

WORLD TRADE ORGANIZATION

G/ADP/N/1/ARG/1/Suppl.9
G/SCM/N/1/ARG/1/Suppl.8
22 September 2008
(08-4428)

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

Original: Spanish

NOTIFICATION OF LAWS AND REGULATIONS UNDER ARTICLE 18.5 OF THE AGREEMENT

ARGENTINA

Supplement

The following communication, dated 15 September 2008, is being circulated at the request of the delegation of Argentina.

FOREIGN TRADE

Decree 1393/2008

Rules and regulations for the effective implementation of Law No. 24.425

Bs. As., 2/9/2008

HAVING REGARD to File No. S01:0184454/2007 of the Registry of the MINISTRY OF THE ECONOMY AND PRODUCTION, Law No. 24.425, and Decrees No. 1326 of 10 November 1998 and No. 1088 of 28 August 2001, 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 by Law No. 24.425;

Annex 1A of the above-mentioned Marrakesh Agreement Establishing the World Trade Organization, approved by Law No. 24.425, contains the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 and the Agreement on Subsidies and Countervailing Measures;

Decree No. 1326 of 10 November 1998 established and put into effect rules and regulations for the effective implementation of Law No. 24.425;

Decree No. 1219 of 12 September 2006 established the objective criteria to be applied to imports from non-market economy countries or countries in transition to a market economy, for the purpose of determining price comparability under the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, approved by Law No. 24.425;

Proceedings in respect of 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;

The Directorate-General of Legal Affairs of the MINISTRY OF THE ECONOMY AND PRODUCTION has taken appropriate action within its sphere of competence;

This Act is issued 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 shall be the following:

- (a) The MINISTRY OF THE ECONOMY AND PRODUCTION, which shall issue decisions establishing anti-dumping or countervailing duties, whether provisional or definitive, and decisions initiating anti-dumping or countervailing duty reviews, and shall also carry out the other functions assigned to it by this Decree;
- (b) the SECRETARIAT OF INDUSTRY, TRADE AND SMALL AND MEDIUM-SIZED ENTERPRISES of the MINISTRY OF THE ECONOMY AND PRODUCTION, which shall have the functions assigned to it by this Decree;
- (c) the UNDERSECRETARIAT FOR TRADE POLICY AND MANAGEMENT, attached to the SECRETARIAT OF INDUSTRY, TRADE AND SMALL AND MEDIUM-SIZED ENTERPRISES, which shall be responsible for directing the procedure, determining the existence of dumping or subsidization, and other functions assigned to it by this Decree; and
- (d) the NATIONAL FOREIGN TRADE COMMISSION, a decentralized body under the SECRETARIAT OF INDUSTRY, TRADE AND SMALL AND MEDIUM-SIZED ENTERPRISES, which shall be responsible for determining the existence of a like domestic product, the representativeness of the applicant, injury to the domestic industry and a causal link, and other functions assigned to it by this Decree and by Decree No. 766 of 12 May 1994.

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 1994, approved by Law No. 24.425;
- (b) "Agreement on Subsidies": the Agreement on Subsidies and Countervailing Measures, approved by Law No. 24.425;
- (c) "the Ministry": the MINISTRY OF THE ECONOMY AND PRODUCTION;

- (d) "the Secretariat": the SECRETARIAT OF INDUSTRY, TRADE AND SMALL AND MEDIUM-SIZED ENTERPRISES;
- (e) "the Undersecretariat": the UNDERSECRETARIAT FOR TRADE POLICY AND MANAGEMENT; and
- (f) "the Commission": the NATIONAL FOREIGN TRADE COMMISSION.

TITLE II – INVESTIGATION

CHAPTER I – APPLICATION FOR INITIATION OF THE INVESTIGATION

Article 3 – Prior to the submission of the application, the Commission and the Undersecretariat shall provide, at the request of the interested parties, and within the limits of their respective areas of responsibility, a specialized information service, the functions of which shall be:

- (a) To cooperate in the search for the information required for determination of the formal criteria provided for by law for the initiation of an investigation, and to provide guidance to the interested parties in completing the forms to be submitted;
- (b) to facilitate the access of enterprises 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.

