trade practice, for which purpose account shall be taken of whether the exporting country or country of origin would grant the injury test in respect of Colombian exports. In such cases the applicant shall supply the information in accordance with Article 32 of this Decree.

NORMAL VALUE: The normal value to which this Decree refers corresponds to the concept of normal value contained in the Agreement on Implementation of Article VI of the GATT or any other Agreement replacing or modifying it and generally refers to the price of the product when sold for consumption in the country of origin or of export.

CHAPTER III

DUMPING

ARTICLE 3. - CONCEPT. An import is considered as being dumped when the export price is less than the normal value for the like product when destined for consumption in the country of origin or of export in the ordinary course of trade, compared at the same level of trade.

ARTICLE 4. - EXPORT PRICE. Export price means the price actually paid or payable for the product sold for export to Colombia.

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

In calculating the export price, the necessary adjustment shall be made to allow for all costs incurred prior to sale, such as costs of transport, insurance, maintenance, loading and unloading, import duties and other levies arising subsequent to export from the country of origin; a reasonable margin of general, administrative and selling costs; a reasonable margin of profit and any commission usually paid or agreed.

ARTICLE 5. - NORMAL VALUE IN THE ORDINARY COURSE OF TRADE. "Normal value" means the amount actually paid or payable for a like product by comparison with the product imported, when sold for consumption in the domestic market of the country of origin or of export, in the ordinary course of trade.

For the purposes of the foregoing, sales made at a loss or below cost shall be ignored if they have been made within a period of time, which shall normally be one year and never less than six months, and in any significant volume, i.e., more than 20 per cent of all sales.

In cases where products are not imported directly from the country of origin but from a third country, the price at which the products are sold from the country of export to Colombia shall normally be compared with the comparable price in the country of export. However, comparison may be made with the price in the country of origin if, for example, the products are merely transshipped through the country of export, or such products are not produced in the country of export or there is no comparable price for them in the country of export.

ARTICLE 6. - NORMAL VALUE IN OTHER TRANSACTIONS. When there are no sales of the like product in the ordinary course of trade in the domestic market of the country of origin or of export or when, because of the particular market situation, such as price or low volume of domestic sales, such sales do not permit a proper comparison, the normal value shall be determined:

1. By considering the highest export price for the like product exported to a third country from the same country, provided it is representative; or
2. By considering the constructed price of the like product. This shall be based on the cost of production in the ordinary course of trade in the country of origin, plus a reasonable amount for administrative and selling costs, as well as for profits, taking into account the data for the producer of the product subject to investigation or the average data for other producers of like goods by comparison with the goods subject to investigation or another reasonable method. The addition for profit shall not exceed the profit normally realised on sales of products of the same category in the domestic market of the country of origin.

PARAGRAPH: The volume of sales of the like product in the markets of the country of origin or of export shall be deemed low if it accounts for less than 5 per cent of sales of the product under consideration in the importing country, unless it is demonstrated that, although it accounts for a smaller proportion, it is sufficient to allow for a proper comparison.

ARTICLE 7. - NORMAL VALUE IN COUNTRIES WITH CENTRALLY PLANNED ECONOMIES. In the case of imports coming from and originating in countries with centrally planned economies, the normal value shall be determined on the basis of the comparable price in the ordinary course of trade at which the like product is actually sold to 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 investigating authority.

In such cases, in determining the normal value, INCOMEX shall take into account the following criteria:

1. The production processes in the country with a market economy and the country with a centrally planned economy.
2. Scale of production.
3. Quality of the products.

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

ARTICLE 8. - ADJUSTMENTS TO THE EXPORT PRICE. In making a fair comparison between the normal value and the export price, the following, *inter alia*, shall be deducted in the form of adjustments to the export price:

1. The amounts directly connected with the costs incurred by the exporter, taking into account conditions agreed with the buyer for delivery of the product (f.o.b., c.i.f., etc.);
2. The amounts for direct costs in providing guarantees, technical assistance and other after-sales services;
3. The costs of commission payed in connection with the sales under consideration. Wages payed to full-time sales personnel shall also be deducted.

The amount of the adjustments shall be calculated on the basis of relevant information for the period of investigation or in the light of data for the latest financial year available.

