

WORLD TRADE ORGANIZATION

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

Original: Spanish

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

ARGENTINA

Supplement

The following communication, dated 18 October 2001, has been received from the Permanent Mission of Argentina.

Pursuant to Article 18.5 of the Agreement on Implementation of Article VI of the GATT 1994 and Article 25.12 of the Agreement on Subsidies and Countervailing Measures, I have the pleasure to notify the Committee on Anti-Dumping Practices and the Committee on Subsidies and Countervailing Measures of Decree No. 1088 of 28 August 2001 which will come into force on 1 January 2002 and amends Regulatory Decree No. 1326 of 10 November 1998.

FOREIGN TRADE

Decree 1088/2001

Anti-dumping and anti-subsidy regimes in Law No. 24,425. Speeding up of procedures for investigations into unfair trade practices conducted in accordance with current regulations. Definitions. Investigation. Application for initiation and conduct. Preliminary and final determinations. Undertakings. Retroactivity. Collection of duties. Duration and review of measures and undertakings. Small and Medium-Sized Enterprises - SMEs. Circumvention. General provisions. Validity. Scope of Decree No. 1326/98.

Buenos Aires, 28 August 2001

HAVING REGARD TO Law No. 24,425 and Regulatory Decree No. 1326 of 10 November 1998, and

WHEREAS:

The Final Act Embodying the Results of the Uruguay Round of Multilateral Trade Negotiations, the Ministerial Decisions, Declarations and Understandings and the Marrakesh Agreement Establishing the WORLD TRADE ORGANIZATION (WTO) were approved under Law No. 24,425;

Annex 1A of the above-mentioned Marrakesh Agreement Establishing the World Trade Organization, approved under Law No. 24,425, contains the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (GATT) and the Agreement on Subsidies and Countervailing Measures;

The Agreements referred to in the previous paragraph call for their provisions to be applied in respect of reviews of investigations initiated under Law No. 24,425, Regulatory Decree No. 2121 of 30 November 1994 and Decree No. 1326 of 10 November 1998;

Decree No. 1326 of 10 November 1998 established and put into effect rules and regulations for the effective implementation of Law No. 24,425;

Procedures for investigations into unfair trade practices conducted in accordance with current regulations should be speeded up;

Accordingly, the date of entry into force of this regulation should be established and the cases in which Decree No. 1326/98 would remain in force defined;

The GENERAL DIRECTORATE FOR LEGAL AFFAIRS of the MINISTRY OF THE ECONOMY has taken appropriate action within its sphere of competence;

The NATIONAL EXECUTIVE is competent to enact this Act by virtue of the provisions of Article 99, paragraph 2, of the NATIONAL CONSTITUTION;

Wherefore,

THE PRESIDENT OF THE ARGENTINE NATION
DECREES:

TITLE I - DEFINITIONS

Article 1 - The implementing authorities for this Decree, under the powers assigned to them therein, shall be the following:

- (a) The MINISTRY OF THE ECONOMY;
- (b) the SECRETARIAT OF TRADE of the MINISTRY OF THE ECONOMY;
- (c) the UNDERSECRETARIAT FOR FOREIGN TRADE MANAGEMENT, a unit of the SECRETARIAT OF TRADE of the MINISTRY OF THE ECONOMY; and
- (d) the NATIONAL FOREIGN TRADE COMMISSION, a decentralized agency of the SECRETARIAT OF TRADE of the MINISTRY OF THE ECONOMY.

Article 2 - For the purposes of this Decree, the following meanings shall apply:

- (a) "Anti-Dumping Agreement", the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (GATT) 1994, approved by Law No. 24,425;
- (b) "Agreement on Subsidies", the Agreement on Subsidies and Countervailing Measures of the General Agreement on Tariffs and Trade (GATT) 1994, approved by Law No. 24,425,
- (c) "the Ministry", the MINISTRY OF THE ECONOMY;
- (d) "the Secretariat", the SECRETARIAT OF TRADE;
- (e) "the Undersecretariat", the UNDERSECRETARIAT FOR FOREIGN TRADE MANAGEMENT;
- (f) "the Commission", the NATIONAL FOREIGN TRADE COMMISSION;
- (g) "dumping", a product is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country;
- (h) "subsidy", a subsidy is a benefit conferred by a foreign government through its public bodies or a private body, either directly or indirectly and specifically destined for one or several given domestic industry(ies) in order to strengthen its/their international competitive position;

- (i) "injury", shall be taken to mean material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry;
- (j) "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.

TITLE II - INVESTIGATION

CHAPTER 1 - APPLICATION FOR INITIATION OF THE INVESTIGATION

Article 3 - The application for initiation of a dumping or subsidy investigation shall be submitted by or on behalf of the domestic industry which considers itself to be affected by the alleged dumping or subsidization.

The application shall be submitted in accordance with the guidelines, requirements and formalities established for that purpose by the Secretariat, as well as those established in Article 5 of the Anti-Dumping Agreement and Article 11 of the Agreement on Subsidies, and shall include evidence which can reasonably be expected to be in the possession of the applicants(s) of the following:

- (a) Dumping or subsidization;
- (b) injury; and
- (c) a causal link between the two.