The Secretariat shall establish the necessary procedures to implement a consultation system and safeguard the confidentiality of the information contained therein.

Article 4 – The application for initiation of a dumping or subsidy investigation shall be submitted in writing in the original and ONE (1) copy, each with the corresponding back-up magnetic medium, by the domestic industry which considers itself to be affected by the alleged dumping or subsidization, or any representative thereof, to the Incoming Communications and Notifications Department for Industry, Trade and Small and Medium-Sized Enterprises of the Directorate of Incoming Communications and Notifications of the Directorate-General of Dispatch and Incoming Communications, attached to the UNDERSECRETARIAT FOR ASSET MANAGEMENT AND STANDARDIZATION of the LEGAL AND ADMINISTRATIVE SECRETARIAT of the MINISTRY OF THE ECONOMY AND PRODUCTION, which shall transmit the original version of the submission and ONE (1) diskette to the Undersecretariat, and the certified copy with its back-up magnetic medium to the Commission, within TWO (2) working days.

The application shall be submitted in accordance with the guidelines, requirements and formalities to be established for that purpose by the Secretariat pursuant to Article 5.2 of the Anti-Dumping Agreement and Article 11.2 of the Agreement on Subsidies, and shall include evidence which can reasonably be expected to be available of the following:

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

The applicant shall likewise produce reliable evidence of the representativeness to which it lays claim, in accordance with Article 5.4 of the Anti-Dumping Agreement and Article 11.4 of the Agreement on Subsidies, supported, where possible, by certification from the corresponding association, chamber, federation or business entity representing it, of its percentage share of the domestic industry to which it belongs.

Applications submitted on behalf of the domestic industry may be drawn up by chambers or associations of producers representing the sector of the domestic industry which considers itself to be affected by the alleged dumping or subsidization.

Article 5 – When submitting its application, the applicant may request that the information provided be treated confidentially. The Undersecretariat and the Commission shall rule within the limits of their respective areas of responsibility and within a maximum of FIVE (5) days from the time when all the requirements for a thorough analysis of the request have been met. During this period, the information in question shall be treated confidentially, as described in this Decree.

The above-mentioned requirements shall include the following: the application shall be clearly marked with the heading CONFIDENTIAL in the top right-hand corner of each page; adequate grounds shall be given for the request; and satisfactory non-confidential summaries of the information for which confidentiality is being requested, or an explanation of the reasons which preclude the presentation of such summaries, shall be provided.

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 6 – Together with the submission referred to in Article 4 of this Decree, the interested parties shall complete the forms prepared by the Secretariat for that purpose. These shall be reviewed by the Undersecretariat and/or the Commission, within the limits of their respective areas of responsibility, so as to determine whether they contain any errors or omissions. If so, the Undersecretariat and the Commission shall inform the applicant, within FIVE (5) days, of any deficiencies in the application so that they may be remedied.

If no errors or omissions are found in the application, or if such as are found are remedied, the Commission shall communicate these details to the Undersecretariat within TEN (10) days. In its communication, the Commission shall give its opinion on the existence of ONE (1) like domestic product and the representativeness of the applicant under Article 4 of this Decree.

The Undersecretariat shall notify the applicant and the Commission of its acceptance of the application within TWO (2) working days. If the Commission determines that the conditions set forth in the above paragraph have not been met, the Undersecretariat, after so informing the applicant and the Commission, shall reject the application and shelve the file, and explain the factual and legal reasons for this decision.

Article 7 – The Undersecretariat shall examine the evidence provided in the application in respect of dumping or subsidization, in order to determine whether there is sufficient evidence to justify the initiation of an investigation, and shall inform the Commission of its findings within TEN (10) days of having notified acceptance of the application.

Article 8 – The Commission, within a period of TEN (10) days from the date of receipt of the report referred to in Article 7 of this Decree, shall examine the evidence set forth in the application and

submit its findings to the Secretariat, while providing a copy of the report to the Undersecretariat, in respect of:

- (a) Injury to the domestic industry; and
- (b) the causal link between dumping or subsidization and injury to the domestic industry.

Article 9 – The Undersecretariat, once it has received the report referred to in Article 8 of this Decree, and within a period of THREE (3) working days, shall submit to the Secretariat its recommendation regarding the decision to be taken on initiation of the investigation.

