

WORLD TRADE ORGANIZATION

G/SG/N/1/PER/2/Suppl.2
31 August 2004

(04-3603)

Committee on Safeguards

Original: Spanish

NOTIFICATIONS OF LAWS, REGULATIONS AND ADMINISTRATIVE PROCEDURES RELATING TO SAFEGUARD MEASURES

PERU

Supplement

The following communication, dated 24 August 2004, is being circulated at the request of the delegation of Peru.

The Permanent Mission of Peru to the International Organizations at Geneva presents its compliments to the Secretariat of the World Trade Organization (Committee on Safeguards) and, in accordance with the provisions of Article 12.6 of the Agreement on Safeguards, has the honour to submit herewith the text of Supreme Decree No. 017-2004-MINCETUR of 20 August 2004, amending Supreme Decree No. 020-98-MITINCI, which approved regulations governing the application of the aforesaid Agreement.

**AMENDMENTS TO SUPREME DECREE NO. 020-98-ITINCI APPROVING
REGULATIONS GOVERNING THE IMPLEMENTATION OF THE
AGREEMENT ON SAFEGUARDS AND THE AGREEMENT
ON TEXTILES AND CLOTHING OF THE
WORLD TRADE ORGANIZATION**

SUPREME DECREE No. 017-2004-MINCETUR

THE PRESIDENT OF THE REPUBLIC

CONSIDERING:

That the regulations governing the application of the Agreement on Safeguards and the Agreement on Textiles and Clothing of the World Trade Organization (WTO), incorporated in domestic legislation by Legislative Decision No. 26407, were approved by virtue of Supreme Decree No. 020-98-ITINCI;

That it has been deemed appropriate to review and amend the aforementioned Supreme Decree No. 020-98-ITINCI in order to allow effective implementation of the WTO Agreement on Safeguards;

In accordance with the provisions of paragraph 8 of Article 108 of Peru's Political Constitution;

DECREES:

Article 1. Articles 1, 4, 5, 8.4, 9-16, 23, 24.3, 27, 29, 30, 31.3, 32-35, 36.3, 43 and 47 of Supreme Decree No. 020-98-ITINCI shall be amended as follows:

"**Article 1.** The purpose of this Supreme Decree is to establish regulations to govern the Agreement on Safeguards of the World Trade Organization (WTO), which is incorporated in domestic legislation by virtue of Legislative Decision No. 26407.

The general safeguard provided for in the WTO Agreement on Safeguards may be applied to any product, including agricultural products."

"**Article 4.** For the purposes of this Decree, the following meanings shall apply:

Serious injury: A significant overall impairment in the position of a domestic industry;

Threat of serious injury: Serious injury that is clearly imminent, the determination of which shall be based on facts and not merely on allegation, conjecture or remote possibility;

Domestic industry: The producers as a whole of the like or directly competitive products operating within Peruvian territory, or those whose collective output of the like or directly competitive products constitutes a major proportion of the domestic production of those products. A major proportion of domestic production shall be understood to mean an enterprise or group of enterprises accounting for at least 50 per cent of total domestic production of the product concerned.

Like product: A product of the domestic industry which is identical in its physical characteristics to the imported product concerned, or which, while not alike in all respects, has characteristics closely resembling those of the imported product.

Directly competitive product: A product of the domestic industry which, while not similar to the product with which it is compared, is essentially equivalent for trade purposes as it is devoted to the same use and is interchangeable with the product in question.

Critical circumstances: Circumstances in which there is clear evidence that increased imports have caused or are threatening to cause serious injury and any delay in the adoption of a measure by the competent authorities would cause damage to the domestic industry that would be difficult to repair.

Interested parties: Interested parties shall be considered to include exporters, foreign producers, governments of supplier countries, importers and trade or business associations representative of the exporting or importing producers of the like or directly competitive product; associations of consumers whose interests are affected shall also be considered as interested parties.

Safeguard measure: An urgent measure of a temporary nature taken for the purpose of offsetting the serious injury or threat of serious injury to a domestic industry caused by a significant increase in imports in absolute terms or relative to domestic production.

Adjustment plan: A programme, subject to review and follow-up by the competent authorities, which the firms applying for safeguard measures undertake to implement during the period of application of such measures in order *inter alia* to facilitate the more orderly transfer of resources for more productive uses, to increase competitiveness or to adapt to new conditions of competition.

Imported product: Products which have entered the country for consumption or products which are about to be imported.

Agreement: The Agreement on Safeguards of the World Trade Organization.

WTO: World Trade Organization.

'Days': Working days, unless expressly provided otherwise."

"**Article 5.** A Multisectoral Commission shall be established to apply the safeguard measures provided for in this Decree. The Commission's membership shall comprise the Minister of the Economy and Finance, the Minister of Foreign Trade and Tourism and the Minister of the sector to which the affected domestic industry belongs. The decisions on application or non-application adopted by the Commission shall be made official by Supreme Decree of the Ministry of Foreign Trade and Tourism, endorsed by the Ministers of the Multisectoral Commission.

For the purposes of this Decree, 'Commission' shall be taken to mean the Commission established under this Article."

"**Article 8.** An application for the imposition of safeguard measures shall include:

4. The percentage of domestic production of the like or directly competitive product accounted for by these firms."

"**Article 9.** Except in the case provided for in the following Article, investigations to determine an increase in imports in such quantities and under such conditions as to cause or threaten to cause serious injury to a domestic industry shall be initiated upon written application addressed to the investigating authority."

"**Article 10.** In special circumstances, the investigating authority may initiate an investigation without having received a written application by a domestic industry. It shall do so only if it has sufficient evidence of serious injury or threat of serious injury as a result of a significant increase of imports in absolute terms or relative to domestic production.

'Special circumstances' shall be considered to include situations where the domestic industry is disorganized, fragmented or in the national interest."

"**Article 11.** Within a time-limit of one (1) month, extendable by one (1) further month, from the date of submission of the application, the investigating authority may:

- (a) Initiate the investigation, by publishing the corresponding decision notifying the public of the initiation of the investigation; or,
- (b) Allow the applicant fifteen (15) days in which to meet the requirements laid down in this Decree. This period shall be calculated from the day following the corresponding request and may be extended for a further fifteen (15) days.