ARTICLE 9. - ADJUSTMENTS TO THE NORMAL VALUE. In making a fair comparison between normal value and the export price, adjustments to the normal value will include, *inter alia*:

1. The amount of a reasonable estimate of the value of the difference in the characteristics of the product under consideration;
2. The amount of import duties or indirect taxes payable for a like product and the materials physically incorporated in it, when intended for consumption in the country of origin or of export and not payed or refunded when the product is exported to Colombia;
3. The following sales costs:
 - (a) Costs of transport, insurance, maintenance, unloading and allied costs incurred in forwarding the product under consideration from the exporter's warehouse to the first independent buyer;
 - (b) costs of packaging the product under consideration;
 - (c) costs of sales credits. The volume of the refund shall be calculated in relation to the currency of the invoice;
 - (d) costs of commission paid in connection with sales. Wages paid to full-time personnel engaged in direct sales activities shall also be deducted;
 - (e) direct costs of providing guarantees, technical assistance and other after-sales services.

ARTICLE 10. - MARGIN OF DUMPING. Margin of dumping means the amount by which the export price is less than the normal price. This margin shall be calculated per unit of product imported into the national territory at the dumping price.

The export price and the normal value shall be examined on a comparable basis, taking into account the agreed conditions for delivery of the product, preferably at the ex-factory level and in respect of transactions made at nearly as possible the same time.

Normally, the comparison between the normal value and the export prices during the period of review may be made on the basis of weighted averages. If, during the period of review, the normal value and the export prices vary or exceptional circumstances arise, the margin may be calculated by the weighted average normal value and the various export prices or on a transaction-to-transaction basis.

In determining the margin of dumping, allowance shall be made, in each case, according to the specific circumstances, for the differences affecting comparability and adjustments to the normal price or the export price may be made in accordance with the following criteria and without prejudice to the terms of Articles 8 and 9 of this Decree:

1. Differences in the physical characteristics of the products.
2. Differences in quantity, allowing for quantity discounts freely agreed in the ordinary course of trade during a representative period, and in the production cost of different quantities.
3. Differences in conditions of sale which may include differences in indirect taxes and duties, credit conditions, guarantees, forms of technical assistance, after-sales services, commissions, packaging, transport, maintenance services, loading and related or other costs.
4. Differences in respect of tax charges in cases where a product exported to Colombia has been exempt from import duties or indirect taxes to which the like product and the materials of which it is made are subject when the product is destined for consumption in the country of origin or of export or in cases where such taxes have been refunded.

When a participant in the investigation requests that any such differences to be taken into consideration, he shall furnish evidence that the request is justified.

PARAGRAPH: A margin of dumping of less than 2 per cent of the export price shall be considered *de minimis*.

CHAPTER IV

SUBSIDIES

ARTICLE 11. - CONCEPT. An import is considered as having been subsidized when the production, manufacture, transport or export of the imported good or of its raw materials and inputs has received directly or indirectly any bounty, aid, premium, stimulus or incentive from the Government of the country of origin or of export or from its public or semi-public agencies.

Multiple currency practices in the country of origin or of export, or any form of

income or price support when it confers an advantage, may also be considered a subsidy.

ARTICLE 12. - ELEMENTS FOR DETERMINING THE SUBSIDY. The amount of the subsidy shall be calculated in monetary units or percentages ad valorem per unit of subsidized product imported into the national territory.

The amount of the subsidy shall be established by deducting the following elements from the total subsidy:

1. Any expenditure that has had to be incurred in order to be entitled to the subsidy or benefit from it;
2. Export taxes, duties and other levies to which the export of the product to Colombia has been subjected and which are specifically intended to offset the subsidy.

When a participant in an investigation applies for such deduction, he must supply evidence substantiating the application.

The amount of the subsidy shall be considered *de minimus* if it is less than one per cent ad valorem.

CHAPTER V

INJURY, THREAT OF INJURY, MATERIAL RETARDATION OF THE ESTABLISHMENT OF AN INDUSTRY IN COLOMBIA

ARTICLE 13. - INJURY INVESTIGATION. A determination of injury shall be based on sufficient evidence and shall involve an objective examination of the following factors:

1. Information on the industry of the product concerned considered as a whole:
 - 1.1 Volume of dumped or subsidized imports, in particular to determine, *inter alia*, whether there has been a significant increase in absolute terms or relative to total production or to consumption in the country.