Article 10 – On the basis of the recommendation referred to in Article 9 of this Decree, and within a period of FIVE (5) days, the Secretariat shall decide whether it is appropriate to initiate an investigation.

In the event of deciding that an investigation would not be appropriate, the Secretariat shall notify the applicant(s) of this decision and of the factual and legal basis for it.

Article 11 – In the case of an application for a subsidy investigation, following receipt of a duly documented application and before proceeding to initiate the investigation, the Undersecretariat shall notify the government of the country of origin or the exporting country concerned and invite it to hold consultations with a view to clarifying the situation and arriving at a mutually agreed solution, as provided in Article 13.1 of the Agreement on Subsidies.

Article 12 – The decision to initiate an investigation shall include information pertaining to the following:

- (a) The proper identification of the product under investigation;
- (b) the origin(s) of the product;
- (c) the period investigated pursuant to Article 15 below;
- (d) the basis of the allegation of dumping set out in the application or a description of the subsidization practice to be investigated;
- (e) a summary of the factors on which the allegation of injury is based;
- (f) the causal link;
- (g) where appropriate, identification of the third market economy country considered at the stage prior to the initiation of the investigation and the communication to the parties concerned so that, within a period of TEN (10) working days, they may make any comments they deem relevant concerning the selection of the third country in question;
- (h) the departments to which such submissions should be sent;
- (i) the corresponding instructions to the Directorate-General of Customs attached to the FEDERAL PUBLIC REVENUE ADMINISTRATION, an autonomous body within the MINISTRY OF THE ECONOMY AND PRODUCTION; and

- (j) the date of initiation of the investigation.

Article 13 – The Undersecretariat shall, as early as possible, notify the decision to initiate an investigation to the representative of the government(s) of the exporting country(ies) concerned, 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.

Article 14 – 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 and those of this Decree, as to the existence of dumping or subsidization, injury and a causal link between the two. Prior to such a decision, it shall ask the Undersecretariat and the Commission to issue the reports referred to in Articles 7 and 8 of this Decree.

CHAPTER II – CONDUCT OF THE INVESTIGATION

Article 15 – The period for compiling data for the determination of dumping or subsidization shall normally correspond to the TWELVE (12) months preceding the initiation of the investigation. In the event of a shorter period of time being considered appropriate for the analysis, the above-mentioned period may be reduced to a minimum of SIX (6) months. The period for compiling data for the determination of injury shall normally be 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/or the Commission to request information relating to a longer or shorter period of time.

Article 16 – Once the decision has been made to initiate an investigation, the Undersecretariat and the Commission shall send questionnaires to producers, exporters and importers within a period of TEN (10) days.

The completed questionnaires, together with supporting documentation and any other evidence to be used, shall be returned to the Undersecretariat and/or Commission, as appropriate, by the party concerned, within THIRTY (30) days of their receipt. Questionnaires shall also be accompanied by the respective back-up magnetic medium.

Where there is no reliable record of the date of receipt of the questionnaires sent to exporters, they shall be considered to have been received one week after the date on which they were dispatched to the respondent 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.

The documentation in question shall be drafted in Spanish or, where appropriate, accompanied by the necessary translation by a certified public translator. It shall also be accompanied by the relevant official attestations, in accordance with Article 28 of the Regulation on Administrative Procedures, Decree No. 1759/72 T.O. 1991.

When submitting the information, the interested parties may request confidential treatment, in which case they shall abide by the conditions set forth in Article 5 of this Decree.

At the request of a party, the Undersecretariat and/or the Commission may grant extensions of the time-limit for the presentation of the questionnaires and other information, provided that the applicant party adequately substantiates the specific circumstances constituting grounds for the extension. On no account, however, shall the Undersecretariat and/or the Commission grant extensions beyond the time-frames provided for in the first paragraph of Article 18 of this Decree.

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, the Undersecretariat and the Commission shall make their respective preliminary and final determinations on the basis of the facts available, as provided for in Annex II of the Anti-Dumping Agreement.

Article 17 – Upon receipt of the questionnaires, the Undersecretariat and the Commission shall review them and, where required, within a period of SEVEN (7) days, request that any necessary clarification be provided within a maximum period of TEN (10) days.