The applicant(s) shall likewise produce reliable evidence of the representativeness to which it/they lay(s) claim, in accordance with Article 5 of the Anti-Dumping Agreement and Article 11 of the Agreement on Subsidies, supported where possible by certification by the corresponding association, chamber, federation or business entity representing it/them, of its/their percentage share of the domestic industry to which it/they belong(s).

Prior to submission of the application, the interested parties may request advice on the formalities required from the service determined for that purpose by the Undersecretariat as well as from the Commission.

Article 4 - If no formal errors or omissions are found in the application, or if such as are found are remedied within the time-limit of FIVE (5) working days, the Undersecretariat shall notify its acceptance of the application, with a copy to the Commission, and inform the applicant(s).

Article 5 - The Undersecretariat shall analyse the evidence provided in the application and check whether it complies with the requirements set forth in Article 3 above, in which case it shall, within TWENTY (20) days of the notification of acceptance of the application, submit its report recommending the initiation of the investigation to the Secretariat. The latter shall, within FIVE (5) days, declare the initiation of the investigation. When making its recommendation, the Undersecretariat shall assess other circumstances pertaining to general foreign trade policy and the public interest, substantiating its assessment in each instance.

Article 6 - The resolution to initiate an investigation shall contain the following necessary information:

- (a) The proper identification of the product under investigation;
- (b) the origin(s) of the product;
- (c) the existence of a like domestic product;
- (d) the period investigated pursuant to Article 12 below;
- (e) the basis of the allegation of dumping set out in the application or a description of the subsidization practice to be investigated,
- (f) a summary of the factors on which the allegation of injury is based;
- (g) the causal link;
- (h) the date on which the decision in question is to enter into force;
- (i) the invitation to all parties which demonstrate a legitimate interest in the investigation to submit all of the evidence they feel is relevant;
- (j) the addresses to which such submissions should be sent;
- (k) the corresponding instructions to the DIRECTORATE-GENERAL OF CUSTOMS; and
- (l) other requirements as set out in Article 5 of the Anti-Dumping Agreement and Article 11 of the Agreement on Subsidies.

Article 7 - In the event of a decision that an investigation would not be appropriate, the Secretariat shall inform the applicant(s) of this decision and of the factual and legal basis for it.

Article 8 - In the case of applications for anti-dumping investigations, the Undersecretariat shall inform the representative of the government(s) of the exporting country(ies) involved of the Secretariat's decision to initiate an investigation. In the case of an application for a subsidy investigation, following receipt of the application and before proceeding to initiate the investigation, the Undersecretariat shall notify the government of the country of origin or the exporting country concerned, as provided in Article 13 of the Agreement on Subsidies.

Article 9 - The Undersecretariat shall, as early as possible, notify the decision to initiate an investigation to the applicant and other parties whose interest is known from the background information in the files, including producers, exporters and importers of the product under investigation.

With due regard for the protection of confidential information, it shall provide to the known exporters and authorities of the exporting country the full text of the non-confidential version of the application submitted in accordance with Article 3 of this Decree and Law No. 24,425, which shall also be made available to the other interested parties upon request. Where the number of exporters involved is particularly high, the full text of the application shall only be provided to the authorities of the exporting country.

Article 10 - The applicant may, prior to the initiation of the investigation, communicate its decision not to maintain the application submitted, in which case it shall be considered to have been withdrawn, pursuant to Article 67 of the Regulations on Administrative Procedures, Decree 1759/72 T.O. 1991.

Article 11 - The Secretariat may initiate the investigation ex officio when it has sufficient evidence, pursuant to the provisions of the Anti-Dumping Agreement or the Agreement on Subsidies, as the case may be, and this Decree, to determine the existence of dumping or subsidization, injury and a causal link between the two. Prior to such a decision, it shall seek the report referred to in Article 5 above from the Undersecretariat.

CHAPTER II - CONDUCT OF THE INVESTIGATION

Article 12 - The period for compiling data for the determination of dumping or subsidization shall correspond to the TWELVE (12) months preceeding the month in which the investigation is initiated. In the event of a shorter period of time being considered appropriate for the analysis, the above-mentioned time-limit may be reduced to a minimum of SIX (6) months. The period for compiling data for the determination of injury shall correspond to THREE (3) full years plus all months of the current year preceding the month in which the investigation is initiated. All of the above shall be without prejudice to the possibility for the Undersecretariat and the Commission to request information relating to a longer or shorter period of time, according to the particular circumstances of each case.

Article 13 - When a decision has been taken to initiate an investigation and at any stage thereof, the Undersecretariat and the Commission may request any information required for the conduct of the investigation by sending questionnaires to the producers, exporters, importers, users and/or consumers, who shall provide the evidence that these bodies intend to rely upon.

The completed questionnaires, together with supporting documentation, shall be returned to the Undersecretariat and/or Commission within THIRTY (30) days of their date of receipt by the interested party.

When there is no reliable record of the date of receipt of the questionnaires, they shall be considered to have been received one week after the date on which they were dispatched to the addressee or transmitted to the competent diplomatic representative of the exporting country or, in the case of a separate customs territory, to an official representative of the exporting territory.