Imports shall be considered *de minimis* if the volume is less than one per cent of the volume of domestic consumption of the product investigated, as well as those imports from a country which account for less than 3 per cent of total imports of such product;

- 1.2 Effects of imports on trends in the domestic industry with respect to factors such as, *inter alia*, prices, output, market share, profits, utilization of installed capacity, inventories, sales, ability to raise capital or investment, employment and wages.
2. Information on the domestic producers affected, considering the effects on, *inter alia*, production, utilization of installed capacity, inventories, sales, market share, prices, growth, profits, return on investment, cash flow, capitalization, employment and wages.
3. Information to determine the causal relationship between the imports and the

alleged injury, particularly where buyers have changed supplier.

No one of the factors in paragraphs 1 and 2 is alone sufficient to give decisive guidance in determining injury.

ARTICLE 14. - EXAMINATION OF THREAT OF INJURY. Threat of injury shall be determined to exist when it is imminent. For this purpose INCOMEX shall consider, in addition to the factors mentioned in the previous article of this Decree, the following, *inter alia*

1. The possibility of a substantial increase in imports, provided the latter are effected at dumped prices or with subsidies, such as the existence of a contract for supply or the awarding of a tender;
2. Increased or surplus installed or utilized capacity in the exporting country.

ARTICLE 15. - EXAMINATION OF MATERIAL RETARDATION OF THE ESTABLISHMENT OF AN INDUSTRY. For the purposes of determining material retardation of the establishment of an industry in Colombia, INCOMEX shall examine *inter alia*, feasibility studies, loans negotiated and contracts for procurement of machinery related to new investment projects or the expansion of existing plant.

ARTICLE 16. - PERIOD OF REVIEW OF THE INJURY. The factors mentioned in Articles 13, 14 and 15 of this Decree shall be analysed:

1. For a period of at least three years, two years preceding the current year and the current year. If the first half of the latter year has not elapsed, the information shall relate to the three preceding years and to the period of the current year;
2. Imports from or originating in more than two countries subject to investigation may be accumulated for the purpose of assessing the volume and the impact on the domestic industry, when they are not subject to provisional or definitive duties, provided that the volume of cumulative imports is less than 3 per cent of total imports and the sum of the imports from the accumulated countries is more than 7 per cent of such imports.

CHAPTER VI

MEASURES

ARTICLE 17. - STATEMENTS OF INTENT. The Trade Practices Committee shall evaluate the cases in which the competent authorities of the country of origin or of export, the producers or the exporters, offer through INCOMEX, at its suggestion or at the initiative of the parties, to eliminate or limit the subsidy, to revise the export prices or to cease exports to Colombia, as appropriate, in such a way as to eliminate the consequent injury.

In dumping investigations, INCOMEX shall only receive statements of intent during the two months following the date of publication of the resolution containing the preliminary determination.

Offers shall not be considered when:

1. They do not include the supply of the information and authorization to carry out investigations which the investigating authority deems necessary to determine that such offers are fulfilled;
2. They offer quantitative restrictions in cases of dumping investigations.

ARTICLE 18. - PROCESSING OF STATEMENTS OF INTENT. In cases where statements of intent are submitted, INCOMEX, shall, in a reasoned resolution, communicate them within 10 working days following the date of submission to the participants in the investigation, granting them a period of five working days to inform INCOMEX in writing of their comments on the content of the statements.

Within a period of 15 days following publication of the resolution communicating the statements of intent, INCOMEX shall convene the Trade Practices Committee to inform it of the terms of the statements and the comments received in that regard. The Committee shall submit a recommendation in respect of the foregoing to the Ministry of Foreign Trade. The Ministry of Foreign Trade shall adopt and publish the decision most appropriate to the interests of the country.

In its resolution accepting the offer, the Ministry may order that anti-dumping or countervailing duties should not be collected, or should be collected in an amount less than the identified margin of dumping or subsidy, or be collected only as from a specified date or up to a specified date. The application of any concessions made in the decision taken shall be conditional on fulfilment of the offers by the parties which made the statements of intent accepted by the Ministry of Foreign Trade.