Such clarifications and/or corrections which have not been submitted within the established time-frame may be considered, where appropriate, following the preliminary determination.

Article 18 – The parties may provide evidence up to a maximum of TEN (10) working days following the notification of the determinations made in accordance with Articles 21, 22 or 23 of this Decree, as applicable.

The Undersecretariat and the Commission, within the limits of their respective areas of responsibility, shall examine the evidence provided by the parties and, within TEN (10) working days of the expiry of the time limit established in the paragraph above, shall notify the interested parties of the evidence to be considered and substantiate the decision taken.

The interested parties may produce the evidence accepted by the Undersecretariat and/or the Commission in relation to the investigation up to EIGHTY (80) days prior to the final determination of dumping or subsidization by the Undersecretariat and the final determination of injury and causality by the Commission.

Once the period for the presentation of evidence has been officially concluded and before a final determination is made, the Undersecretariat and the Commission shall provide notification of the essential facts under consideration which form the basis for the decision on whether to apply definitive measures. These facts shall be made available to the interested parties for a period of TEN (10) working days so that they may present their arguments. Any arguments presented after this period shall not be taken into consideration.

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

Article 19 – 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 or obtain further details.

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 and, where appropriate, the government of the foreign country, indicating the general nature of the information to be verified and whether additional information will need to be provided. Further details may, however, be requested during the verification process and in the light of the information obtained.

The interested parties shall have a period of FIVE (5) days in which to give their consent. In the event that the information provided by the producers/exporters of the product under investigation is verified, the Undersecretariat shall notify the authorities of the exporting Member of the names and addresses of the firms to be visited and the dates agreed.

If the interested parties or the government of the foreign country do not agree to the on-the-spot investigation, or if they do not cooperate with the investigation, the Undersecretariat and/or the Commission shall use the best information available in order to complete the investigation.

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. This copy shall be made available to the interested parties which shall have TEN (10) days to present any additional 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.

Article 20 – During the investigation the Undersecretariat and/or the Commission may, where appropriate, hold meetings with the interested parties in order to obtain additional information and/or resolve any disputed aspects.

CHAPTER III – PRELIMINARY DETERMINATIONS

Article 21 – The Undersecretariat has up to ONE HUNDRED (100) days from the initiation of the investigation to make a preliminary determination of dumping or subsidization on the basis of the evidence available at that stage. If the determination is affirmative, it shall submit a copy of its report to the Commission within the above time-frame.

Article 22 – The Commission, within a maximum of ONE HUNDRED AND TEN (110) days of deciding to initiate the investigation, shall make a preliminary determination of injury to the domestic industry on the basis of the evidence available at that stage and prepare a report on the causal link between such injury and the dumping or subsidization. It shall present its findings to the Secretariat and submit a copy of the above-mentioned report to the Undersecretariat. Where appropriate, it shall propose the appropriate provisional measures to alleviate the injury, stating the methodology used for their calculation.

Article 23 – The Undersecretariat and/or the Commission may continue with the investigation until its final stage without applying provisional measures if, at the end of the time-limits set forth in Articles 21 and 22 of this Decree, they do not have any elements that would allow them to make an affirmative decision within the limits of their respective areas of responsibility or to determine that the investigation should be closed.

Article 24 – In order to enable the interested parties to submit their evidence in accordance with Article 18 of this Decree and within the time-frame established therein, the Undersecretariat and the Commission shall notify the parties of the determinations and decisions adopted within the framework of Articles 21, 22 and 23 of this Decree.

Article 25 – Within a period of FIVE (5) days from the receipt of the report referred to in Article 22 of this Decree, the Undersecretariat 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.

The Secretariat, in the event of proceeding with the matter, shall, within a period of TEN (10) days, present its recommendation to the Ministry, which shall decide, within TWENTY (20) days, whether it is appropriate to adopt provisional measures.

Article 26 – The Secretariat shall terminate the investigation, at any stage thereof, if it is informed by the Undersecretariat or the Commission that any of the criteria set forth in Article 5.8 of the Anti-Dumping Agreement and Article 11.9 of the Agreement on Subsidies have been verified.

Article 27 – 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 period of validity.

