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Committee on Anti-Dumping Practices

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

GUATEMALA

The following communication, dated 21 February 2008, is being circulated at the request of the delegation of Guatemala.

CENTRAL AMERICAN REGULATIONS ON UNFAIR BUSINESS PRACTICES

TITLE I

GENERAL PROVISIONS

ARTICLE 1. (Definitions) For the purposes of these Regulations, the expressions indicated below have the following meaning:

COUNCIL OF MINISTERS: The Council of Ministers for Economic Integration established by Article 37 of the Guatemala Protocol.

DOMESTIC INDUSTRY: This term shall be understood as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products.

EXECUTIVE COMMITTEE: The Executive Committee for Economic Integration established by Article 37 of the Guatemala Protocol.

GATT 1994: The General Agreement on Tariffs and Trade 1994, annexed to the Agreement Establishing the World Trade Organization.

GUATEMALA PROTOCOL: The Protocol to the General Treaty on Central American Economic Integration, signed on 29 October 1993.

INTERESTED PARTIES: Those referred to in Article 6.11 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 and in Article 12.9 of the Agreement on Subsidies and Countervailing Measures, respectively.

INVESTIGATING AUTHORITY: The Directorate or Directorate-General of Integration of the Ministry or Secretariat of the Economy or, as the case may be, the Directorate competent for matters pertaining to Central American economic integration in each State Party, or the technical unit with responsibility for investigating unfair business practices. This shall be SIECA in the case of regional procedures.

LIKE PRODUCT: The term "like product" shall be understood 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.

MINISTER: The Minister or Secretary of each State Party having responsibility for matters relating to Central American economic integration or, as the case may be, the investigation of unfair business practices.

REGION: All of the States Parties as a whole.

SIECA: The Secretariat for Central American Economic Integration.

STATES PARTIES: The States Parties to the General Treaty on Central American Economic Integration, the Guatemala Protocol, and the Convention on the Central American Tariff and Customs Regime.

THIRD COUNTRIES: Countries that are not States Parties.

UNFAIR BUSINESS PRACTICE: Dumping or subsidies.

WTO: The World Trade Organization.

WTO AGREEMENTS: The Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 and the Agreement on Subsidies and Countervailing Measures.

ARTICLE 2. (Object of the Regulations) These Regulations develop the provisions established in the WTO Agreements and, as appropriate, the provisions of the Guatemala Protocol and the Convention on the Central American Tariff and Customs Regime.

ARTICLE 3. (Initiation of proceedings) The process of investigation for the purpose of establishing the existence and effects of unfair business practices may be initiated on application by an interested party or ex officio, in accordance with the provisions of the WTO Agreements.

Where the investigating authority proceeds ex officio, it shall notify the domestic industry for confirmation of its consent to the pursuit of the investigation.

ARTICLE 4. (Substantive and procedural rules) All substantive aspects relating to unfair business practices and procedural aspects not covered by these Regulations shall be determined by the provisions of the instruments referred to in Article 2 of these Regulations.

TITLE II

PROCEDURES AND MEASURES IN CASES OF UNFAIR BUSINESS PRACTICES

CHAPTER I

PROCEDURE IN TRADE RELATIONS WITH THIRD COUNTRIES

ARTICLE 5. (Purpose of the procedure) The investigating authority shall investigate, analyse and evaluate allegedly unfair business practices and decide whether it is appropriate to recommend the imposition of "anti-dumping duties" or "countervailing duties", as the case may be.

Such measures shall be imposed when unfair business practices cause or threaten to cause material injury or serious prejudice to a domestic industry, or material retardation of the establishment of such an industry, in accordance with the criteria set out in the WTO Agreements.

ARTICLE 6. (Application) Applications for initiation of an investigation may be made by representatives of the domestic industry producing the product prejudiced by the imports in relation to which an investigation is requested which consider that they are being affected or threatened by imports alleged to be the subject of unfair business practices.

The application shall be submitted to the investigating authority in compliance with the following formal requirements:

- (a) Designation of the investigating authority to which the application is made;

- (b) particulars of the applicant and, in the case of a legal representative, any accreditation documents as may be required by the respective State Party's domestic legislation;
- (c) service address;
- (d) account of the facts and specific indication of the unfair business practice;
- (e) request couched in precise terms consistent with the account of the facts;
- (f) the other requirements established in the WTO Agreements;
- (g) place and date of the application; and
- (h) signature of the applicant or legal representative of the domestic industry.