In the resolutions concerned, the Ministry of Foreign Trade shall also stipulate that, if the authority, producer or exporter which made the offer fails or refuses to provide periodic information relating to the fulfilment of such offer, INCOMEX may order the immediate application of provisional duties using the best information available, without prejudice to a declaration of non-fulfilment through a reasoned resolution.

Where the authority, after receiving statements of intent, determines that there are no grounds for imposing definitive anti-dumping or countervailing duties, the resolution terminating the investigation shall state that the offers accepted previously have lapsed.

ARTICLE 19. - ANTI-DUMPING AND COUNTERVAILING DUTIES. The Ministry of Foreign Trade or INCOMEX, as appropriate, may determine and order the collection of definitive or provisional anti-dumping or countervailing duties on any dumped or subsidized imported product which is proved to be causing or threatening to cause material injury to domestic industry or materially retarding the establishment of an industry in Colombia.

The amount of duties may normally be expressed in one of the following forms or a combination thereof, if necessary: as an ad valorem percentage, or in accordance with a base price.

When no applicable international obligations on the matter exist, anti-dumping or countervailing duties may be determined when the existence of dumping or subsidies has been established, and account shall be taken of whether the injury test would be granted to Colombian exports in the country of export or of origin.

ARTICLE 20. - CALCULATION OF DUTIES. Whenever the information so permits and the characteristics of the investigation so allow, duties shall be calculated in an amount sufficient to eliminate material injury, the threat of material injury or material retardation of the establishment of an industry.

For this purpose, account shall be taken of:

1. The price of the imported product in the domestic market compared with the price of the domestic product.
2. The prices at which the product is sold in the domestic market.
3. The impact of the measures on the domestic market.

Anti-dumping or countervailing duties shall not be imposed in an amount greater than the margin of dumping or the amount of the subsidy.

ARTICLE 21. - PROVISIONAL DUTIES. INCOMEX may, solely to prevent injury being caused during the period of the investigation, by a reasoned resolution only subject to direct revocation, impose provisional duties where, after affording the party being investigated reasonable opportunity to participate in the investigation by replying to the questionnaires issued for the purpose, it makes a preliminary finding of the existence of dumping or a subsidy and of the existence of sufficient proof of consequent injury.

In the case of investigations of imports of products originating in countries with which Colombia has not entered into international commitments on the application of anti-dumping or countervailing duties, INCOMEX may impose provisional duties in the resolution deciding to initiate the investigation, and it will not be necessary for that purpose to have afforded the interested parties the opportunity referred to in the previous paragraph.

The amount of the provisional anti-dumping or countervailing duties shall be stated in the resolution establishing them and shall be paid by all importers on imports of that product which have been found to have been made at dumping or subsidized prices and to be causing injury to an industry in Colombia.

Such payments may be replaced by the furnishing of a security lodged with the corresponding Customs administration, taking into account the time-limit established in the resolution issued by INCOMEX. Securities shall be governed by the Customs provisions.

The resolution shall be published in the Ministry of Foreign Trade Gazette, Chapter INCOMEX, and a copy thereof must immediately be notified in due form as established in Article 38 of this Decree.

ARTICLE 22. - DEFINITIVE DUTIES. When a definitive anti-dumping or countervailing duty is imposed, it shall be levied in the amounts mentioned in the relevant resolution, whoever the importer may be, on imports of such products found to be dumped or subsidized and causing injury to an industry in Colombia.

The Ministry of Foreign Trade, following the opinion of the Trade Practices Committee, shall adopt the decision most appropriate to the interests of the country and may determine that the anti-dumping or countervailing duty be less than the margin of dumping or the amount of the subsidy if such lesser amount is adequate to remove the injury.

ARTICLE 23. - IMPOSITION OF DUTIES ON MASSIVE IMPORTS OR FOR NON-COMPLIANCE. In addition to the cases provided for in the previous article, the Ministry of Foreign Trade may order definitive duties to be imposed as follows:

1. In the case of massive dumped or subsidized imports, as mentioned in Article 2 of this Decree, released for consumption 90 days prior to the date of imposition of the provisional duties but in no case prior to the date of publication of the resolution to initiate an investigation in a dumping case, or prior to the date of the invitation to hold consultations mentioned in Article 35 of this Decree;
2. In the case of non-compliance with the offers in the statement of intent accepted in conformity with Article 18 of this Decree on imports released for consumption during the 90 days prior to the date of establishment of the provisional duties, but in no case prior to such non-compliance.