Once the requirements have been met, the investigating authority shall have a period of fifteen (15) days in which to take a decision.

If the necessary documents are not provided in an appropriate form within the time-limit, the investigating authority shall declare the application inadmissible and shall notify the applicant of the reasons for that decision; or

- (c) Reject the application on the grounds that it is unfounded and notify the applicant of the reasons for the rejection."

"**Article 12.** Immediately after an investigation has been initiated, the investigating authority shall notify the countries or economies whose exports might be affected by the application of a possible safeguard measure, so that they may submit evidence and state their views.

Without prejudice to the provisions of the preceding paragraph, the Commission may decide to apply safeguard measures on a provisional basis, in accordance with the provisions of the Agreement on Safeguards and this Decree.

Within thirty (30) days of the publication of the decision to initiate an investigation, the applicant shall submit a report containing the general outline of an adjustment plan and substantiating the objectives associated with the adjustment of the domestic industry to competition from imports that it is wished to achieve through imposition of the safeguard measure.

Should the Multisectoral Commission decide to apply a definitive safeguard measure, the applicant shall present the adjustment plan to the Ministry of the sector concerned within a period of 60 calendar days, which may be extended for a further 30 days, from the time the measure is first applied. In *ex officio* investigations, the adjustment plan shall be presented by the domestic industry or the Ministry of the sector to which the affected domestic industry belongs."

"Article 13. The investigation shall be initiated by the decision published in the Official Journal 'El Peruano', which shall also be posted on the website of the National Institute for the Defence of Competition and the Protection of Intellectual Property (INDECOPI). The interested parties shall have a period of thirty (30) days from the day following publication in which to submit in writing any evidence or arguments they consider relevant in defence of their interests in the investigation.

The investigating authority shall be responsible, in coordination with the Ministry of Foreign Trade and Tourism, for notifying the decision to initiate an investigation to the Committee on Safeguards of the WTO, in accordance with the requirements laid down by the Committee on Safeguards.

The time-limits allowed to foreign producers or exporters shall take account of the factor of distance."

"Article 14. The decision to initiate an investigation shall contain:

- (a) The identity of the applicant, where the application is made by a party;
- (b) a detailed description of the product or products that have been or are being imported, with an indication of their tariff heading;
- (c) a description of the domestic product similar to or directly competing with the product that has been or is being imported;
- (d) information about the increase in imports and the serious injury or threat thereof;
- (e) the period under investigation;
- (f) the time-limits for the determination or submission of documents, notices, date of hearing, etc.; and
- (g) an express invitation to all parties that may have an interest in stating their views on the subject-matter of the investigation."

"Article 15. The investigating authority may request the data and information it deems relevant for the fulfilment of its tasks directly from the interested parties, customs agents, transport and other companies and public or private sector bodies, which must provide the information in question within the established time-limits, on pain of liability.

When the information requested by the investigating authority is not provided within the time-limits laid down in this Decree, or when the investigation is seriously impeded, findings may be made on the basis of the available data. If the investigating authority finds that an interested party has supplied it with false or misleading information, it shall disregard such information and may use the data available.

Information received pursuant to the regulations which follow may be used only for the purpose for which it was requested."

"Article 16. The investigating authority shall have a maximum of six (6) months in which to conclude the investigation. This period shall be calculated from the date of publication in the Official Journal 'El Peruano' of the investigating authority's decision to initiate an investigation.

Once the investigation has been concluded, the investigating authority shall submit its report to the Commission, which shall have a period of one (1) month to assess the appropriateness of initiating the consultation process provided for under the WTO Agreement.

The Commission shall have a period of no more than 15 days from the end of the consultation process to decide whether or not to apply the safeguard measure, in accordance with the provisions of the Agreement."

"**Article 23.** For the purposes of an affirmative or negative, preliminary or final determination of serious injury or threat thereof, the investigating authority shall draw up a technical report setting out all relevant factors of an objective and quantifiable nature having a bearing on the determination, together with its assessment or estimate of the likely effects of a provisional or definitive measure, as the case may be.

Once it has arrived at an affirmative or negative determination of serious injury or threat thereof caused by increased imports, the investigating authority shall transmit copies of that determination, with the corresponding technical report, to the Commission and to the Ministry of Foreign Trade and Tourism (MINCETUR), for that body to make the corresponding notification to the WTO Committee on Safeguards."

"**Article 24.** The determination as to the existence or absence of serious injury or threat thereof shall contain:

3. A list of the countries or economies from which Peru imports the product under investigation."

"**Article 27.** The safeguard measures shall consist in the application of a customs duty."

"**Article 29.** In critical circumstances and at any stage of the investigation where delay of any kind would cause damage to the domestic industry that it would be difficult to repair, the investigating authority, at the request of a party or *ex officio*, as the case may be, shall draw up a preliminary technical report to be used by the Multisectoral Commission as a basis for its decision on the application of provisional safeguard measures.

The aforementioned report shall contain all relevant factors of an objective and quantifiable nature that may serve to assess the relevance of the application of a provisional safeguard measure. The report shall be based on the existence of evidence in support of a preliminary determination that increased imports have caused, or are threatening to cause, serious injury.

Within a period of fifteen (15) days from the day following the submission of the technical report by the investigating authority, the Commission shall decide, on the basis of the above report, whether or not to apply provisional safeguard measures."

"**Article 30.** The decision as to the adoption of provisional measures shall be taken by the Commission on the basis of the preliminary technical report prepared by the investigating authority. Once the decision on adoption has been taken and before the measure is introduced, MINCETUR shall make the necessary notification to the WTO Committee on Safeguards. Immediately after the measure has been introduced, the consultations referred to in Article 12.4 of the Agreement shall be initiated."

"**Article 31.** The text providing for the adoption of a provisional safeguard measure shall contain:

3. A list of the countries or economies from which Peru imports the product under investigation."

"Article 32. Provisional safeguard measures shall have a maximum duration of 200 calendar days and may be suspended before the date of their expiration by decision of the Multisectoral Commission.