The original application and accompanying documentation shall be provided in as many copies as the number of interested parties identified in the application, except in the case of information which is considered confidential.

ARTICLE 7. (Acceptance of the application) Within thirty days of receiving the application, the investigating authority shall examine it in order to establish whether the requirements for acceptance thereof, as set forth in the preceding Article, have been duly fulfilled. If the authority determines that the application is incomplete, it shall notify the interested party within ten days so that the latter may meet the relevant requirements within thirty days of the notification. At the request of the interested party, this period may be extended for a further thirty days.

If the interested party fails to comply within the stipulated period, the application shall be considered abandoned and shall be filed, without prejudice to the right of the party concerned subsequently to resubmit the case.

If the interested party provides the additional information, the investigating authority shall accept the application within the following fifteen days.

ARTICLE 8. (Examination and rejection of the application) After examining the application within the time-limit established in the preceding Article, the investigating authority shall reject it by means of a reasoned resolution in the following cases:

- (a) If it determines that the application has not been made on behalf of a domestic industry, in accordance with the WTO Agreements;
- (b) if it determines that there is insufficient evidence of either an unfair business practice or injury justifying the initiation of proceedings; and
- (c) if the evidence provided is insufficient to justify initiating an investigation.

The resolution rejecting an application shall be notified, within ten days of its date of issue, to the interested party, which may use the legal remedies provided for in the legislation of the State Party concerned against it.

ARTICLE 9. (Notification of the exporting government) The investigating authority shall directly notify the government of the country of origin or export of the product under investigation of

the application for the initiation of an investigation into unfair business practices. This notification shall be made prior to the initiation of the investigation.

The notification may be sent by fax, electronic mail, courier, or any other communication medium as may allow confirmation of receipt.

ARTICLE 10. (Opportunity for consultations) In the case of subsidies, together with the notification provided for in the preceding Article or at any time prior to the initiation of the investigation, the investigating authority shall afford an opportunity to the governments of the countries of origin or export of the product under investigation to hold consultations for the purpose of clarifying the facts stated in the application and arriving at a mutually agreed solution. Consultations for this same purpose may be held during the investigation.

ARTICLE 11. (Resolution for the initiation of an investigation) Where the investigating authority decides, following the examination referred to in Article 8 above, that there is sufficient evidence to justify an investigation, it shall issue a resolution declaring the initiation of the investigation procedure. The resolution shall contain at least the following information:

- (a) Identification of the investigating authority initiating the procedure and date and place of issue of the resolution;
- (b) indication that the application and its accompanying documentation have been accepted;
- (c) name or business name and domicile of the domestic producer or producers of like products;
- (d) country or countries of origin or provenance of the products alleged to be the subject of unfair business practices;
- (e) reasons and justification for the resolution;
- (f) detailed description of the product that has been or is being imported under allegedly unfair business practices;
- (g) description of the domestic products alike to the product imported under allegedly unfair business practices;
- (h) time-limit granted to the defendants and, where appropriate, the foreign government or governments mentioned, to submit whatever evidence they see fit, and the place at which they may present their submissions;
- (i) determination of the information that is to be requested from the interested parties in questionnaires and forms.

The resolution shall be notified within ten days of its date of issue to the interested parties of which the investigating authority has reasonable knowledge, which shall have a period of thirty days from the day following the notification in which to object.

ARTICLE 12. (Records and access thereto) All information provided by interested parties, together with the information compiled by the investigating authority ex officio, shall be filed in

chronological order in two separate files, one of which shall contain public and the other confidential information.

Interested parties, their representatives and their counsel, duly accredited for the purpose, shall be entitled, at any stage of the proceedings, to examine, read or copy any document or item of evidence in the record and to request certification thereof, with the exception of confidential information, which shall be accessible only to the investigating authority and to the party that supplied the information. Such information may not be disclosed during the investigation process.

Once the investigation has been concluded, anyone may access the file containing public information and may request the permission of the investigating authority to photocopy it.

ARTICLE 13. (Confidentiality) Pursuant to the WTO Agreements and more specifically the domestic legislation of each State Party, access to information regarded as confidential shall be restricted to the party that supplied the information and the investigating authority.