ARTICLE 24. - ANTI-AVOIDANCE MEASURES. The scope of a definitive duty in force on an imported product may extend to parts or components for assembly or finishing operations in Colombia where it is established that:

1. The product assembled or finished with such parts or components in Colombia is the like product to that subject to definitive duties;
2. The assembly or finishing in Colombia is carried out by a party who is related to the exporter or producer whose exports are subject to definitive duties, or who acts on their behalf;
3. The parts or components have been obtained in the country subject to the duty in force, from the exporter or producer to whom the definitive duty is applied, from suppliers of the exporter or the producer or from a party in the exporting country who acts as supplier on behalf of the exporter or producer;
4. Imports of parts or components and assembly or finishing operations have increased subsequent to the initiation of the investigation which gave rise to the imposition of definitive duties;
5. The total cost of the parts or components is equal to or exceeds 70 per cent of the total cost of all the parts or the components used in the assembly or finishing of a like product;
6. When there is evidence of the dumping of the product produced with such parts, on the basis of a comparison of the price of the product assembled or finished in Colombia and the normal value previously established for a like product when subject to the initial definitive anti-dumping duty;
7. There is evidence that it is necessary to include such parts within the scope of application of resolutions to impose definitive duties in order to avoid injury to the domestic industry for a like product to the product subject to definitive duty.

The authorities may impose provisional duties on parts or components up to the amount of the definitive duties in force on the finished product when there is sufficient evidence of occurrences under subparagraphs 1-6 and final duties when there exists sufficient evidence of occurrences under subparagraphs 1-7.

ARTICLE 25. - EXCESS AMOUNTS AND REFUNDS. There shall be a refund or the security or a reduce amount of the security shall be collected when:

1. The definitive duties are lower than the provisional duties paid or guaranteed, in an amount equivalent to the difference between them;
2. A definitive duty is established for threat of injury or material retardation in the establishment of an industry in Colombia and the injury has not yet occurred, for the total amount of the duty paid or return of the security;
3. Where definitive duties are not established, the security shall be returned or the entire amount paid by way of provisional duty shall be refunded.

The DIAN shall refund excess amounts in accordance with the procedures laid down in the Customs Code for the refund of money to importers or order the return of the security.

ARTICLE 26. - APPLICATION AND DURATION OF ANTI-DUMPING AND COUNTERVAILING DUTIES. An anti-dumping duty or a countervailing duty shall remain in force for a maximum period of five years as long as the causes which gave rise to it persist.

No imported product shall be subject to both anti-dumping and countervailing duties to compensate for the same situation of dumping or subsidization.

The DIAN shall apply the anti-dumping and countervailing duties in accordance with the law and the resolution imposing the duties, as well as the rules for collection, lodging of securities, procedures and other matters relating to tariff charges.

Investigations carried out shall in no case hinder the procedures for customs clearance of the goods into the national territory.

ARTICLE 27. - REVISION OF DUTIES. As from the first year of the imposition of definitive duties and provided the conditions which led to the imposition have changed, INCOMEX may, *ex officio* or upon application by an interested party, order the investigation to be reopened to review the duties.

The resolution ordering the investigation to be reopened shall, for procedural purposes, have the same status as the resolution adopting the preliminary decision. In no case shall the period between the resolution on reopening and the resolution adopting the final determination exceed four months.

Any definitive duties established shall remain in force during the review investigation.

ARTICLE 28. - ADOPTION OF DECISIONS. All decisions taken in the course of investigation shall be based on the best information available.

When, for the purposes of verification of the information duly submitted for the investigation, INCOMEX requires the participation of the complainant or the interested party, it shall first advise them accordingly. If they do not allow the verification to be made, the information shall be regarded as correct, in the absence of convincing evidence to the contrary.