Article 28 – The Undersecretariat shall inform all interested parties of the adoption of provisional measures within a maximum of FIVE (5) days of the publication of the administrative decision in the Official Journal.

CHAPTER IV – FINAL DETERMINATIONS

Article 29 – The Undersecretariat, within TWO HUNDRED AND TWENTY (220) days of the initiation of the investigation, shall make a final determination of dumping or subsidization and communicate its findings to the Commission.

When, for reasons of technical complexity, it is necessary to extend the period mentioned in the preceding paragraph, the Secretariat may authorize such an extension on an exceptional basis.

If the final determination of the Undersecretariat is negative, the Secretariat may decide to close the investigation.

Article 30 – The Commission, within TWO HUNDRED AND FIFTY (250) days of the initiation of the investigation, shall make its final determination of injury to the domestic industry and of a causal link between such injury and the dumping or subsidization, present its findings to the Secretariat, and submit a copy of its report to the Undersecretariat. Likewise, where appropriate, it shall propose suitable final measures to alleviate the injury, stating the methodology used for their calculation.

When, for reasons of technical complexity, it is necessary to extend the period mentioned in the preceding paragraph, the Secretariat may authorize such an extension on an exceptional basis.

In the event of a negative determination by the Commission, the Undersecretariat, upon receipt of notification thereof, shall refer the proceedings to the Secretariat for the latter to declare the investigation terminated.

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 definitive anti-dumping or countervailing duties should be applied, taking into account the other circumstances pertaining to general foreign trade policy and the public interest.

The Secretariat, within a period of TEN (10) days, shall reach a conclusion as to whether it is appropriate to apply a definitive measure and refer the matter to the Ministry for its consideration. The Ministry shall have TWENTY (20) days to reach a decision as to whether or not to apply definitive anti-dumping or countervailing duties.

Article 31 – Decisions imposing final measures shall contain all relevant information on the issues of fact and law and the reasons which have led to the imposition of such measures, in accordance with the guidelines set forth in Article 27 of this Decree. Furthermore, they shall indicate the time-frame within which the Undersecretariat and the Commission are to publish their respective public reports on the Secretariat web site.

Article 32 – The Undersecretariat shall inform the parties concerned whether or not final measures are to be applied within FIVE (5) days of the publication of the administrative decision in the Official Journal.

The investigation shall be completed within TEN (10) months of the date of its initiation. In exceptional circumstances, the Secretariat may extend the investigation period in accordance with Article 5.10 of the Anti-Dumping Agreement and Article 11.11 of the Agreement on Subsidies.

CHAPTER V – UNDERTAKINGS

Article 33 – Investigations may be suspended or terminated without the imposition of measures, if voluntary undertakings by exporters or by the government of the exporting country under investigation, offered in accordance with Articles 8.4 of the Anti-Dumping Agreement and 18.1 of the Agreement on Subsidies, are accepted.

Article 34 – Once an affirmative preliminary determination of dumping or subsidization, injury and causal link has been made, the undertaking shall be offered to the Undersecretariat which shall submit a copy thereof to the Commission within TWO (2) working days.

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

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

The Undersecretariat, upon receipt of the Commission report and within FIVE (5) working days, shall present its report on the undertaking to the Secretariat, taking into consideration the other circumstances pertaining to general foreign trade policy and the public interest.

The Secretariat shall make its recommendation on whether or not the undertaking should be accepted within TEN (10) days of the receipt of the above-mentioned report and transmit its findings to the Ministry, so that the latter may reach a decision within FIFTEEN (15) days.

Article 35 – 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 36 – The Undersecretariat shall notify the party offering the undertaking of the decision to accept it within FIVE (5) days of its publication in the Official Journal.

Article 37 – In the event that the Secretariat decides that it is not appropriate to accept the undertaking, it shall inform the party that offered the undertaking of its decision and of the factual and legal basis for it.

Article 38 – Undertakings may be suggested by the Secretariat, at the proposal of the Undersecretariat or Commission, but no exporter shall be forced to enter into them.

Article 39 – The Undersecretariat shall monitor compliance with the price undertakings accepted. In this connection, exporters may be requested to submit information relating to compliance at the intervals set forth in the acceptance decision.