At the request of a party, the Undersecretariat and/or the Commission may grant extensions to the time-limit for the presentation of information, taking into account the time-frame for the investigation and provided that the party adequately substantiates the specific circumstances constituting grounds for the extension.

When questionnaires are transmitted to interested parties, it shall be expressly placed on record that, in the event of no replies or partial replies being received or replies not providing the information required, the implementing authority shall use the best information available. The provisions of Law No. 24,425 and this Decree shall apply in respect of the term "best information available".

Article 14 - When there is a large number of applicants, exporters or importers, the investigation may be limited to a representative number of interested parties by using samples which are statistically valid on the basis of the information available at the time of selection.

Notwithstanding the above, the margin of dumping shall be determined for any exporter not initially selected who submits the necessary information within the time-limits established in this Decree.

Article 15 - Upon receipt of the questionnaires, the Undersecretariat and the Commission shall review them and, where required, request that any necessary clarifications be provided within a maximum of TEN (10) days.

Such clarifications and/or corrections, as well as any evidence received after the time-limit and completed questionnaires returned within an extension period which are unable to be considered for the preliminary determination may be considered, where appropriate, subsequent to such determination.

Article 16 - The interested parties may furnish evidence for the investigation in relation to dumping or subsidization not later than SIXTY (60) days before the final determination by the Undersecretariat and in relation to injury and causality not later than SIXTY (60) days before the final determination by the Commission. Once the period for presenting evidence has been officially declared as over and following the hearings referred to in Article 17 of this Decree, the Undersecretariat and the Commission shall notify the essential facts under consideration that form the basis for the decision on whether or not to apply final measures. These shall be made available to the parties for FIVE (5) working days to allow them to defend their interests.

The time-limit for presenting the closing arguments shall be FIVE (5) working days as from the working day following the time-limit mentioned in the above paragraph. Subsequent statements shall not be taken into consideration.

Once the time-limit for presenting the closing arguments has expired, the preliminary investigation shall be concluded.

Article 17 - After each preliminary determination and prior to the final determinations on dumping or subsidization and injury and causality, the Commission and the Undersecretariat shall convene a public hearing to enable the interested parties to state their positions, request clarification and answer the questions posed by the implementing authority.

In exceptional cases, the Undersecretariat or the Commission may convene a closed hearing, in which case they shall state the grounds for such a hearing. In the case of the Commission, such a decision shall be taken unanimously by its board of directors.

The Undersecretariat and the Commission, within the sphere of their respective fields of competence, shall decide upon the procedure and time-limits for the hearing, as well as the deadlines by which the parties must provide their accreditation and indicate their willingness to participate.

Article 18 - The Undersecretariat and the Commission may, within the limits of their respective areas of responsibility and once a decision has been taken to initiate the investigation, carry out on-the-spot investigations in the country or abroad in order to verify the information provided by a party.

The Undersecretariat and the Commission, for the purposes of on-the-spot investigations, shall give notice of no less than TEN (10) days to the party concerned, indicating the general nature of the information to be verified as well as whether additional information will need to be provided.

Once the on-the-spot investigation has been concluded, an official record of the action taken shall be drawn up and included in the files. The record shall be signed by the party under investigation or its legal representative and the official(s) who carried out the investigation, and a copy shall be provided, upon request, to the party concerned, which shall have FIVE (5) days to present any supplementary information which may have been requested.

If the party under investigation claims that specific information is of a confidential nature, the official in charge of the procedure shall take a decision on confidential treatment on an "ad referendum" basis with respect to the declaration to be made subsequently by the competent authority. If the request for confidential treatment is not accepted, the party under investigation may withdraw the information concerned.

Article 19 - The parties may request confidential treatment of information. The Undersecretariat and the Commission shall rule within the sphere of their respective fields of competence and within a maximum of FIVE (5) working days from the time when all of the conditions for a thorough analysis of the request have been met. Such conditions shall include providing the grounds for the request, together with non-confidential summaries of the information requested or an explanation of the reasons which preclude presentation of such summaries.

When the Undersecretariat or the Commission reaches a decision in favour of confidentiality of information, the relevant pages shall be extracted from the records and access to them shall be limited, exclusively, to the officials assigned to the investigation.

When no satisfactory summary is provided or no convincing cause shown for the inability to provide such a summary, the information in question shall be disregarded and placed at the disposal of the interested party.

Article 20 - In cases where any interested party refuses access to, or otherwise does not provide the necessary information within the time-limits established in this Decree, or significantly impedes the investigation, preliminary or final determinations, either affirmative or negative, may be made on the basis of the facts available. Where it is found that an interested party has supplied false or misleading information, the information shall be disregarded and use may be made of facts available.

The outcome of cases where an interested party does not cooperate with the investigation at all or does not do so fully could prove less favourable to that party than if it had cooperated.

Information submitted by an interested party which is not ideal in all respects should nevertheless not be disregarded, provided that any deficiencies are not such as to prevent reasonably accurate findings and that the information has been submitted within the time-limits established in this Decree and is verifiable and that the party has acted to the best of its ability, pursuant to Law No. 24,425.