CHAPTER VII

PROCEDURE AND RESPONSIBILITIES

ARTICLE 29. - INITIATION OF THE PROCEDURE. INCOMEX may initiate the procedure referred to in this Decree *ex officio* or upon application by a major proportion of the domestic industry.

ARTICLE 30. - *EX OFFICIO* INVESTIGATION. INCOMEX may carry out an investigation on its own initiative when there is adequate evidence to presume the existence of injury caused by dumped or subsidized imports.

The information on the injury needed to carry out the investigation must be submitted by the domestic producers affected or concerned, in accordance with INCOMEX requirements.

ARTICLE 31. - INITIATION OF THE PROCEDURE UPON APPLICATION BY A MAJOR PROPORTION OF THE DOMESTIC INDUSTRY. INCOMEX may initiate the procedure upon application by domestic producers accounting for a major proportion of the domestic industry who consider themselves injured by imports of like products effected during the 12 months prior to the application, or currently being effected, at dumping or subsidized prices. The application may also be submitted by an association of producers which meets the same requirements.

For the purposes of the investigations referred to in this Decree, imports currently being effected means those taking place under current import registers and those to be effected under current commercial contracts or by successful bidders in tendering procedures, and shipped during the particular period of investigation.

ARTICLE 32. - COMPLAINT REQUIREMENTS. The application referred to in the previous Article must be submitted in writing, in accordance with the manual elaborated by the INCOMEX Trade Practices Sub-Directorate, using the forms and attaching the required documents. This documentation shall be submitted to the INCOMEX Trade Practices Sub-Directorate or regional or section offices.

The application shall also contain at least the following particulars:

1. Identification of complainant;
2. Description of the goods whose import is concerned;
3. Countries of origin or of export;

4. Name and domicile of the importers and exporters, if known;
5. Export prices and normal value in the country of origin or of export;
6. Any encouragement, incentive, premium, subsidy or other help provided to the imported good or its raw materials and inputs in the country of origin or of export, authority or agency providing such support, indicating where appropriate the applicable law and, where possible, the value or amount thereof and its impact on the price of the imported product;
7. Determination of the injury or threat of injury or of material retardation of an industry in Colombia caused by the dumped or subsidized imports, based on *inter alia* indicators of output, sales, utilization of installed capacity and profit trends;
8. Offer to submit the corresponding documents to the authorities for verification of information supplied;
9. Provision of the evidence intended for submission;
10. Elements to determine the causal relationship between the practice and the injury;
11. Identification of the confidential documentation and non-confidential summary or version of that documentation.

ARTICLE 33. - OFFICIAL RECEIPT OF APPLICATION. If INCOMEX, on examination of the application, finds that it meets the requirements of the previous article, it shall notify the complainant within five working days.

If INCOMEX finds it necessary to request additional information for the purposes of official receipt of the application, it shall ask the complainant to provide it. This request shall interrupt the period established in the previous paragraph, which shall start anew when the complainant supplies the information requested. Once the information requested is supplied, INCOMEX shall, within the period mentioned above, proceed to issue the receipt of the application.

If after two months following the request for additional information such information has not been supplied in full, the complainant shall be considered to have withdrawn the application and an order will be issued for it to be filed.

ARTICLE 34. - EVALUATION OF THE APPLICATION FOR THE IMPOSITION OF ANTI-DUMPING DUTIES. INCOMEX shall have a period of 20 working days from the date of dispatch of the notification of receipt to evaluate the application for an investigation to impose anti-dumping duties, and may request and furnish evidence and information *ex officio* or at the request of a party to establish that there are grounds for initiating an investigation.

The grounds for initiating a dumping investigation will depend on:

1. Confirmation that the application is made on behalf of a major proportion of domestic industry;

2. Adequate evidence of the existence of dumping or injury and the causal relationship between these two elements.

ARTICLE 35. - EVALUATION OF AN APPLICATION FOR THE IMPOSITION OF COUNTERVAILING DUTIES. In the case of a subsidy investigation, INCOMEX shall, within five working days following the issue of receipt of the application, afford the authorities of the countries whose products are the subject of investigation an opportunity, within a maximum period of one month, to hold consultations with the aim of clarifying the facts and arriving at a mutually agreed solution between the Columbian authorities and those of the country of origin or of export.

