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

Original: Spanish

**NOTIFICATION OF LAWS AND REGULATIONS UNDER
ARTICLES 18.5, 32.6 AND 12.6
OF THE AGREEMENTS**

PLURINATIONAL STATE OF BOLIVIA

The following communication, dated 10 February 2020, has been received from the delegation of the Plurinational State of Bolivia.

SUPREME DECREE NO. 4069**EVO MORALES AYMA****CONSTITUTIONAL PRESIDENT OF THE PLURINATIONAL STATE OF BOLIVIA****WHEREAS:**

Article 298.I.4 and 298.I.5 of the Political Constitution of the State determine that central Government has exclusive competence for customs procedure and foreign trade.

Article 54.II of the Constitution establishes that the protection and safeguarding of industry and state services is the duty of the State and of society.

Law No. 1637 of 5 July 1995 approved and ratified the Final Act of the Uruguay Round establishing the World Trade Organization (WTO) and incorporated the results of the multilateral trade negotiations under the General Agreement on Tariffs and Trade (GATT).

The Plurinational State of Bolivia signed the Cartagena Agreement in 1969 and is a full member of the Andean Community and is therefore subject to Andean legal regulations.

The Plurinational State of Bolivia signed trade agreements establishing specific conditions for the implementation of anti-dumping, countervailing and safeguard measures.

It is necessary to preserve the domestic production base by implementing international trade remedies through anti-dumping, countervailing and safeguard measures.

IN THE COUNCIL OF MINISTERS,**HEREBY DECREES:**

ARTICLE 1.- (PURPOSE). The purpose of this Supreme Decree is to establish an institutional framework for the implementation of international trade remedies pursuant to Articles VI and XIX of the GATT 1947, the WTO Agreement on Safeguards, the WTO Agreement on Subsidies and Countervailing Measures, the WTO Agreement on Implementation of Article VI of the GATT 1994, the Cartagena Agreement, the Andean Decisions and concluded and yet-to-be concluded trade agreements.

ARTICLE 2.- (INVESTIGATING AUTHORITY). Through the Vice-Ministry of Tax Policy, the Ministry of the Economy and Public Finance shall be the Investigating Authority responsible for the investigation envisaged for the implementation of anti-dumping, countervailing and safeguard measures.

ARTICLE 3.- (OBLIGATION TO PROVIDE INFORMATION). The various public administration departments and interested parties in the implementation of trade remedies shall provide information when required by the Investigating Authority and within the time-frames established by the regulations. In addition, information received pursuant to these regulations may be used only for the purpose for which it was requested.

ARTICLE 4.- (COMMITTEE ON THE EVALUATION OF TRADE PRACTICES).

- I.** The Committee on the Evaluation of Trade Practices is established as a body responsible for assessing and deciding on the appropriateness of implementing anti-dumping, countervailing and safeguard measures, their form and scope.
- II.** The Committee shall comprise the Ministries of Development Planning, the Economy and Public Finance, Production Development and the Plural Economy, Foreign Affairs and Rural Development and Lands, through their Higher Executive Authority or duly accredited representative.
- III.** The Committee shall be chaired by the Ministry of the Economy and Public Finance and shall be responsible for convening meetings.
- IV.** The Committee shall prepare and approve internal regulations for its functioning.

ADDITIONAL PROVISIONS

SINGLE ADDITIONAL PROVISION.-

- I.** Subparagraph (aa), comprising the following text, is incorporated into Article 52 of [Supreme Decree No. 29894](#) of 7 February 2009 (Organization of the Executive Branch):

"(aa) Exercise the powers of a trade remedy Investigating Authority for the implementation of anti-dumping, countervailing and safeguard measures."

- II.** Subparagraphs (n) and (ñ), comprising the following text, are incorporated into Article 54 of Supreme Decree No. 29894 of 7 February 2009 (Organization of the Executive Branch):

"(n) Fulfil the function of Investigating Authority on behalf of the Ministry of the Economy and Public Finance.

(ñ) Propose and implement trade remedy policies and regulations for the implementation of anti-dumping, countervailing and safeguard measures."

TRANSITIONAL PROVISIONS

SINGLE TRANSITIONAL PROVISION.- Within a period of 20 working days from the publication of this Supreme Decree, the Ministry of the Economy and Public Finance shall prepare the Ministerial Resolution to implement trade remedies for the implementation of anti-dumping, countervailing and safeguard measures.

FINAL PROVISIONS

SINGLE FINAL PROVISION.- The implementation of this Supreme Decree shall not result in additional resources for the General Treasury of the Nation.

REPEALING AND DISABLING PROVISIONS

REPEALING PROVISIONS.- Supreme Decree No. 28524 of 10 December 2005 and [Supreme Decree No. 23308](#) of 22 October 1992 are repealed.