If information is not used, the supplying parties shall be informed of the reasons therefor.

CHAPTER III - PRELIMINARY DETERMINATIONS

Article 21 - The Undersecretariat has up to SIXTY (60) days from the initiation of the investigation to make a preliminary determination of dumping or subsidization on the basis of the evidence available at this stage. If the determination is affirmative, it shall submit a copy of its report to the Commission.

If the Undersecretariat makes a determination of absence of dumping or subsidization, it shall inform the Secretariat which, should it consider it appropriate, may decide to close the investigation and file the papers.

Article 22 - The Commission, within a maximum of SIXTY FIVE (65) days of deciding to initiate the investigation, shall make a preliminary determination of injury to the domestic industry caused by the imports under investigation on the basis of the evidence available at this stage and the causality report. It shall likewise propose the appropriate provisional measures to alleviate the injury, stating the methodology used for their calculation. This report shall be submitted to the Undersecretariat.

In the event of a negative determination by the Commission, the Undersecretariat, upon receipt of the notification thereof, shall submit the papers to the Secretariat for the latter, should it consider it appropriate, to declare the investigation terminated and file the papers.

Article 23 - The Undersecretariat, within FIVE (5) days of receipt of the Commission report, shall submit to the Secretariat its recommendation on whether or not to apply provisional duties, taking into consideration all other circumstances pertaining to general foreign trade policy and the public interest, and substantiating its assessment in each instance.

The Secretariat, within TEN (10) days, shall make its recommendation to the Ministry of the Economy which shall then decide within TEN (10) days whether or not it is appropriate to adopt provisional measures.

If the Undersecretariat or the Commission lack sufficient evidence to announce a decision at this stage of the investigation, the investigation shall continue until a final determination has been reached, and the applicant and other interested parties shall be duly notified.

Article 24 - The decision to impose provisional measures shall include the following:

- (a) The names of the producers/exporters or, if this is impracticable, of the supplier countries concerned;
- (b) a product description for customs purposes;
- (c) the established margins of dumping or the established amount of the subsidy;
- (d) considerations relating to the determination of the existence of injury and causal link;
- (e) the main grounds on which the preliminary determination is based;
- (f) the method of quantifying the provisional measures;
- (g) the relevant instructions to the DIRECTORATE-GENERAL OF CUSTOMS; and

- (h) the date of its entry into force and other elements established in the existing regulations.

Article 25 - The Undersecretariat shall inform all interested parties of the adoption of provisional measures within a maximum of FIVE (5) working days of the publication of the decision in the Official Journal.

Article 26 - When the Ministry of the Economy decides not to apply provisional measures, pursuant to Article 23 of this Decree, the applicant and other interested parties shall be notified thereof, setting out the factual and legal reasons on which the Authority based its findings.

CHAPTER IV - FINAL DETERMINATIONS

Article 27 - The Undersecretariat, within ONE HUNDRED AND EIGHTY (180) days of the initiation of the investigation, shall make a final determination of dumping or subsidization, inform the Secretariat of the existence of dumping or subsidization and communicate its findings to the Commission.

When reasons of technical complexity require a more thorough analysis, the Undersecretariat may ask the Secretariat to extend the time-limit mentioned in the above paragraph for a period of not more than FORTY (40) days.

If the final determination of the Undersecretariat is negative, the Secretariat, should it consider it appropriate, may decide to close the investigation and file the papers.

Article 28 - The Commission, within TWO HUNDRED (200) days of the initiation of the investigation, shall make its final determination of injury to the domestic industry caused by the imports under investigation and a causal link between the latter and the dumping or subsidization, and submit a copy of its report to the Undersecretariat. Likewise, together with the report on injury and causality, it shall propose the appropriate final measures to alleviate the injury, stating the methodology used for their calculation.

When reasons of technical complexity require a more thorough analysis, the Commission may ask the Secretariat to extend the time-limit mentioned in the above paragraph for a period of up to FORTY (40) days.

When the Undersecretariat makes use of the additional period provided for in Article 27 of this Decree, the Commission shall make its final determination of injury and causality within TWO HUNDRED AND FORTY (240) days.

The Undersecretariat, upon receipt of the Commission report and within a period of TEN (10) days, shall submit to the Secretariat a report recommending whether or not anti-dumping or countervailing duties should be applied, taking account of the other circumstances pertaining to general foreign trade policy and the public interest and substantiating its assessment in each instance.

The Secretariat of Trade, within TEN (10) days, shall reach a conclusion as to whether or not it is appropriate to apply a final measure and refer the matter to the Ministry of the Economy for its consideration.

The Ministry of the Economy, within TEN (10) days, shall rule on the subject and, in consequence, issue the final decision as to whether or not to apply anti-dumping or countervailing duties.

Article 29 - The decisions imposing final measures shall set out all relevant information on the issues of fact and law and the reasons which have led to the imposition of such measures, following the guidelines established in Article 24 above. The decision shall also specify whether the security posted while the provisional duties were in force should be executed or released.

Article 30 - The Undersecretariat shall inform all interested parties of whether or not final measures are to be applied within FIVE (5) working days of the publication of the decision in the Official Journal.