When the period of a month for consultations prior to initiation has elapsed, INCOMEX shall have a period of 20 working days to evaluate the grounds for the application for an investigation to impose countervailing duties with the aim of deciding on initiation. If, as a result of the consultations provided for in the previous paragraph, the solution mentioned therein is reached, INCOMEX shall refrain from initiating an investigation.

The grounds for initiating a subsidy investigation will depend on:

1. Confirmation that the complaint is made on behalf of a major proportion of domestic industry;
2. Adequate evidence of the existence of subsidization, injury and the causal relationship between these two elements.

ARTICLE 36. - CONSULTATIONS. Without prejudice to the provisions of the previous article, an opportunity to hold consultations shall also be afforded throughout the period of investigation. In such cases, the time-limit of one month for holding consultations shall not suspend other periods established for the investigation.

ARTICLE 37. - INITIATION OF THE INVESTIGATION AND IMPOSITION OF PROVISIONAL DUTIES. If, in evaluating the application, INCOMEX finds grounds for initiating an investigation, it shall adopt a resolution to that effect, which shall be published within the period specified in Articles 34 and 35 of this Decree in the Ministry of Foreign Trade Gazette, Chapter INCOMEX. If INCOMEX does not find grounds for initiating an investigation, it shall adopt a reasoned resolution to that effect within the same time-limits.

When an investigation is ordered of imports of products originating in countries with which Colombia has not entered into international commitments on the application of anti-dumping or countervailing duties, INCOMEX, pursuant to Article 21 of this Decree, may impose provisional duties in the resolution deciding on the initiation of the investigation. In this case, the INCOMEX questionnaires will be dispatched after the provisional duties are imposed.

ARTICLE 38. - DISPATCH AND RECEIPT OF QUESTIONNAIRES. Within seven working days following the date of publication of the resolution ordering initiation of the investigation, INCOMEX shall forward a copy of the resolution and the forms established for the purpose of requesting information on the case to the interested parties connected with the application, at the address indicated thereon, and to the diplomatic or consular representatives of the country of origin or of export. Other interested parties shall be convened by a notice published only once in a national newspaper with a broad

circulation. INCOMEX shall observe the same time-limits for the dispatch of questionnaires subsequent to the preliminary determination, where necessary.

The interested parties shall return the forms, duly completed, within 40 calendar days following the date of their dispatch, without prejudice to the periods provided for in trade agreements entered into by the country. This period may be extended, in a reasoned resolution, by up to 10 further calendar days in the event of a duly justified request by the interested parties.

Replies sent by producers or exporters abroad shall be submitted in Spanish, or in an official translation, as shall the documents intended to demonstrate the claims made by each interested party in the investigation.

ARTICLE 39. - PRELIMINARY DETERMINATION. Within a period of 65 calendar days following the date of initiation of the investigation, INCOMEX shall, in a reasoned resolution, state the preliminary decisions of the investigation and, where appropriate, it may order the imposition of provisional duties. In no case may the preliminary determination be adopted sooner than 60 calendar days following the publication of the resolution ordering the initiation, except as provided for in the second paragraph of Article 37 of this Decree.

Where special circumstances so allow, INCOMEX may, *ex officio* or upon application by an interested party, extend the period indicated for the preliminary determination by up to one month.

PARAGRAPH: The documentation and information received 15 days before the maximum time-limit for the adoption of the preliminary determination may not be considered in the preliminary determination but will in any event be taken into account for the conclusion of the investigation.

ARTICLE 40. - JOINT HEARINGS OF INTERESTED PARTIES. Within 15 calendar days following publication of the preliminary determination, the interested parties in the investigation and in general any persons who have shown that they have a legitimate interest in the investigation may apply for the holding of joint hearings of interested parties representing different interests.

INCOMEX has five working days to convene the meeting. The meeting shall be held within one month from the date upon which the application is submitted.

ARTICLE 41. - CONCLUSION OF THE INVESTIGATION. After the interested parties in the investigation have been afforded an opportunity to put forward their arguments, and on the basis of the available evidence and information, INCOMEX shall convene the Trade Practices Committee to report on the findings of the investigation, within a period of three months from the date of publication of the resolution containing the preliminary determination, in order for the Committee to form an opinion. The period indicated may be extended by up to one month when INCOMEX considers that special circumstances so permit.