Any information which is by nature confidential, for example because its disclosure would be of significant competitive advantage to a competitor or would have a significantly adverse effect upon the interested party that supplied the information or upon a third party from whom that interested party acquired the information, shall, upon good cause shown, be treated as such by the investigating authority.

If the investigating authority finds that the request is not warranted and the interested party is either unwilling to make the information public or to authorize its disclosure in generalized or in summary form, the investigating authority may disregard such information unless it can be demonstrated satisfactorily from appropriate sources that the information is correct.

Any interested party providing confidential information shall furnish a non-confidential summary thereof or state the reasons why it is not susceptible of summary.

Non-confidential summaries of information regarded as confidential shall be sufficiently explicit so that the other interested parties have a clear understanding of the information supplied where such information is relevant, for example graphs showing data in percentage terms and a generic explanation of the data provided, *inter alia*.

ARTICLE 14. (Time-limit for the investigation) The investigation shall be concluded within twelve months of its date of initiation, but may, in exceptional circumstances, be extended for a further period of up to six months, on the initiative of the investigating authority or at the request of an interested party.

ARTICLE 15. (Preliminary determination) The investigating authority shall issue an affirmative or negative preliminary determination of unfair business practices and injury or threat of injury to a domestic industry, or retardation of the establishment of such an industry.

The determination shall take the form of an opinion issued by the investigating authority no earlier than sixty days after the initiation of the investigation.

ARTICLE 16. (Provisional measures) During the investigation, the investigating authority may recommend that the Minister adopt provisional measures in cases of alleged dumping or subsidization, in conformity with the provisions of the WTO Agreements.

ARTICLE 17. (Requirements for the imposition of provisional measures) Provisional measures shall be imposed only if the following prerequisites are fulfilled:

- (a) The investigation has been initiated in conformity with the provisions of these Regulations and at least sixty days have elapsed since its initiation;
- (b) there has been an affirmative preliminary determination of dumping or subsidization involving material injury, threat of material injury, serious prejudice to a domestic industry, or retardation of the establishment of a domestic industry, in conformity with the WTO Agreements;
- (c) the investigating authority deems such measures to be necessary to prevent serious injury or prejudice to a domestic industry, in conformity with the WTO Agreements.

ARTICLE 18. (Duration of provisional measures) The application of provisional measures shall be limited to as short a period as possible, not exceeding four months.

With respect to dumping, by decision of the investigating authority and at the request of exporters representing a significant percentage of the trade involved, the duration of provisional measures may be extended to a period not exceeding six months. Where in the course of an investigation the authorities consider whether a duty lower than the margin of dumping would be sufficient to remove the injury, these periods may be six and nine months, respectively.

Within ten days of its publication, the resolution imposing provisional measures shall be notified to the interested parties and to the customs authorities for implementation.

ARTICLE 19. (Verification of information) The investigating authority may, at any time during the course of the investigation, conduct such verification visits as it may consider relevant.

The investigating authority shall gather information as it deems necessary, and, where it considers it appropriate, shall examine and verify information from the interested parties so as to confirm its authenticity.

The investigating authority may conduct verification visits in other countries as required, subject to the agreement of the firms concerned, and provided that there is no objection on the part of the government of the country in question, which shall be officially informed thereof. As soon as agreement has been obtained from the firms concerned, the investigating authority shall notify the authorities of the exporting country of the names and addresses of the firms to be visited and the dates proposed.

Prior to the visit, the firms shall be advised of the general nature of the information to be verified, though this should not preclude requests during the visit for further details to be provided in the light of the information obtained.

ARTICLE 20. (Withdrawal from the investigation) The applicant may withdraw from the investigation at any time by providing its reasons in writing.

If an application for withdrawal is made after the initiation of the investigation, the investigating authority shall notify the interested parties of the withdrawal, whereby the investigation shall be deemed closed. The investigating authority may continue the investigation only if, within thirty days of the notification, domestic producers expressly supporting continuation of the investigation account for at least 50 per cent of the producers having shown support or opposition.

ARTICLE 21. (Termination of the investigation) The investigation shall be terminated if it is determined that the margin of dumping or amount of the subsidy is *de minimis* or that the volume of imports or the injury is negligible.

ARTICLE 22. (Final resolution) Within three days of concluding the investigation, the investigating authority shall submit the technical study together with the relevant recommendations to the Minister so that, within three working days of its receipt and by means of a reasoned resolution, the Minister may declare the investigation concluded, state whether or not a definitive anti-dumping or countervailing duty should be imposed and, where appropriate, revoke or confirm any provisional measure adopted.