Article 31 - When provisional measures have been established for a period of over FOUR (4) months as a result of the existence of some of the circumstances provided for in Article 7.4 of the Anti-Dumping Agreement, the time-limits for the final determinations of the Undersecretariat and the Commission may be extended to TWO HUNDRED AND FORTY (240) and TWO HUNDRED AND SIXTY (260) days, respectively. In this case, the Undersecretariat, and therefore the Commission, shall not make use of the additional period established in Article 27 of this Decree.

The investigation shall normally be completed within TWELVE (12) months of its date of initiation.

CHAPTER V - UNDERTAKINGS

Article 32 - The Ministry of the Economy may suspend or terminate the investigations without imposing provisional or final measures if offers of voluntary undertakings presented in accordance with Articles 8.4 of the Anti-Dumping Agreement and 18.4 of the Agreement on Subsidies and this Decree are accepted.

Article 33 - Once an affirmative preliminary determination of dumping or subsidization, injury and causal link has been made, the undertaking shall be presented to the Undersecretariat which shall submit a copy of this presentation to the Commission.

The Undersecretariat and the Commission shall have THIRTY (30) days from the date of the presentation referred to in the preceding paragraph to produce their respective reports.

The Undersecretariat, upon receipt of the Commission report and within FIVE (5) days, shall make its recommendation on whether or not the undertaking should be accepted, taking into consideration the other circumstances pertaining to general foreign trade policy and the public interest, and substantiating its assessment in each case.

The Secretariat shall transmit its findings in respect of the reports of the Undersecretariat and the Commission to the Minister of the Economy within TEN (10) days of their receipt.

The Ministry of the Economy shall have TEN (10) days to decide whether or not to accept the undertaking and to issue the corresponding resolution, during which period the procedural time-limits governing the investigation shall remain suspended for the enterprises offering the undertaking.

The Undersecretariat and the Commission may request, if need be, any necessary clarifications within FIVE (5) days of the receipt of the undertaking. These shall be provided within TEN (10) days.

Article 34 - The decision to suspend or conclude an investigation on account of the acceptance of an undertaking shall include all relevant information concerning matters of fact and law and the reasons which led to such acceptance.

Article 35 - The Undersecretariat shall notify the decision to accept or reject the undertaking as early as possible to the exporter who offered the undertaking and within a maximum of FIVE (5) working days of its publication in the Official Journal.

Article 36 - Undertakings may be proposed by the Secretariat, at the suggestion of the Undersecretariat or Commission, but no exporter shall be forced to enter into them. Likewise, according to the conclusions drawn by the Undersecretariat and Commission, exporters may be asked to amend their proposals so that their feasibility may be examined.

CHAPTER VI - RETROACTIVITY

Article 37 - Provisional and final measures shall only be applied after the decision taken pursuant to this Decree enters into force, subject to the exceptions set out in this Article.

When provisional measures have been applied and the Commission has reached a final affirmative determination of injury and causality and the Undersecretariat has done likewise for dumping or subsidization, the latter shall decide what proportion of the provisional duty is to be definitively collected.

This decision shall not apply when the Commission has made a final determination of threat of injury and causality, except where it is found that the threat of injury would, in the absence of provisional measures, have developed into injury.

In all other cases in which the Commission has made a final determination on the threat of injury and causality, the security posted shall be released and final measures imposed only as of the date on which the determination is made.

Article 38 - If the final measure is higher than the provisional one, the difference shall not be collected. If the final measure is lower than the provisional one, the difference shall be reimbursed or the duty recalculated. When a final determination is negative, the provisional measure shall not be confirmed.

Article 39 - A definitive duty may be levied on products which were entered for consumption not more than NINETY (90) days prior to the date of application of provisional measures, but not prior to the initiation of the investigation, when:

- (a) The Undersecretariat determines that there is a history of dumping or that the importer was, or should have been, aware that the exporter practises dumping and that such dumping would cause injury; and
- (b) the Commission determines that, in addition to the level of imports which caused injury during the investigation period, there is a further substantial rise in imports which, in the light of the timing, volume and other circumstances, such as a rapid build-up of inventories of the imported product, is likely to undermine the remedial effect of the measure to be applied.

These determinations shall be made together with the final determinations, as stipulated in Chapter IV of Title II of this Decree.

The report by the Undersecretariat recommending whether or not final measures should be applied shall also include a recommendation as to whether duties be applied retroactively.

The Secretariat shall reach a conclusion on whether or not the retroactive application of a final measure is appropriate, referring the matter to the Ministry of the Economy for its consideration. The latter shall reach a conclusion on the subject and shall in consequence issue a decision establishing or rejecting the retroactive application of anti-dumping or countervailing duties.

CHAPTER VII - COLLECTION OF DUTIES

Article 40 - For the purposes of this Chapter, the terms "anti-dumping duty" and "countervailing duty" shall signify an amount in legal tender equal to the margin of dumping or the amount of the subsidy, respectively, determined as preliminary or final measures and applied for the purpose of offsetting dumping or subsidization.