Article 40 – In the event of the violation of an undertaking, the Ministry shall decide on the immediate application of provisional measures using the best information available. In such cases, definitive duties may be levied on products entered for consumption not more than 90 days before the application of such provisional measures, except that any such retroactive assessment shall not apply to imports entered before the violation of the undertaking.

CHAPTER VI – RETROACTIVITY

Article 41 – 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 42 – 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 43 – 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, when:

- (a) The Undersecretariat determines that there is a history of dumping or subsidization or that the importer was, or should have been, aware that the exporter practises dumping or subsidization; and
- (b) the Commission determines that the dumping or subsidization would cause injury and that, in addition to the level of imports which caused injury during the investigation period, there is a further substantial rise in imports in a relatively short time 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, provided that the importers have been given an opportunity to comment.

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

Where appropriate, the report by the Undersecretariat recommending whether 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 the retroactive application of a final measure is appropriate, referring the matter for consideration to the Ministry, which shall reach a conclusion in this respect 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 44 – For the purposes of this Chapter, the terms "anti-dumping duty" and "countervailing duty" shall signify an amount in legal tender equal to or less than the margin of dumping or the amount of the subsidy calculated, estimated and applied for the purpose of offsetting the injurious effects of the calculated dumping or subsidization.

Article 45 – The anti-dumping or countervailing duty, whether provisional or definitive, may be *ad valorem* or specific. The implementing authority may, for purposes of determining the appropriate anti-dumping or countervailing duty, establish minimum f.o.b. export values.

Article 46 – The amount of the anti-dumping or countervailing duty shall be established prospectively and shall not exceed the margin of dumping or the amount of the subsidy, as the case may be, determined as a result of an investigation.

Article 47 – The DIRECTORATE-GENERAL OF CUSTOMS shall, upon publication of the respective adopted decision 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 48 – The DIRECTORATE-GENERAL OF CUSTOMS shall, on a monthly basis, inform the Undersecretariat and the Commission 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 49 – In the cases and circumstances provided for in Article 9.5 of the Anti-Dumping Agreement and Article 19.3 in fine of the Agreement on Subsidies, any exporter or producer in the exporting country which has not exported during the period of investigation may request the determination of an individual margin of dumping or the establishment of an individual countervailing duty, as appropriate, presenting the necessary information for that purpose to the Undersecretariat. The Undersecretariat shall submit its findings to the Secretariat within ONE HUNDRED AND TWENTY (120) days of the acceptance of the request.

Within TEN (10) days of receiving the report, the Secretariat shall present its conclusions to the Ministry, which shall take a decision within the following TWENTY (20) days.

Article 50 – For the purposes of the above Article, the Secretariat shall establish the requirements and other formalities to be met by the parties concerned when submitting their requests, and other aspects relating to this procedure.

CHAPTER VIII – DURATION AND REVIEW OF MEASURES AND UNDERTAKINGS

Article 51 – 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 and the injury.

CHANGED CIRCUMSTANCES REVIEW

Article 52 – Any decision imposing an anti-dumping or countervailing duty, or any decision approving a price undertaking, may be reviewed. Such a review may be initiated ex officio or, provided that TWO (2) years have elapsed since the establishment of the respective measure, at the request of the party concerned.

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 53 – The provisions regarding evidence and procedure set forth in Title II of this Decree shall be applicable, insofar as is relevant, to the changed circumstances review, which shall normally be concluded within EIGHT (8) months of the date of its initiation.

Article 54 – The Secretariat shall establish the requirements and formalities to be met by the parties concerned when submitting their application, and other aspects relating to the review procedure.

ANTI-DUMPING OR COUNTERVAILING DUTY EXPIRY REVIEW

Article 55 – The anti-dumping or countervailing duty or price undertaking expiry review shall cover dumping and subsidization as well as injury, and shall determine whether the expiry of the duty would be likely to lead to continuation or recurrence of the injury and the dumping or subsidization. The duty may remain in force pending the outcome of such a review.

Article 56 – A request for review of an anti-dumping or countervailing duty owing to the expiry of its period of validity may be submitted by or on behalf of the domestic industry no later than

THREE (3) months prior to the end of the period of imposition of the anti-dumping or countervailing duty whose termination it is wished to avoid.