When it is decided to adopt a definitive safeguard measure, the period of application of any provisional measure shall be reckoned as part of the total period of duration of the definitive measure."

"Article 33. Provisional safeguard measures shall be applied only in the form of an increase in customs duties.

The body responsible for the assessment, guarantee and implementation of safeguard measures shall be the National Tax Administration Authority (SUNAT).

The posting of security shall not be permitted in the case of definitive safeguard measures.

Provisional and definitive safeguards shall be applied immediately to goods for which customs clearance for domestic use is requested during the period for which the measures are in force."

"Article 34. The amount of a provisional safeguard measure shall be paid or guaranteed for payment by the importer, by lodging a security payable to the SUNAT.

When the amount of a definitive safeguard measure is higher than that of a provisional safeguard measure that has been paid or guaranteed, the excess shall not be payable. Conversely, provisional duties collected in an amount higher than that fixed for a definitive measure shall be refunded.

In the event that no definitive safeguard measure is established, reimbursement of the full amount paid shall be ordered promptly, or the security given for the amount of the provisional duties imposed shall be refunded or released."

"Article 35. In order to arrive at an affirmative determination concerning the imposition of definitive safeguard measures, the investigating authority shall submit to the Commission the corresponding technical report on the serious injury caused or threatened by the increased imports. The report shall also contain an assessment of the likely effects of the application of the safeguard measure and the information that emerged during the investigation that is relevant, so that the Commission may assess the public interest affected and decide whether or not it is appropriate to apply safeguard measures and the amount of such measures.

The Commission shall assess the general public interest of the country, taking into consideration the technical report by the investigating authority and the effects of the imposition of such measures both at national level and in regard to trade relations with countries possibly affected, particularly in cases where application of the safeguard has the effect of exceeding the tariff level bound by Peru in the WTO.

Once the decision to take a definitive measure has been adopted, the Ministry of Foreign Trade and Tourism shall make the corresponding notification to the WTO Committee on Safeguards."

"**Article 36.** The text whereby the Multisectoral Commission proposes to adopt or establishes the application of a definitive safeguard measure shall contain:

3. A list of the countries or economies from which Peru imports the product under investigation."

"**Article 43.** A safeguard measure may be extended *ex officio* at the request of the Multisectoral Commission or on the application of a party no less than six months before expiry of the period prescribed for the adoption of the initial measure. To that end, the procedure provided for the adoption of the original measure shall be followed, to the extent that it is applicable."

"**Article 47.** A safeguard measure may be applied again to imports of a product that has previously been subject to such a measure, adopted in accordance with the Agreement, after a period of time equal to half that during which such a measure had been previously applied, provided that the period of non-application is at least two years."

Article 2. Article 8.10 of Supreme Decree No. 020-98-ITINCI is hereby revoked.

Article 3. Any reference made to the Ministry of Industry, Tourism, Integration and International Trade Negotiations within the framework of Supreme Decree No. 020-98-ITINCI, should be understood to apply to the Ministry of Foreign Trade and Tourism.

Article 4. This Supreme Decree shall be endorsed by the Chairman of the Council of Ministers, the Minister of Foreign Trade and Tourism, the Minister of the Economy and Finance and the Minister of Production.

Done at Government House, Lima, on the nineteenth day of the month of August of the year two thousand and four.

Alejandro Toledo, **Constitutional President of the Republic**
Carlos Ferrero, **Chairman of the Council of Ministers**
Alfredo Ferrero, **Minister of Foreign Trade and Tourism**
Pedro Pablo Kuczynski, **Minister of the Economy and Finance**
Javier Sota Nadal, **Minister of Education, responsible for the Production Portfolio**

Supreme Decree of 18 December 1998 (published on 19 December 1998).

**APPROVING REGULATIONS GOVERNING THE AGREEMENT ON SAFEGUARDS
AND THE AGREEMENT ON TEXTILES AND CLOTHING
OF THE WORLD TRADE ORGANIZATION**

SUPREME DECREE NO. 020-98-ITINCI

THE PRESIDENT OF THE REPUBLIC

CONSIDERING:

That, by virtue of Legislative Decision No. 26407, the legislature incorporated in domestic legislation the Agreement Establishing the World Trade Organization (WTO) and the Multilateral Agreements on Trade in Goods contained in the Final Act of the Uruguay Round signed at Marrakesh, Morocco, on 15 April 1994;

That the aforementioned Multilateral Agreements on Trade in Goods include the Agreement on Safeguards designed to strengthen Article XIX of the GATT and regulate the procedures that may be followed by WTO Members in cases involving massive imports of goods which cause or threaten to cause serious injury to a domestic industry, and the WTO Agreement on Textiles and Clothing (ATC), which establishes the transitional safeguard for textile products and clothing;

That, in signing the Agreement on Safeguards, WTO Members recognized the importance of structural adjustment and the need to enhance rather than limit competition in international markets;

That a safeguard measure can be applied only on the basis of a pre-established and public procedure, inasmuch as countries are obliged to publish promptly any regulations adopted with regard to investigative procedures for the possible application of safeguard measures;

That it is accordingly desirable to approve the necessary regulatory measures to facilitate implementation of the WTO Agreement on Safeguards;

That, in accordance with the international obligations undertaken by Peru, the WTO must be notified of the laws, regulations and administrative procedures which Peru is entitled to adopt in respect of safeguard measures;

In accordance with the provisions of paragraph 8 of Article 108 of Peru's Political Constitution;

DECREES:

TITLE I: GENERAL PROVISIONS

Article 1. The purpose of this Supreme Decree is to establish regulations to implement the rules laid down in the Agreement on Safeguards and the Agreement on Textiles and Clothing of the World Trade Organization (WTO), incorporated in national legislation by Legislative Decision No. 26407.

The general safeguard provided for in the WTO Agreement on Safeguards may be applied to any product, including agricultural products, with the exception of products subject to the provisions

of the WTO Agreement on Textiles and Clothing which have not yet been integrated into the general regime (GATT 1994), pursuant to Article 2 of that Agreement.