Article 41 - An anti-dumping or countervailing duty, whether provisional or definitive, may be *ad valorem* or specific, fixed or variable or a combination of the two, or determined by establishing minimum f.o.b. export values.

Article 42 - The amount of the anti-dumping or countervailing duty shall be established on a retrospective basis and shall not exceed the margin of dumping or the amount of the subsidy determined as a result of an investigation.

Article 43 - Anti-dumping and countervailing duties shall apply to the imported product concerned in addition to all other existing charges thereon, which shall remain in force under their respective legal regimes. They shall also be governed subsidiarily by the rules applicable to import duties.

Article 44 - No product originating in the same country and imported into the ARGENTINE REPUBLIC may be subjected simultaneously to anti-dumping and countervailing duties designed to remedy the same situation caused by dumping or export subsidies.

Article 45 - The DIRECTORATE-GENERAL OF CUSTOMS, under the FEDERAL PUBLIC REVENUE ADMINISTRATION, a self-governing entity within the Ministry of the Economy, shall, upon publication of the decision adopted by the Minister of the Economy in the Official Journal, issue the necessary instructions for the collection of the corresponding anti-dumping or countervailing duty, in conformity with the decision taken in each case by the implementing authority.

Article 46 - The DIRECTORATE-GENERAL OF CUSTOMS, under the FEDERAL PUBLIC REVENUE ADMINISTRATION, a self-governing entity within the Ministry of the Economy, shall, on a monthly basis, inform the Undersecretariat of the volume and values of imports subject to anti-dumping and countervailing duties, broken down by origin and the amounts of the duties collected, as well as the names of the importers and exporters.

Article 47 - Pursuant to Article 42 above, in order to establish the actual margin of dumping or amount of subsidization and at the request of the party concerned, any decision imposing a final measure may be reviewed provided that ONE (1) year has elapsed since the establishment of the final measure or since the most recent review.

To this end, the Secretariat shall publish for ONE (1) day in the Official Journal the date as from which the request for an annual review may be made, giving TWO (2) months' advance notice and notifying the interested parties.

The request for a review shall be presented to the Undersecretariat within the first FIFTEEN (15) days of the anniversary month of each annual period of the entry into force of the established measure and shall include a detailed statement of the reasons for the request.

The request for a review shall be made to the Undersecretariat, which shall distribute questionnaires for completion by the importers and/or exporters involved for approval to this end.

The Undersecretariat shall have TWO HUNDRED AND SEVENTY (270) days as from the presentation of the request for a review to reach a determination on the margin of dumping or the subsidization corresponding to the period under review and shall submit its findings to the Secretariat.

The Secretariat, within TEN (10) days, shall transmit its decision to the Ministry of the Economy for the latter to issue, within TEN (10) days, a determination applying anti-dumping or countervailing duties according to the level of dumping or subsidization confirmed by the Undersecretariat.

Article 48 - If none of the interested parties requests an annual review within the prescribed time-limits, the established measure shall be considered final for that period and maintained for the following annual period.

Article 49 - In the cases and circumstances provided for in Article 9.5 on the Anti-Dumping Agreement, any exporter or producer in the exporting country which has exported to the customs territory for ONE (1) year as from the date of entry into force of the anti-dumping measure may request the determination of an individual margin of dumping, presenting the necessary information for that purpose to the Undersecretariat.

The Undersecretariat shall report to the Secretariat within NINETY (90) days of receipt of the request and the latter shall submit its findings to the Ministry of the Economy within TEN (10) days of receipt of this report. The Ministry of the Economy shall then take a decision within the following TEN (10) days. The investigation procedure provided for in this Decree shall apply in this connection.

CHAPTER VIII - DURATION AND REVIEW OF MEASURES AND UNDERTAKINGS

Article 50 - Any definitive anti-dumping or countervailing duty shall remain in force only as long as and to the extent necessary to counteract dumping or subsidization which is causing injury. However, it may not continue in force longer than FIVE (5) years from the date of its imposition or from the date of the most recent review if that review covered all aspects of the dumping or subsidization, injury and causal link.

CHANGED CIRCUMSTANCES REVIEW

Article 51 - Any decision imposing a final measure, or any decision approving an undertaking, may be reviewed provided that one (1) year has elapsed since the establishment of the final measure, or since the most recent review or the approval of the undertaking.

The review may cover the need for continued imposition of the duty to offset dumping or subsidization or the possibility that the injury would continue or recur were the duty to be removed or

varied, or both. If, as a result of the review carried out, it is determined that the anti-dumping or countervailing duty is no longer warranted, it shall be made inoperative.

Article 52 - The interested parties may request a changed circumstances review after the first year of validity of the anti-dumping or countervailing duties, pursuant to Article 11.2 of the Anti-Dumping Agreement and Article 21.2 of the Agreement on Subsidies.

A changed circumstances review may be requested by the interested parties, who may present evidence for use by the Undersecretariat which, in turn, shall submit a copy to the Commission.

Within TWENTY (20) days of the presentation, the Undersecretariat shall submit to the Secretariat its report concerning the recommendation that the review be initiated.