The implementing authority may also initiate ex officio a final anti-dumping or countervailing duty expiry review when it has sufficient evidence, in accordance with the above provisions and the regulations issued for that purpose.

The provisions under Title II on evidence and procedure shall be applicable, insofar as is relevant, to a review carried out under this Article, which shall normally be concluded within EIGHT (8) months of the date of its initiation.

Article 57 – When deciding to initiate an anti-dumping or countervailing duty or price undertaking expiry review, the implementing authority may decide whether it is also appropriate to carry out a changed circumstances review.

Article 58 – The Secretariat shall establish the requirements and formalities to be met by the domestic industry when submitting an application, and other aspects relating to the review procedure.

CHAPTER IX – CIRCUMVENTION

Article 59 – 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 60 – The determination of the existence of circumvention practices may be made at the request of a party, ex officio or at the suggestion of the Undersecretariat and/or the Commission, on the basis of the main elements of information put together in the investigation or review concerning the measure being circumvented.

Article 61 – Requests by interested parties shall contain reasonable evidence of the alleged circumvention practice, without prejudice to any information that the Undersecretariat and/or the Commission may request.

Article 62 – The Undersecretariat and the Commission, within the limits of their respective areas of responsibility, shall allow the parties concerned to intervene and shall present their conclusions to the Secretariat within ONE HUNDRED AND TWENTY (120) days of the acceptance of the request. Within TEN (10) days of the receipt of the said reports, the Secretariat shall present its conclusions to the Ministry, which shall take a decision within the following TWENTY (20) days.

Article 63 – The Secretariat shall establish the requirements and other formalities to be met when submitting an application, and aspects relating to procedure.

TITLE III – GENERAL PROVISIONS

Article 64 – In the case of imports from non-market economy countries or countries in transition to a market economy, for the purposes of determining price comparability, the provisions of Decree No. 1219 of 12 September 2006 shall be applied for the determination of normal value.

Article 65 – 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 that are of a confidential nature.

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 66 – Any decision to initiate an investigation or the reviews established in this Decree, to apply provisional or definitive measures, to approve a price undertaking or to close an investigation shall be transmitted by the MINISTRY OF THE ECONOMY AND PRODUCTION, within TWO (2) working days of its adoption, to the NATIONAL DIRECTORATE OF OFFICIAL RECORDS, attached to 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 67 – The interested parties may challenge by judicial process any decision subject to administrative appeal when the administrative appeal process has been exhausted, as provided in the following Article.

Article 68 – Appeals may be lodged against measures imposing or refusing the application of provisional or definitive anti-dumping or countervailing duties, and against decisions which suspend, refuse, revoke or terminate investigations. Other decisions adopted during the investigation shall not be subject to appeal.

Article 69 – The time-frames set forth in this Decree shall be understood to be calendar days, unless expressly provided otherwise.

Article 70 – The Undersecretariat shall be responsible for directing investigation procedures, 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. 19.549, 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 71 – Once the investigation or review carried out under this Decree are completed, the Undersecretariat and the Commission shall publish their respective public reports on the Secretariat web site.

Article 72 – The Undersecretariat and the Commission may take into consideration the specific circumstances of small and medium-sized enterprises.

Article 73 – In the event that the Undersecretariat and/or the Commission require information from other administrative bodies, they may request it directly and shall record this in the file. The

administrative departments, whatever their hierarchical position, shall cooperate for such purposes, taking especially into account the time limits set by this Decree.

Article 74 – The Secretariat is the implementing authority responsible for issuing the supplementary regulations to this Decree.

Article 75 – This Decree shall enter into force FIFTEEN (15) working days after its publication in the Official Journal 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.

Article 76 – Upon the entry into force of this Decree, Decree No. 1088 of 28 August 2001 and Decree No. 1326 of 10 November 1998 shall be repealed. The investigations and reviews of existing measures initiated as a result of applications submitted under Decree No. 1326/98 shall be governed by that Decree until they are concluded.

Article 77 – This Decree shall be proclaimed, published, transmitted to the National Directorate of Official Records and filed. FERNANDEZ DE KIRCHNER. – Sergio T. Massa. – Jorge E. Taiana. – Carlos R. Fernández.