Article 2. The safeguard measures applicable to imports effected in the framework of the integration treaties and bilateral trade agreements to which Peru is a party shall be governed by the provisions of such treaties.

Article 3. Safeguard measures shall be applied when a product, irrespective of its source, is being imported in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products.

Safeguard measures shall be applied to a product being imported irrespective of its origin, in accordance with the provisions of the Agreement.

Article 4. For the purposes of this Decree, the following meanings shall apply:

Serious injury: A significant overall impairment in the position of a domestic industry.

Threat of serious injury: Serious injury that is clearly imminent, the determination of which shall be based on facts and not merely on allegation, conjecture or remote possibility.

Domestic industry: The producers as a whole of the like or directly competitive products operating within Peruvian territory, or those whose collective output of the like or directly competitive products constitutes a major proportion of the domestic production of those products. A major proportion of domestic production shall be understood to mean an enterprise or group of enterprises accounting for at least 50 per cent of total domestic production of the particular product.

Exceptionally, in the case of fragmented domestic industries involving an extremely high number of producers, an investigation may be initiated with the support of at least 25 per cent of the total domestic industry, where that situation is justified and duly substantiated in the opinion of the investigating authority.

Like product: A product of the domestic industry which is identical in its physical characteristics to the imported product concerned, or which, while not alike in all respects, has characteristics closely resembling those of the imported product.

Directly competitive product: A product of the domestic industry which, while not similar to the product with which it is compared, is essentially equivalent for trade purposes as it is devoted to the same use and is interchangeable with the product in question.

Critical circumstances: Circumstances in which there is clear evidence that increased imports have caused or are threatening to cause serious injury and any delay in the adoption of a measure by the competent authorities would cause damage to the domestic industry, which it would be difficult to repair.

Interested parties: Interested parties shall be considered to include exporters, foreign producers, governments of supplier countries, importers, trade or business associations representative of the exporting or importing producers of the like or directly competitive product; associations of consumers whose interests are affected shall also be considered as interested parties.

Safeguard measure: An urgent measure of a temporary nature taken for the purpose of offsetting the serious injury or threat of serious injury to a domestic industry caused by a significant increase in imports in absolute terms or relative to domestic production.

Adjustment plan: A programme, subject to review and follow-up by the competent authorities, which the firms applying for safeguard measures undertake to implement during the period of application of such measures in order *inter alia* to facilitate the more orderly transfer of resources for more productive uses, to increase competitiveness or to adapt to new conditions of competition.

Imported product: Products which have entered the country for consumption or products which are about to be imported.

Agreement: The Agreement on Safeguards of the World Trade Organization.

WTO: World Trade Organization.

'Days': Working days, unless expressly provided otherwise.

TITLE II: COMPETENT AUTHORITY

Article 5. A Multisectoral Commission shall be established to apply the safeguard measures provided for in this Decree. The Commission's membership shall comprise the Minister of the Economy and Finance, the Minister of Industry, Tourism, Integration and International Trade Negotiations and the Minister of the sector to which the affected domestic industry belongs. Decisions taken by the Commission shall be made official by Ministerial Resolution of the Ministry of Industry, Tourism, Integration and International Trade Negotiations.

For the purposes of this Decree, 'Commission' shall be taken to mean the Commission set up under this Article.

Article 6. The Dumping and Subsidies Commission of the National Institute for the Defence of Competition and the Protection of Intellectual Property, hereinafter the investigating authority, is the body responsible for the investigation provided for under the procedure for the application of safeguard measures pursuant to this Decree.

Article 7. Decisions relating to the application, suspension and revocation of safeguard measures, and to the modification or extension of the time-limits for their application, shall be the exclusive responsibility of the Multisectoral Commission and shall be taken on the basis of the technical report prepared by the investigating authority as a result of the investigation carried out.

TITLE III: INVESTIGATIONS

CHAPTER I: APPLICATION FOR THE INITIATION OF AN INVESTIGATION

Article 8. An application for the imposition of safeguard measures shall include:

1. A description of the imported product, its tariff classification and the customs duties in force.
2. A description of the like or directly competitive product.
3. The names and addresses of the firms or entities represented in the application.

4. The percentage of domestic production of the like or directly competitive product accounted for by those firms and proof of the representativeness of the domestic industry, in accordance with the definition contained in Article 4 of this Decree.
5. Import data for the previous three calendar years or another period adequately justified as representative for the industry, which show the increase in the imports under investigation in absolute terms or relative to domestic production. Such information shall as far as possible be submitted on a monthly basis.
6. Data on the volume and value of domestic production of the like or directly competitive product for the previous three calendar years or another period adequately justified as representative for the industry. Such information shall as far as possible be submitted on a monthly basis.
7. Quantitative data indicating the degree of serious injury or threat thereof to the domestic industry for the period referred to in the previous paragraph, including but not confined to the following:
 - (a) With regard to serious injury:
 - (i) A significant idling of installed production capacity in the domestic industry, including data on the closure of plants or the under-utilization of production capacity;
 - (ii) the inability of a significant number of domestic firms to carry out production activities at a reasonable level of profit;
 - (iii) substantial unemployment or a significant level of underemployment within the sector of the domestic industry and the domestic industry as a whole;
 - (iv) changes in the level of prices, production, productivity and sales; and
 - (v) any other data considered relevant.
 - (b) With regard to the threat of serious injury:
 - (i) Evidence of an increase or imminent increase in imports in such quantities and under such conditions as to threaten to cause serious injury to the domestic industry;
 - (ii) a decline in sales or market share, a higher and growing inventory (whether maintained by domestic producers, importers, wholesalers or retailers), and a downward trend in production, profits, wages, productivity or employment (or growing underemployment) in the domestic industry;
 - (iii) the extent to which firms in the domestic industry are unable to generate adequate capital to finance the modernization of their domestic plants and equipment, or are unable to maintain existing levels of expenditure for research and development;