DISABLING PROVISIONS.- Article 68.I of [Supreme Decree No. 29894](#) of 7 February 2009, Organization of the Executive Branch, is repealed.

The Ministers of State for Development Planning; the Economy and Public Finance; Production Development and the Plural Economy; Foreign Affairs; Rural Development and Lands shall be responsible for implementing and enforcing this Supreme Decree.

Done at the *Casa Grande del Pueblo* in the city of La Paz, on the thirtieth day of the month of October, two thousand and nineteen.

EVO MORALES AYMA, Diego Pary Rodríguez, Juan Ramón Quintana Taborga, Carlos Gustavo Romero Bonifaz, Javier Eduardo Zavaleta López, Mariana Prado Noya, Luis Alberto Arce Catacora, Luis Alberto Sánchez Fernández, Rafael Alarcón Orihuela, Nélida Sifuentes Cueto, Oscar Coca Antezana, Félix Cesar Navarro Miranda, Héctor Enrique Arce Zaconeta, Milton Gómez Mamani, Lilly Gabriela Montaña Viaña, Carlos Rene Ortuño Yañez, Roberto Iván Aguilar Gómez, Cesar Hugo Cocarico Yana, Wilma Alanoca Mamani, José Manuel Canelas Jaime, Tito Rolando Montaña Rivera.

MINISTERIAL RESOLUTION NO. 1652

26 November 2019

WHEREAS:

Article 298.I.4 and 298.I.5 of the Political Constitution of the State determine that central government has exclusive competence for customs procedure and foreign trade.

Article 54 of the Political Constitution of the State establishes that the protection and safeguarding of industry and state services is the duty of the State and of society.

Law No. 1637 of 5 July 1995 approved and ratified the Final Act of the Uruguay Round establishing the World Trade Organization (WTO) and incorporated the results of the multilateral trade negotiations under the General Agreement on Tariffs and Trade (GATT).

The Plurinational State of Bolivia signed the Cartagena Agreement in 1969 and is a full member of the Andean Community and is therefore subject to Andean legal regulations.

The Plurinational State of Bolivia signed trade agreements establishing specific conditions for the implementation of anti-dumping, countervailing and safeguard measures.

The purpose of Supreme Decree No. 4069 of 30 October 2019 is to establish an institutional framework for the implementation of international trade remedies pursuant to Articles VI and XIX of the GATT 1947, the WTO Agreement on Safeguards, the WTO Agreement on Subsidies and Countervailing Measures, the WTO Agreement on Implementation of Article VI of the GATT 1994, the Cartagena Agreement, the Andean Decisions and concluded and yet-to-be concluded trade agreements.

The single additional provision of Supreme Decree No. 4069 of 30 October 2019 incorporates the responsibility of the Ministry of the Economy and Public Finance to exercise the powers of trade remedy Investigating Authority.

This additional provision also establishes that the Vice-Ministry of Tax Policy shall fulfil the function of Investigating Authority on behalf of the Ministry of the Economy and Public Finance.

The single transitional provision of the aforementioned Supreme Decree establishes that, within a period of 20 working days from its publication, the Ministry of the Economy and Public Finance shall prepare the Ministerial Resolution to implement trade remedies for the implementation of anti-dumping, countervailing and safeguard measures.

It is necessary to comply with these provisions in order to preserve the domestic production base by applying international trade remedies through anti-dumping, countervailing and safeguard measures.

THEREFORE:

The Ministry of the Economy and Public Finance, with the powers and responsibilities conferred by Law.

HEREBY RESOLVES:

SINGLE ARTICLE.- To approve the regulations for the implementation of trade remedies, which, in Annexes I and II, are an integral part of this Resolution.

For registration, communication and implementation.

ANNEX I**RULES GOVERNING THE IMPLEMENTATION OF
ANTI-DUMPING AND COUNTERVAILING MEASURES****CHAPTER I****GENERAL PROVISIONS**

Article 1. (SCOPE OF APPLICATION). This Annex establishes the provisions contained in the WTO Agreement on Implementation of Article VI of the GATT 1994, the WTO Agreement on Subsidies and Countervailing Measures, and Articles 93 and 94 of the Cartagena Agreement, the Andean Decisions and the Agreements signed by the Plurinational State of Bolivia. It will also determine the conditions for the application of anti-dumping duties and countervailing duties on imports in order to counter and remedy distortions to international trade.

These rules shall be applied in accordance with the provisions of the relevant WTO Agreements. For matters not covered by these rules, WTO and Andean Community regulations shall apply where appropriate, taking precedence over domestic legislation.