The resolution imposing a definitive anti-dumping or countervailing duty shall be put into effect in accordance with the domestic law of each State Party and shall be notified within ten days of its issue to the interested parties and to SIECA, so that the latter may bring it to the attention of the Executive Committee.

CHAPTER II

PROCEDURE IN INTRA-REGIONAL TRADE RELATIONS

ARTICLE 23. (Transmittal to the Executive Committee) In the case of products originating in Central America, once the application has been processed in accordance with the preceding Chapter, the investigating authority shall, together with the notification of the resolution referred to in the last paragraph of the preceding Article and within the same time-limit indicated therein, transmit to SIECA a summary of the record, for the latter to notify the other States and convene the Executive Committee to examine the matter.

ARTICLE 24. (Convocation) Within eight days of receiving the summary, SIECA shall convoke the Executive Committee to a meeting to be held within thirty days of the date of the convocation and shall transmit to its members a copy of the summary.

ARTICLE 25. (Statements by affected parties) The State Party affected by the measure adopted shall, within fifteen days of being notified of the convocation, submit to the Executive Committee through SIECA a duly substantiated statement of the case.

ARTICLE 26. (Review) Where, after receiving the reports, the Executive Committee at its meeting nevertheless considers that it requires further items of evidence, it may collect such items through SIECA, which shall submit its report to the Committee within thirty days.

ARTICLE 27. (Recommendation of the Executive Committee) Within thirty days of receipt of the corresponding report from SIECA, the Executive Committee shall make whatever recommendations it deems appropriate.

CHAPTER III

REGIONAL PROCEDURE

ARTICLE 28. (Regional procedure) Where the industry of a State Party other than the importer is affected, at the request of the government concerned, a regional procedure shall be instituted and conducted through SIECA. The procedure shall be initiated as of the moment when SIECA receives the request from the State concerned, which shall be submitted in the original plus five copies and, as appropriate, in compliance with Article 6 of these Regulations.

ARTICLE 29. (Notification) Within ten days of receipt of the request, SIECA shall issue a resolution to proceed with the case and, within the following ten days, shall forward a copy of the record to the investigating authority of the importing State Party, which shall proceed with the case in accordance with the provisions of Chapter I of this Title. The authority shall begin reviewing the case as from the eighth day after SIECA transmitted the record.

ARTICLE 30. (Continuation of procedure) If the importing State Party fails to initiate the investigation within the time-limit established in the preceding Article, SIECA shall, within the following ten days, transmit a copy of the record to the other States Parties and officially notify the interested parties, thereby initiating the regional procedure.

ARTICLE 31. (Time-limit for the investigation) SIECA shall conduct the relevant investigation within the period established in Article 14 of these Regulations and may gather and request any evidence and reports it deems necessary, in particular from the exporters who are the subject of the complaint and from Central American producers and importers. During the investigation period, any interested party may submit information or present written submissions.

ARTICLE 32. (Convocation and final resolution) Within five days of the conclusion of the investigation, SIECA shall convene the Executive Committee and transmit the record, together with a technical report and whatever recommendations it considers pertinent. The Committee shall meet within the following fifteen days in order to settle the case definitively, by determining the individual or joint actions to be taken by the States Parties.

ARTICLE 33. (Provisional measures) Provided that the prerequisites set forth in Article 18 of these Regulations are fulfilled, SIECA may recommend the adoption of provisional measures. The Executive Committee shall examine and decide on this recommendation at its subsequent meeting.

ARTICLE 34. (Implementation of decisions) The decisions of the Executive Committee establishing provisional or definitive anti-dumping or countervailing duties shall be implemented by the States Parties in accordance with their domestic legislation.

ARTICLE 35. (Cost of the regional investigation) The costs of the regional investigation shall be borne by the domestic industry that brought the action before the complainant State Party.

ARTICLE 36. (Harmonized procedure) In addition to the special provisions established in this Chapter, the provisions of Chapters I and II of this Title shall apply, where appropriate, to the regional procedure.

CHAPTER IV

PROVISIONS COMMON TO CHAPTERS I, II AND III

ARTICLE 37. (Exceptional and provisional nature of measures) Measures imposed pursuant to these Regulations shall be exceptional and temporary in character as they shall be in force for as long as is necessary to counteract the unfair business practice.