- (iv) the extent to which imports are being diverted to the Peruvian market owing to restraints in the markets of third countries or seasonal surpluses at source or points of origin.
- 8. Causal link: An explanation and description of the presumed causes of the injury or threat of injury and the extent to which such injury or threat of injury is attributable to the imports under investigation, based on the relevant data, and an explanation demonstrating that the injury or threat of injury cannot be attributed to causes other than imports.
- 9. A declaration describing the specific purposes for which Government action is sought, for example, in order to facilitate the orderly transfer of resources for more productive uses, to increase competitiveness, or to adapt to new conditions of competition, as well as the level of the measure considered necessary to ensure achievement of the objectives pursued.
- 10. Presentation of a financial report which quantifies the impact of the measure requested on the final and intermediate consumers of the product concerned, and on the public interest.
- 11. If critical circumstances are alleged, data on the following factors:
 - (a) The factual grounds which serve to demonstrate that the increased imports under investigation are causing or threatening to cause serious injury, and that any delay in taking measures would cause damage to the industry which it would be difficult to repair;
 - (b) a declaration specifying the level of the provisional measure requested and the underlying justification for that remedy.

CHAPTER II: PROCEDURE

Article 9. Except in the case provided for in the following Article, investigations to determine an increase in imports in such quantities and under such conditions as to cause or threaten to cause serious injury to a domestic industry shall be initiated upon written application addressed to the Dumping and Subsidies Commission of INDECOPI by a firm or group of firms representing a major proportion of the total domestic industry producing the product under investigation, in accordance with the definition contained in Article 4.

Article 10. In exceptional circumstances, the investigating authority may initiate the investigation *ex officio*, provided that it is in the national interest and subject to the requirement of evidence that the domestic industry affected is materially not able to submit the necessary application. In such cases there must be adequate evidence that increased imports, in absolute or relative terms, are causing or threatening to cause serious injury to the domestic industry.

Article 11. Within a time-limit of one (1) month, extendable by one (1) further month, from the date of submission of the application, the investigating authority may:

- (a) Accept the application and take the necessary decision to initiate an investigation; or
- (b) allow the applicant fifteen (15) days in which to meet the requirements laid down in this Decree. This period shall be calculated from the day following the corresponding request and may be extended for a further fifteen (15) days.

Once the requirements have been met, the investigating authority shall have a period of fifteen (15) days in which to take a decision.

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

- (c) Reject the application on the grounds that it is unfounded and issue the corresponding decision, which shall be notified to the applicant.

Article 12. Immediately after an investigation has been initiated, the investigating authority shall notify the governments of the countries whose exports could be affected by the application of a possible safeguard measure so that they may submit evidence and state their opinions.

Without prejudice to the provisions of the preceding paragraph, the Commission may decide to apply safeguard measures on a provisional basis, in accordance with the provisions of the Agreement on Safeguards and this Decree.

Within thirty (30) days of the publication of the decision to initiate an investigation, the applicant shall submit a duly substantiated plan for the adjustment of the domestic industry to competition from imports, in accordance with the objectives it is wished to achieve through imposition of the measure, as described in the application.

Article 13. The decision to initiate an investigation shall be notified to the interested parties through the Official Journal 'El Peruano', so that within a period of thirty (30) days from the day following publication, they may submit in writing any evidence or arguments they consider relevant in defence of their interests in the investigation.

The investigating authority shall be responsible, with the Ministry of Industry, Tourism, Integration and International Trade Negotiations, for coordinating notification of the decision to initiate an investigation to the Committee on Safeguards of the WTO. Such notification shall be effected immediately after the investigation has been initiated, in accordance with the requirements laid down by the Committee on Safeguards.

The time-limits allowed to foreign producers or exporters shall take account of the factor of distance.

Article 14. The decision to initiate an investigation shall contain at least the following information:

- (a) The identity of the applicant;
- (b) a detailed description of the product or products that have been or are being imported, with an indication of their tariff heading;
- (c) a description of the domestic product alike to or directly competitive with the product that has been or is being imported;
- (d) the period under investigation;
- (e) the time-limits for the determination or submission of documents, advertisements, etc.;

- (f) the name of the exporting country or countries and the necessary information to ensure accurate identification of the product concerned and its origin.

Article 15. The investigating authority may require the data it deems relevant for the fulfilment of its task directly from the interested parties, customs agents, surveillance, transport and other companies and public or private sector bodies, which must provide this information concerned within the time-limits granted, on pain of liability.

When the information requested by the investigating authority is not provided within the time-limits laid down in this Decree, or when the investigation is seriously impeded, findings may be made on the basis of the available data. If the investigating authority finds that an interested party has supplied it with false or misleading information, it shall disregard such information and may use the data available.

Information received pursuant to the regulations which follow may be used only for the purpose for which it was requested.

Article 16. The Commission shall have a period of six (6) months in which to conclude the investigation. This period shall be calculated from the date of publication in the Official Journal 'El Peruano' of the investigating authority's decision to initiate an investigation.

Provided that there are grounds for doing so in the opinion of the investigating authority, the period may be extended once only for a further two (2) months.

Article 17. The decision to initiate an investigation, decisions establishing provisional and definitive safeguard measures, and decisions cancelling or modifying such measures or terminating or suspending the investigation, shall be published in 'El Peruano' once only.

CHAPTER III: CONFIDENTIALITY

Article 18. Any confidential information submitted by the parties in an investigation preceding the application of safeguard measures shall be treated as such by the investigating authority, upon cause being shown, and shall not be revealed without the final consent of the party by which it was submitted.

The investigating authority may invite the parties which have supplied confidential information to provide non-confidential summaries thereof or, if they state that the information in question cannot be summarized, to explain the reasons why this is impossible.

Article 19. If the investigating authority decides that a request for confidentiality is not warranted and if the party which submitted the information is unwilling to make it public or to authorize its full or partial disclosure, in generalized or summary form, the investigating authority shall reserve the right to disregard such information, unless convincing evidence is shown, from a reliable source, that the information is accurate.

Interested parties which have made submissions in the investigation and the representatives of the exporting countries may see all the information obtained in the context of the investigation apart from information of a confidential nature.