Article 2. (DEFINITIONS). For the purposes of this Annex, the following definitions apply:

Investigating Authority.- The Vice-Ministry of Tax Policy, under the Ministry of the Economy and Public Finance, shall be the Investigating Authority responsible for the investigation provided for under the procedure for the implementation of anti-dumping measures and countervailing duties pursuant to these regulations.

Committee on the Evaluation of Trade Practices.- The Committee shall comprise the Ministries of Development Planning, the Economy and Public Finance, Production Development and the Plural Economy, Foreign Affairs and Rural Development and Lands, through their Higher Executive Authority or duly accredited representative.

Injury.- Unless otherwise specified, material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of such an industry.

Centrally planned economies.- Economies in which the majority of enterprises are wholly or partly owned by the State and in which the operating criteria, including prices, production, investment programmes and levels of employment, are under the direct control of the Government.

Date of sale.- The date of the contract, purchase order, order confirmation or invoice, whichever establishes the material terms of sale.

Best information available.- Known facts on the basis of which preliminary or final determinations, affirmative or negative, may be made in cases in which an interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation.

Ordinary course of trade.- Transactions reflecting market conditions in the country of origin carried out habitually or within a representative period between independent buyers and sellers. Sales at prices below per unit (fixed and variable) costs of production shall not be deemed to be transactions in the ordinary course of trade.

Interested parties.- Interested parties shall include:

- (a) Domestic producers of the like product and their representative trade associations;
- (b) Bolivian importers who imported the product under investigation during the dumping or subsidy investigation period and their representative trade associations;

- (c) Foreign producers or exporters who exported the product under investigation to the Plurinational State of Bolivia during the dumping or subsidy investigation period and their representative trade associations;
- (d) The government of the country of origin or exporting country of the product under investigation; and
- (e) Other domestic and foreign parties affected by the investigation, at the discretion of the Investigating Authority.

Export price.- The price actually paid or payable for the product under consideration sold for export to the Plurinational State of Bolivia.

Like product.- A product which is identical, i.e. alike in all respects to the imported product or another product which, although not alike in all respects, has characteristics closely resembling those of the product imported.

Product under consideration.- The imported product that is the subject of the investigation.

Material retardation.- This concept refers to cases in which the product under investigation is not yet being produced, as well as to those cases in which, although some production has occurred, it has not attained a level sufficient to permit the examination of the other two types of injury.

Article 3. (GENERAL INTEREST). The investigation and the imposition of anti-dumping and countervailing duties are in the public interest and seek to prevent and remedy material injury, threat of material injury or material retardation of the establishment of a domestic industry, provided that there is a link to the unfair practice of dumping or subsidies.

It is also based on an assessment of the effects of the imposition of such measures on the general economic interest of the country, at the domestic level, as well as on trade relations with the countries potentially affected.

Duties are imposed specifically on producers and exporters of a country and, where applicable, on a country.

CHAPTER II

DETERMINATION OF DUMPING

Article 4. (DUMPING). A product is considered as being dumped, i.e. imported into the Bolivian market at a price that is less than its normal value, if the export price of the product exported to the Plurinational State of Bolivia is less than the comparable price, in the ordinary course of trade, of a like product destined for consumption in the country of origin.

Article 5. (NORMAL VALUE IN THE ORDINARY COURSE OF TRADE). Normal value means the price actually paid or payable for a like product by comparison with the product imported into the Plurinational State of Bolivia, when sold for consumption or use in the country of origin or export, in the ordinary course of trade.

Article 6. (DETERMINATION OF THE NORMAL VALUE IN OTHER TRANSACTIONS). I. When there are no sales of the like product in the ordinary course of trade in the domestic market of the country of origin or export or when, because of a particular market situation or the low volume of the sales in the domestic market of that country, it is not possible to conduct a proper comparison, the normal value shall be determined by one of the following means:

- (a) The export price of the like product to an appropriate third country, provided that the price is representative; or
- (b) The constructed value, i.e. the cost of production in the declared country of origin plus a reasonable amount for general, administrative, selling and financial costs and profits.

Sales of the like product destined for consumption or use in the domestic market of the exporting country are deemed to be of sufficient quantity to determine the normal value if such sales constitute 5% or more of the sales of the product considered exported to the Plurinational State of Bolivia, provided that a lower ratio is acceptable where the evidence demonstrates that domestic sales at such lower ratio are nonetheless of sufficient magnitude to provide for a proper comparison.

II. Sales of the like product in the domestic market of the exporting country or sales to a third country at prices below per unit costs of production of the like product, including the costs of manufacturing (fixed and variable) plus administrative, sales and general costs, as well as financial costs, shall not be considered to be in the ordinary course of trade and shall be disregarded when determining the normal value when the sales are made.