The Secretariat, within the next FIVE (5) days, shall refer its findings on whether or not a review is appropriate to the Ministry of the Economy, which shall take a decision within FIVE (5) days. Once the review of the measure in force has been initiated, an investigation shall be conducted on which the Undersecretariat shall issue a report on dumping or subsidization within ONE HUNDRED AND TWENTY (120) days, with a copy to the Commission. The latter shall then reach a decision on the injury and causality within ONE HUNDRED AND FORTY (140) days of the initiation of the review, with a copy to the Undersecretariat.

The Undersecretariat, upon receipt of the Commission's report and within a period of TEN (10) days, shall submit its recommendation to the Secretariat, assessing the other circumstances pertaining to general foreign trade policy and the public interest and substantiating its assessment in each instance. The Secretariat, within TEN (10) days following receipt of the above-mentioned report, shall refer its findings to the Ministry of the Economy, which shall take a decision within TEN (10) days. The changed circumstances review shall normally be completed within SIX (6) months of the date of its initiation.

ANTI-DUMPING OR COUNTERVAILING DUTY EXPIRY REVIEW

Article 53 - The anti-dumping or countervailing duty expiry review shall deal with both dumping or subsidization and injury and causality. A notice of the impending expiry of the anti-dumping or countervailing duty shall be published in the Official Journal in the first half of the final year of the period of application of the duties.

Article 54 - A duly substantiated application may be submitted by or on behalf of the domestic industry for a review of the definitive duty up to THREE (3) months in advance of its expiry.

Within TWENTY (20) days of such submission, the Undersecretariat shall submit to the Secretariat its report concerning its recommendation on initiation of a review.

The Secretariat shall, within the next FIVE (5) days, refer its findings with regard to whether the review is appropriate to the Ministry of the Economy, which shall take a decision within FIVE (5) days. If a review is initiated, the Ministry of the Economy shall grant an extension of the existing duty until it is completed.

Once the review of the existing measure has been initiated, an investigation shall be conducted on which the Undersecretariat shall issue a report on dumping within ONE HUNDRED AND TWENTY (120) days of the initiation of the review, with a copy to the Commission.

The Commission, within ONE HUNDRED AND FORTY (140) days of the initiation of the review, shall issue a report on injury and causality, with a copy to the Undersecretariat.

Upon receipt of the Commission's report and within a period of TEN (10) days, the Undersecretariat shall submit to the Secretariat its recommendation on whether to abolish or continue to impose the duty in force, assessing the other circumstances pertaining to general foreign trade policy and the public interest, and substantiating its assessment in each instance.

The Secretariat, within TEN (10) days of receipt of the above-mentioned report, shall refer its findings to the Ministry of the Economy, which shall take a decision within TEN (10) days.

The anti-dumping or countervailing duty expiry review shall normally be completed within SIX (6) months of the date of its initiation.

CHAPTER IX - SMALL AND MEDIUM-SIZED ENTERPRISES (SMEs)

Article 55 - The Undersecretariat and the Commission shall provide a specialized information service for SMEs.

The basic functions of the specialized information service for SMEs shall be as follows:

- (a) To cooperate in the search for information required for determination of the formal criteria provided for by law for the initiation of an investigation; and
- (b) to facilitate SME access to such data on the domestic market of the country of origin or the exporting country as are required for the determination of normal value by the Economic and Commercial Sections of the MINISTRY OF FOREIGN AFFAIRS, INTERNATIONAL TRADE AND WORSHIP.

Article 56 - For the purposes of this Chapter, SMEs shall be considered to be those companies covered by the provisions of Law No. 25,300.

CHAPTER X - CIRCUMVENTION

Article 57 - A measure in force shall be considered to be circumvented when:

- (a) Parts and/or components of the investigated product, assembled to produce a like product, are exported to the ARGENTINE REPUBLIC; or
- (b) a like product, produced by the assembly of parts and/or components of the investigated product, or by some other operation effected in a third country, is exported to the ARGENTINE REPUBLIC; or
- (c) any other practice occurs which tends to undermine the remedial effects of the measure applied, reflecting in all cases a change in the characteristics of trade between third countries and the ARGENTINE REPUBLIC as a result of a practice, process or activity for which there is no adequate cause or economic justification other than the imposition of the duty.

Article 58 - Anti-circumvention action shall be based on the main elements of information put together in the investigation concerning the measure being circumvented, in which the interested parties will be allowed to intervene.

Article 59 - The investigation of circumvention practices may be carried out ex officio or at the request of a party through the Undersecretariat, with intervention by the Commission, and, where appropriate, by other competent agencies.

Article 60 - Once the file has been established, the Undersecretariat shall submit a copy to the Commission so that the latter, within its field of competence, may give its opinion within THIRTY (30) days.

Article 61 - The Undersecretariat, on the basis of the Commission's report and other relevant steps, shall issue and make its recommendation to the Secretariat, within a period of FIVE (5) days of receipt of the Commission's report, for its information and consideration, making its recommendation to the Ministry of the Economy within a period of FIVE (5) days.

Article 62 - The Ministry of the Economy shall in such cases decide, within a period of FIVE (5) days, whether it is necessary to extend the scope of the anti-dumping duties to imports of like products or parts thereof from the same point of origin under investigation or third points of origin, as the case may be.