CHAPTER IV: ANALYSIS OF INJURY

Article 20. In the investigation to determine whether increased imports of a specific product have caused or are threatening to cause serious injury, account shall be taken of all factors of an objective and quantifiable nature having a bearing on the situation of the domestic industry affected, including the following in particular:

- (i) The rate and amount of the increase in imports of the product, in absolute terms and in relation to domestic production and consumption;
- (ii) the share of the domestic market taken by increased imports;
- (iii) the price of the imports, especially in order to determine whether there has been significant underpricing in relation to the ordinary price of the like or directly competitive domestic product;
- (iv) the impact on the domestic industry of the like or directly competitive products, as evidenced by changes in the economic factors identified in Article 8.7(a);
- (v) other factors which, although not related to import trends, have a causal relationship with the injury or threat of injury to the domestic industry concerned.

Article 21. When there is an alleged threat of serious injury, the investigating authority shall examine whether it is foreseeable that the case may become one of serious injury, taking into account the data on the domestic industry identified in Article 8.7(b), in addition to factors such as the rate and amount of the increase in exports to Peru, in absolute and relative terms, the actual or potential export capacity of the countries of production or origin, and the likelihood that the exports resulting from that capacity are destined for the Peruvian market.

Article 22. The determination of serious injury or threat thereof shall be based on objective evidence demonstrating a causal link between increased imports of the product under investigation and the alleged serious injury or threat thereof.

If factors other than increased imports are at the same time causing serious injury or a threat of serious injury to the domestic industry concerned, such serious injury shall not be attributed to increased imports.

Article 23. For the purposes of an affirmative or negative, preliminary or final determination of serious injury or threat thereof, the investigating authority shall draw up a technical report setting out all relevant factors of an objective and quantifiable nature having a bearing on the determination, together with its assessment or estimate of the likely effects of a provisional or definitive measure, as the case may be.

Once it has arrived at an affirmative or negative determination of serious injury or threat thereof caused by increased imports, the investigating authority shall transmit copies of that determination, accompanied by the corresponding technical report, to the Intersectoral Commission and to the Ministry of Industry, Tourism, Integration and International Trade Negotiations (MITINCI), for that body to make the corresponding notification to the WTO Committee on Safeguards.

Article 24. The determination as to the existence or absence of serious injury or threat thereof shall contain:

1. A description of the product that is the subject of the determination.
2. A detailed analysis of the case under investigation, which may consist of a summary of the technical report of INDECOPI, excluding confidential information.
3. The names of the firms which make up the domestic industry.
4. Considerations relating to the methodology used to determine the existence of serious injury or threat thereof.
5. The factual and legal basis of the determination.
6. A reasoned statement concerning the relevance of the factors examined.

TITLE IV: APPLICATION OF SAFEGUARD MEASURES

Article 25. Provisional and definitive safeguard measures shall be applied only in such amount and for such period of time as may be necessary to prevent the threat of injury or remedy serious injury and to facilitate adjustment.

Article 26. No safeguard measure may be applied to a product originating in a developing country Member of the WTO as long as that country's share of Peruvian imports of the product in question does not exceed 3 per cent, provided that developing country Members of the WTO with less than 3 per cent share of Peruvian imports collectively account for not more than 9 per cent of total imports of the product in question.

Article 27. Safeguard measures shall preferably consist of the application of an *ad valorem* tariff; only where measures of this nature are inappropriate shall specific tariffs or quantitative restrictions be applied.

Article 28. If a safeguard measure involves the application of a quantitative restriction, through the establishment of a maximum import quota or entitlement, such quota or entitlement shall on no account be lower than the average level of imports of the product concerned over the last three calendar years preceding the year in which the investigation was initiated, unless clear cause is shown of the need to set a different level in order to remedy or prevent serious injury or the threat thereof, as the case may be.

The above-mentioned quotas shall be allocated among supplying countries in accordance with the provisions of Article 5.2 of the Agreement on Safeguards.

CHAPTER I: PROVISIONAL SAFEGUARD MEASURES

Article 29. In cases where the applicant alleges the existence of critical circumstances, a provisional safeguard measure may be applied. The investigating authority shall draw up a preliminary technical report, which shall contain all relevant factors of an objective and quantifiable nature which may serve to evaluate the relevance of the application of the measure and its possible impact on the domestic market. The preliminary report shall be based on the existence of clear evidence that the increased imports have caused or threaten to cause serious injury.

The investigating authority shall submit the preliminary technical report within a minimum of fifteen (15) days and a maximum of two (2) months from the day following the date of publication of the decision to initiate an investigation.

Article 30. The decision as to the adoption of provisional measures shall be taken by the Multisectoral Commission on the basis of the preliminary technical report prepared by the investigating authority. Once the decision has been taken and before the adoption of the measure, the Multisectoral Commission shall communicate its intention to proceed with adoption of the measure to MITINCI, which shall make the necessary notification to the WTO Committee on Safeguards. Immediately after the measure has been taken, the consultations referred to in Article 12.4 of the WTO Agreement on Safeguards shall be initiated.

Article 31. The text providing for adoption of a provisional safeguard measure shall contain:

1. A determination as to the increase in imports, in absolute and relative terms.
2. A description of the product to which the measure applies.
3. A list of the producers that constitute the domestic industry.
4. A preliminary determination as to the existence of clear evidence that the increased imports are the cause of serious injury or threat thereof, including an account of the economic factors analysed for the purpose of the determination.
5. The level of the provisional safeguard measure, i.e. the amount of the tariff increase.
6. The planned duration of the provisional measure.

In the event that it is decided not to adopt a provisional measure, the corresponding decision shall contain the factual and legal grounds on which the Multisectoral Commission based its decision.

Article 32. Provisional safeguard measures shall have a maximum duration of 200 days and may be suspended before the date of their expiration by decision of the Multisectoral Commission.

When a decision is taken to adopt a definitive safeguard measure, the period of application of any provisional measure shall be calculated as part of the total period of duration of the measure.

Article 33. Provisional safeguard measures shall be applied only in the form of an increase in tariffs calculated *ad valorem*.