ARTICLE 38. (Causal link) For a measure to be adopted, there must be a causal link within the meaning of the WTO Agreements.

ARTICLE 39. (Consistency) The amount of any anti-dumping or countervailing duty applied shall be sufficient to redress the injury or prejudice but never greater than the estimated margin of dumping or the amount of the subsidy.

ARTICLE 40. (Duration of definitive measures) Any definitive anti-dumping or countervailing measure shall be phased out within a period of five years from the date of imposition of the provisional measure or, failing that, of the final resolution.

This time-limit may be extended on an exceptional basis, where it is demonstrated that the conditions which gave rise to the measure continue to exist.

Once a measure has been adopted, it may be reviewed at any time during its implementation.

ARTICLE 41. (Collection of duties) Where an anti-dumping or countervailing duty is imposed on a product, it shall be collected on dumped or subsidized imports that are causing or threatening to cause material injury or serious prejudice to a domestic industry, or material retardation of the establishment of a domestic industry, in accordance with these Regulations. Insofar as possible, it shall be applied to the supplier or suppliers of the product concerned. If, however, all of the suppliers are involved in the unfair business practice at issue, or it is impossible to distinguish between them, the measure shall apply to all suppliers in the country or countries in question.

ARTICLE 42. (Amount of the guarantee) If the definitive anti-dumping or countervailing duty exceeds the amount of the guarantee, payment of the amount shall not be required. If the definitive duty is less than the amount of the guarantee, an order shall be issued for prompt refund of the amount in excess.

ARTICLE 43. (Suspension of the investigation) On the proposal of the investigating authority, the Minister may suspend or terminate the investigation at any stage when there are sufficient grounds for doing so, by issuing the corresponding resolution, which shall be notified within ten days of being issued to the interested parties and SIECA, for the latter to bring it to the attention of the Executive Committee.

ARTICLE 44. (Publication) Resolutions in respect of the initiation of an investigation and the imposition of provisional measures and the final resolution shall be published, once only, at the cost of the interested party, in one of the daily newspapers with national circulation, at the discretion of the investigating authority, and in the Official Journal of the relevant State Party and, when being put into force, in the Official Journal of the Central American Integration System.

ARTICLE 45. (Notification) As required by these Regulations and the WTO Agreements, the investigating authority shall notify procedural actions to interested parties having information in the record, and shall continue to do so unless the party requests to be excluded from the process.

Where in the course of the investigation process the investigating authority is apprised of a new interested party, it shall invite that party to participate in the current stage of the proceedings.

Notifications from the investigating authority to the interested parties may be sent directly by fax, electronic mail, courier, or any other communication medium as may allow confirmation of receipt.

ARTICLE 46. (Remedies) The remedies provided for in the domestic legislation of each State Party shall lie against resolutions adopted by national authorities.

The remedies provided for in the legal instruments of Central American integration shall lie against decisions adopted by regional bodies.

ARTICLE 47. (Dispute settlement) A State Party which considers itself affected by the imposition of an anti-dumping or countervailing duty may refer the matter to the Central American Trade Dispute Settlement Mechanism or the WTO Dispute Settlement Body.

TITLE III

FINAL PROVISIONS

ARTICLE 48. (Amendments to the Regulations) The Council of Ministers shall be responsible for amending the provisions of these Regulations at the request of the States Parties or SIECA.

Each State Party shall submit a semi-annual report to the Executive Committee, through SIECA, on the implementation of this instrument.

ARTICLE 49. (Calculation of time-limits) Unless otherwise specified, the time-limits established in these Regulations shall be calculated in calendar days. Where the time-limit falls on a non-working day it shall be extended to the following working day.

ARTICLE 50. (Suppletive application) In cases not covered by these Regulations, States Parties may apply on a supplementary basis the provisions and principles of Central American integration, the provisions of public international law, and the general principles of law.

ARTICLE 51. (Epigraphs) The epigraphs preceding the Articles of these Regulations are exclusively indicative and therefore have no effect on their interpretation.

ARTICLE 52. (Repeal clause) Upon the entry into force of these Regulations, the Central American Regulations on Unfair Business Practices adopted by Resolution No. 12-95(COMRIEDRE-II) of 12 December 1995, as well as any other prior provisions inconsistent with these Regulations, shall be repealed.