Once the Committee's opinion has been given, the Ministry of Foreign Trade shall, within the following month, adopt the appropriate decision in a reasoned resolution which shall be communicated to the interested parties in the form established in Article 38

of this Decree.

The investigation may be deemed concluded at any time, *inter alia*, when the margin of dumping, the amount of the subsidy or the amount of imports is *de minimis*.

ARTICLE 42. - PERIOD FOR THE INVESTIGATION. To carry out and complete investigation, the authorities have a maximum period of eight months from the date of publication of the resolution ordering initiation, including extensions.

Within that time-limit and whenever it deems it desirable, INCOMEX may request and furnish evidence and information *ex officio* or upon application by any person who shows an interest in the investigation.

ARTICLE 43. - CONFIDENTIALITY OF DOCUMENTS. When initiating the investigation, INCOMEX shall open a separate file, in which shall be placed the documents which the authorities, the complainant or the interested parties provide on a confidential basis. Such documents shall be treated as confidential in accordance with the provisions of the Political Constitution and may be inspected only by the authorities.

Persons who provide confidential documents shall supply non-confidential summaries. If INCOMEX considers that the documents provided as confidential are not of such a nature, it shall request the persons providing them to inform INCOMEX in writing that they waive such confidentiality or to state the reasons why they refrain from doing so.

The confidential nature of a document cannot be adduced as grounds for refusing to provide it to the authorities requesting it in the proper exercise of their functions. The authorities are responsible for ensuring the confidentiality of such documents as they receive in the course of the proceedings mentioned in this Decree.

PARAGRAPH: When, pursuant to this Article, documents are provided as confidential and the non-confidential summaries are not supplied, or the confidentiality is not waived when INCOMEX so requests, or the reasons for refraining from doing so are not stated, or when the reasons are not duly justified, the documentation provided as confidential may be disregarded in the investigation.

ARTICLE 44. - ACCESS TO THE RECORD. Any person may have access to the non-confidential documents referred to in this Decree and may request the issue of photocopies, as provided for in the Administrative Litigation Code.

ARTICLE 45. - PROCEDURES AND REQUIREMENTS. INCOMEX shall establish the procedures, manual for applications, forms and other requirements necessary for the implementation of this Decree.

ARTICLE 46. - RESPONSIBILITIES. For the purposes of this Decree, the Ministry of Foreign Trade, the Trade Practices Committee referred to in Article 31 of Decree 2350 of 1991 and INCOMEX shall have the following functions:

1. Ministry of Foreign Trade: To adopt final decisions and decide on statements of intent submitted;
2. Trade Practices Committee: To submit its opinion to the Ministry of Foreign Trade on statements of intent and results of investigations and authorize extensions of the

time-limits for investigation when there are justifiable grounds for so doing:

3. INCOMEX: To carry out the formal evaluation of applications submitted in accordance with Article 32, to evaluate the grounds for initiating an investigation and give a decision thereon, to communicate by a reasoned resolution the result of the preliminary evaluation, to impose, when appropriate, the provisional duties referred to in Article 21, to communicate by resolutions the terms of statements of intent in accordance with Article 18, and for each case to prepare a study including the results of the investigation, without prejudice to its inherent powers as investigating authority.

ARTICLE 47. - The Trade Practices Committee referred to in Article 31 of Decree 2350 of 1991 shall hear the opinion of the Superintendent of Industry and Trade or his Deputy before making the recommendation referred to in Articles 18 and 22 to the Minister of Foreign Trade.

ARTICLE 48. - APPLICATION. This Decree shall apply without prejudice to the provisions of international treaties, conventions and agreements concluded by Colombia that specifically regulate this matter.

ARTICLE 49. - ENTRY INTO FORCE. This Decree shall enter into force on the date of its publication in the Official Gazette and abrogates any provisions that conflict with it, in particular Decree 150 of 1993.

FOR PUBLICATION AND IMPLEMENTATION.

Done at Santafé de Bogotá, on 10 February 1995.

MAZUERA GOMEZ

Foreign Trade

(Signed) DANIEL

Minister of