The body responsible for the assessment, guarantee and implementation of safeguard measures shall be the National Customs Administration (ADUANAS).

Article 34. The amount of a provisional safeguard measure shall be paid or guaranteed for payment by the importer, by lodging a security payable to the National Customs Administration (ADUANAS).

When the amount of a definitive safeguard measure is higher than that of a provisional safeguard measure that has been paid or guaranteed, the excess shall not be payable. Conversely, provisional duties collected in an amount higher than that fixed for a definitive measure shall be refunded.

In the event that no definitive safeguard measure is established, reimbursement of the full amount paid shall be ordered promptly, or the security given for the amount of the provisional duties imposed shall be refunded or released.

CHAPTER II: DEFINITIVE SAFEGUARD MEASURES

Article 35. In order to arrive at an affirmative determination concerning the imposition of definitive safeguard measures, the investigating authority shall submit to the Multisectoral Commission the corresponding technical report on the serious injury caused or threatened by the increased imports, so that the latter may decide whether or not it is appropriate to apply safeguard measures and the amount of such measures.

The Multisectoral Commission shall assess the general economic interest of the country, including the effects of the imposition of such measures both at national level and in regard to trade relations with countries possibly affected, particularly in cases where application of the safeguard has the effect of exceeding the tariff level bound by Peru in the WTO.

Once the decision to take a definitive measure has been adopted, the Ministry of Industry, Tourism, Integration and International Trade Negotiations shall make the corresponding notification to the WTO Committee on Safeguards.

Article 36. The text whereby the Multisectoral Commission adopts a definitive safeguard measure shall contain:

1. A determination as to the increase in imports, in absolute or relative terms.
2. A description of the product to which the measure applies.
3. A list of the producers comprising the domestic industry.
4. A final determination as to the existence of clear evidence that the increased imports have caused serious injury or threat thereof, including an explanatory account of the economic factors analysed for the purpose of such a determination.
5. The level of the definitive safeguard measure, i.e. the amount of the tariff increase.
6. The planned duration of the definitive measure.
7. The adjustment plan submitted by the applicant firms.
8. The timetable for progressive liberalization of the measure, in the case of measures of a total duration of over one year, including any period of provisional application.
9. An assessment as to the appropriateness of the measure in relation to the public interest.

The aforementioned decision shall be based on the technical report of the investigating authority concerning the determination as to the existence of serious injury or threat thereof caused by the increase in imports.

If it is decided not to adopt a definitive measure, the corresponding text shall contain the factual and legal grounds on which the Multisectoral Commission based its decision and shall be published in the Official Journal 'El Peruano'.

CHAPTER III: CONSULTATIONS

Article 37. Before imposing or extending a definitive safeguard measure, the Peruvian Government shall provide adequate opportunity for consultations to be held with WTO Members which have a substantial interest as exporters of the particular product concerned. The purpose of such consultations shall be, *inter alia*, to examine the information supplied in notifications to the Committee on Safeguards, to exchange views on the measure and to reach an understanding on how to achieve the objective of maintaining the level of Peru's concessions and other obligations under the GATT 1994.

The Government of Peru shall immediately notify the results of the consultations to the WTO Council for Trade in Goods, including any compensation granted, where applicable.

Article 38. When applying safeguard measures or extending their duration, the Government of Peru shall endeavour to maintain a level of concessions and other obligations substantially equivalent to that existing under the GATT 1994 between Peru and the exporting Members which would be affected by such measures.

1. For the purposes of this Article, agreements may be made, through the consultations referred to in the previous Article, regarding any adequate means of trade compensation for the adverse effects of the safeguard measures on trade.

2. When taking a decision to introduce a safeguard measure, the Peruvian Government shall also consider the fact that, in cases where no agreement is reached concerning adequate compensation, the interested governments may, under the terms of the Agreement on Safeguards of the GATT 1994, suspend substantially equivalent concessions, as long as such suspension is not disapproved of by the WTO Council for Trade in Goods.

3. The right to suspend equivalent concessions shall not be exercised for the first three years that a safeguard measure is in effect, provided that it has been adopted as a result of an absolute increase in imports.

CHAPTER IV: DURATION OF SAFEGUARD MEASURES

Article 39. The duration of safeguard measures shall not exceed three years, unless they are extended in accordance with the provisions of Article 44 *et seq.* of these regulations.

Article 40. The total duration of a safeguard measure, including the period of application of any provisional measure, the period of initial application and any extension thereof, shall not exceed six years.

Article 41. Safeguard measures for which the period of application is more than one year shall be liberalized progressively, at regular intervals, during the period of application.

CHAPTER V: MONITORING AND REVOCATION OF SAFEGUARD MEASURES

Article 42. The Ministry of the sector concerned, in coordination with the investigating authority, shall monitor the situation of the affected industry during the period of application of the safeguard measure and may propose to the Multisectoral Commission, on the basis of a well-founded determination, that the measure be revoked if it is established that the efforts to bring about the desired adjustment and changes in the circumstances which originally gave rise to the application of the measure are insufficient or inadequate.

CHAPTER VI: EXTENSION OF SAFEGUARD MEASURES

Article 43. A safeguard measure may be extended *ex officio* at the request of the Multisectoral Commission or on the application of a party no less than two (2) months before expiry of the period prescribed for the initial measure. To that end, the procedure provided for the adoption of the original measure shall be followed.

Article 44. Safeguard measures may be extended once only, for a period no longer than three years.

Article 45. In order for a safeguard measure to be extended, the Multisectoral Commission shall base its decision on the investigating authority's technical report and on the finding that application of the measure continues to be necessary to prevent or remedy serious injury and that there is evidence that the industry is undergoing a process of adjustment, and shall satisfy itself that the provisions of the WTO Agreement relating to consultations and notifications are duly observed.

Article 46. Measures which are extended shall not be more restrictive than those in force at the end of the initial period, and the gradual liberalization considered appropriate in relation to the adjustment plan shall be continued during the period of extension.

CHAPTER VII: RENEWED APPLICATION OF A SAFEGUARD MEASURE

Article 47. No new measure may be applied to the same product before two years have elapsed since the end of the duration of a safeguard measure.