Article 63 - In particularly complex circumvention cases, the prescribed time-limits may be extended with the agreement of the Secretariat.

Article 64 - The Ministry of the Economy, upon receipt of this report and within a period of FIVE (5) days, shall decide whether or not it is appropriate to include the new enterprise and/or origin reported.

Article 65 - The existing rules of discovery and evidence in respect of investigations shall apply to circumvention proceedings.

TITLE III – GENERAL PROVISIONS

Article 66 - In the case of imports from a non-market economy country, the normal value shall be determined by reference to any of the following criteria:

- (a) The value calculated for a market-economy third country; or
- (b) the export price from such a third country to other countries, including the ARGENTINE REPUBLIC; or
- (c) any other reasonable basis, including the price actually paid or payable in the ARGENTINE REPUBLIC for the like product, duly adjusted if necessary to include a reasonable profit margin.

For the purpose of selecting an appropriate market-economy third country, due account shall be taken of any reliable information available at the time of selection. Account shall also be taken of time-limits and, where appropriate, a market-economy third country which is subject to the same investigation shall be used.

Shortly after the initiation of the investigation, the interested parties shall be informed of the market-economy third country selected.

Any other similar situation shall be taken to mean, *inter alia*, all those for which, with regard to the product under investigation, considering its inputs, users and/or consumers or the country's financial and/or foreign exchange systems, a functioning market economy cannot be verified.

With regard to the treatment of imports from the PEOPLE'S REPUBLIC OF CHINA, the above provisions shall apply until the PROTOCOL OF ACCESSION OF THE PEOPLE'S REPUBLIC OF CHINA TO THE WORLD TRADE ORGANIZATION (WTO) is signed, after which the treatment of imports shall be governed by the provisions of that Protocol.

Article 67 - The applicant or his agent or qualified representative may inspect the file at any point in the proceedings, except for those papers, reports or opinions which have been declared to be of a confidential nature by the competent authority.

The other interested parties, or their agents or representatives, may inspect the file after the initiation of the investigation, subject to the exception referred to in the preceding paragraph in respect of confidential information.

Article 68 - Any decision to initiate an investigation or the reviews established in Chapter VIII of this Decree, to apply provisional measures or definitive duties, to approve an undertaking or to close an investigation shall be transmitted, within TWO (2) working days of its adoption, to the NATIONAL DIRECTORATE OF OFFICIAL RECORDS, attached to the TECHNICAL UNDERSECRETARIAT of the LEGAL AND TECHNICAL DEPARTMENT of the OFFICE OF THE PRESIDENT, for publication in the Official Journal within a maximum of TWO (2) working days of the date of its transmission.

Article 69 - The interested parties or their agents or qualified representatives may, upon written request, take copies of the file after the initiation of the investigation, subject to the exception referred to in this Decree in respect of confidential information.

Article 70 - The time-limits under this Decree shall be understood to be calendar days, unless expressly provided otherwise.

Article 71 - This Decree shall enter into force on 1 January 2002 and shall be applicable to investigations and reviews of existing measures initiated as a result of applications submitted after the date of its entry into force.

Investigations initiated under Decree No. 1326/98 shall be governed by this Decree until their conclusion, with the exception of the amount of duty, which shall be established on a retroactive basis.

When an annual period of validity of a definitive duty expires after the entry into force of this Decree, at the request of a party the amount of the duty shall be established retroactively for the subsequent year.

Article 72 - The Undersecretariat shall be responsible for directing investigation procedures, following up cases and complying with time-limits in relation to the application of anti-dumping or countervailing duties, without prejudice to the investigative powers entrusted to the Commission by this Decree and Decree No. 766/94.

The procedure for the application of anti-dumping and countervailing duties provided for in this Decree shall also be governed by the National Law on Administrative Procedures, No. 19549, and

the Regulations on Administrative Procedures - Decree No. 1759/72 T.O. 1991. Special attention shall be paid in this supplementary application to complying with the time-limits established in this Decree.

Article 73 - Once the preliminary and final proceedings of an investigation, undertaking or review are completed, the Undersecretariat and the Commission shall publish their respective reports on the Secretariat's Web page.

Article 74 - The SECRETARIAT OF TRADE of the MINISTRY OF THE ECONOMY shall be the Authority responsible for promulgating the supplementary regulations in this Decree.

Article 75 - This Decree shall be proclaimed, published, transmitted to the National Directorate of Official Records and filed.

— DE LA RUA. — Chrystian G. Colombo. — Domingo F. Cavallo. —
Adalberto Rodríguez Giavarini.

— CORRIGENDUM —

Decree 1088/2001

The 30 August 2001 edition, in which this Decree was published, contained the following misprint:

The last paragraph of ARTICLE 21;

WHICH READS: If the Undersecretariat makes a determination of dumping or subsidization, it shall inform the Secretariat which, should it consider it appropriate, may decide to close the investigation and file the papers.

SHOULD READ: If the Undersecretariat makes a determination of absence of dumping or subsidization, it shall inform the Secretariat which, should it consider it appropriate, may decide to close the investigation and file the papers.