If a safeguard measure has been applied for a period of over four years, the prohibition contained in the previous paragraph shall apply after a period equal to half the period of its duration has elapsed.

Article 48. Notwithstanding the provisions of the preceding Article, safeguard measures of a duration not exceeding 180 days may be applied again to imports of the same product in cases where:

1. At least one year has elapsed since the date of introduction of a safeguard measure on the import of the product concerned;
2. such a measure has not been applied on the same product more than twice in the five-year period immediately preceding the date of introduction of the safeguard measure.

TRANSITIONAL PROVISIONS

1. The transitional safeguard established in Article 6 of the WTO Agreement on Textiles and Clothing (ATC) shall be applicable to all products covered by that Agreement which have not been integrated into the general regime (GATT 1994) in accordance with Article 2 of the ATC, in the light of the procedures established in this Decree.

2. Transitional safeguards may be adopted by the Commission when the investigating authority recommends their application and determines that the product in question has been imported in such increased quantities as to cause serious damage, or actual threat thereof, to the domestic industry producing like or directly competitive products.

3. The investigating authority shall not recommend the application of transitional safeguards unless it is demonstrated that the serious damage or actual threat thereof is caused by the increased

quantities in total imports of the product in question, and not by such other factors as technological changes or changes in consumer preference.

In order to determine the serious damage or actual threat thereof, the investigating authority shall examine the effect of the imports on the affected domestic industry, as reflected in changes in such relevant economic variables as output, productivity, utilization of installed capacity, inventories, market share, exports, wages, levels of employment, domestic prices, profits and investment. None of these factors, either alone or combined with other factors, can give decisive guidance.

4. Applications for the introduction of transitional safeguard measures shall be submitted in writing to the investigating authority, accompanied by sufficient evidence and information to give an indication of the increase in imports, the serious damage or actual threat thereof, and the causal link between the two.

For the purposes of the transitional safeguard, the provisions of Title III of this Supreme Decree shall apply, in the light of Article 6 of the WTO Agreement on Textiles and Clothing.

5. If the investigating authority concludes that application of a transitional safeguard should be recommended, it shall submit the corresponding report to the Commission for the latter to decide whether or not such application is appropriate.

If the Commission decides to apply the measure, it shall require the competent authorities to request consultations with the government or governments of the countries that would possibly be affected by the measure, in accordance with the procedure provided for in Articles 6.7, 6.8, 6.9 and 6.10 of the ATC.

Once the consultation process has been concluded, the Commission's decision shall be given official form in a ministerial resolution of the Ministry of Industry, Tourism, Integration and International Trade Negotiations. If it is decided not to apply the measure, the Commission shall set out that agreement in an appropriate legal text.

6. The transitional safeguard provided for in this text shall be applied on a country-by-country basis. To that end, the investigating authority shall determine the country or countries to which the serious damage or actual threat thereof to the domestic industry is to be attributed, on the basis of a sharp and substantial increase in imports, actual or imminent, from each country individually, and on the basis of the level of imports as compared with imports from other sources, market share, and import and domestic prices at a comparable stage of commercial transaction. In accordance with the provisions of Article 6.4 of the ATC, none of these factors, either alone or combined with other factors, can necessarily give decisive guidance.

The imminent increase in imports referred to in the preceding paragraph shall be measurable and shall not be determined on the basis of allegation, conjecture or remote possibility resulting, for example, from the production capacity existing in the exporting countries.

7. The transitional safeguard shall consist of a quantitative restriction, and shall remain in force no longer than three years, without possibility of extension, or until the product is integrated into the GATT 1994, whichever comes first.

8. The level of restraint imposed through the application of a transitional safeguard shall under no circumstances be lower than the actual level of imports from the country concerned during the 12-month period terminating two months preceding the month in which the request for consultations referred to in Transitional Provision 5 was made.

Should the restraint remain in force for a period exceeding one year, the level for subsequent years shall be the level specified for the first year increased by not less than six per cent per annum; carry forward and carryover may also be applied in accordance with the rules laid down in Articles 6.13 and 6.14 of the ATC.

9. For the purpose of applying transitional safeguard measures, consideration shall be given to the interests of the exporting countries, in accordance with the terms of the Agreement on Textiles and Clothing.

10. In unusual and critical circumstances, where delay would cause damage which would be difficult to repair, provisional measures may be adopted on the condition that the request for consultations and notification to the WTO Textiles Monitoring Body shall be effected within no more than five (5) days from the day following publication of the measure.

11. These transitional provisions shall be applicable until 31 December of the year 2004.

FINAL PROVISIONS

1. The procedure established in this Supreme Decree shall also apply to applications for the imposition of safeguard measures against imports from countries which are not WTO Members. However, the second paragraph of Article 3 and Articles 26, 37, 38, 41 and 48 of these regulations shall not apply to those countries.

Safeguards applied against WTO non-Member countries shall be adopted on a country-by-country basis.

2. The Ministry of Industry, Tourism, Integration and International Trade Negotiations, *ex officio* or at the request of the Commission, may adopt follow-up measures in respect of imports of certain products, in order to monitor trends in such imports. Such measures shall consist in observing and keeping track of import indicators, in absolute terms or in relation to domestic production, as well as trends, within the industry concerned, in indices of employment, production, utilization of installed capacity, profitability and market share, among others.

3. The negotiations which take place during consultations held with WTO Member countries on the basis of undertakings provided for in the WTO Agreements on Safeguards and on Textiles and Clothing shall be under the responsibility of MITINCI and the investigating authority.

4. This Decree shall be endorsed by the Chairman of the Council of Ministers and by the Ministers of the Economy and Finance and of Industry, Tourism, Integration and International Trade Negotiations.

Done at Government House, Lima, on the eighteenth day of the month of December of the year one thousand nine hundred and ninety-eight.

ALBERTO FUJIMORI FUJIMORI
Constitutional President of the Republic

ALBERTO PANDOLFI ARBULU
Chairman of the Council of Ministers

JORGE BACA CAMPODONICO
Minister of the Economy and Finance

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