- (a) Within a reasonable period of time, preferably 12 months, but in no case less than six months;
- (b) In substantial quantities, i.e.:
 - 1. When the weighted average selling price of the like product in the anti-dumping investigation period is below the weighted average per unit costs of the like product during that period; or
 - 2. When the volume of sales of the like product below per unit costs constitutes not less than 20% of the total volume of sales of the like product.
- (c) At prices that do not provide for the recovery of all costs within a reasonable period of time, preferably 12 months.

III. Transactions between associated or related parties or bound by a compensatory arrangement may be deemed to be in the ordinary course of trade and used to establish normal value only if it is demonstrated that the prices and costs involved are comparable to those in transactions between unassociated or unrelated parties.

The transactions between associated or related parties shall be deemed to be in the ordinary course of trade if the weighted average price of sale from the interested party to the associated or related party is not more than 3% greater or less than the weighted-average price of sale from the interested party to unassociated or unrelated parties.

IV. The following transactions shall not be deemed to be in the ordinary course of trade or used to calculate the normal value:

- (a) Sales of samples or sales to employees and donations;
- (b) Sales to other enterprises under manufacturing agreements (tolling) or product exchanges (swaps);
- (c) Captive consumption; or
- (d) Other transactions, as established by the Investigating Authority.

V. For the purpose of the application of this Article, costs shall normally be calculated on the basis of records kept by the exporter or producer under investigation, provided that such records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the product under consideration. The Investigating Authority shall consider all available evidence on the proper allocation of costs, including that which is made available by the exporter or producer, in particular in relation to establishing appropriate amortization and depreciation periods and allowances for capital expenditures and other development costs.

Unless already reflected in the cost allocations under this paragraph, costs shall be adjusted appropriately for those non-recurring items of cost which benefit future and/or current production,

or for circumstances in which costs during the period of investigation are affected by start-up operations.

The adjustment made for start-up operations shall reflect the costs at the end of the start-up period or, if that period extends beyond the period of the anti-dumping investigation, the most recent costs which can reasonably be taken into account during the investigation.

VI. The amounts for administrative, financial, selling and general costs and for profits shall be based on actual data pertaining to production and sales in the ordinary course of trade of the like product by the exporter or producer under investigation. When such amounts cannot be determined on this basis, the amounts may be determined on the basis of:

- (a) The actual amounts incurred and realized by the exporter or producer concerned in respect of the production and sales in the domestic market of the country of origin or export of the same general category of products;
- (b) The weighted average of the actual amounts incurred and realized by other exporters or producers subject to investigation in respect of the production and sales of the like product in the domestic market of the country of origin or export; or
- (c) Any other reasonable method, provided that the amount of profit so established does not exceed the profit normally realized by other exporters or producers on sales of products of the same general category in the domestic market of the country of origin or export.

Article 7. (NORMAL VALUE IN CENTRALLY PLANNED ECONOMIES) I. In the case of imports coming from or originating in countries with centrally planned economies, the normal value shall be determined on the basis of the comparable price in the ordinary course of trade at which a like product is sold in a third country with a market economy and a similar level of development (substitute country) for domestic use or consumption; the constructed value of the like product in the substitute country; the export price of the like product from the substitute country to other countries, excluding the Plurinational State of Bolivia; the price actually paid or payable in the domestic market of the Plurinational State of Bolivia for the like product, duly adjusted if necessary to include a reasonable profit margin; or on the basis of any other method deemed appropriate by the Investigating Authority.

II. The product on the basis of which the normal value is determined shall originate in the substitute country. When the normal value is determined according to the export price in a substitute country, that price shall be related to a market other than that of the Plurinational State of Bolivia.

III. For the purpose of selecting and evaluating the relevance of choosing a particular country with a market economy from which to obtain the normal value, the Investigating Authority shall take into account, *inter alia*, the following criteria:

- (a) The production processes in the country with a market economy and the country with a centrally planned economy;
- (b) The scale of production; and
- (c) The quality of the products.

Time-limits shall also be taken into account and, where appropriate, a third country subject to the same investigation shall be used.

Immediately after the initiation of the investigation, the interested parties shall be informed of the market-economy third country selected and given a reasonable period of time in which to submit their comments.

Article 8. (EXPORT PRICE). I. The price actually paid or payable for the product under consideration sold for export to the Plurinational State of Bolivia;

II. If there is no export price or where it appears to the Investigating Authority that the export price is unreliable because of association or relationship or a compensatory arrangement between the exporter and the importer or a third party, the export price shall be calculated on the basis of the price at which the imported products are first sold to an independent buyer.

If the products are not resold to an independent buyer, or not resold in the condition as imported, the price may be calculated on such reasonable basis as the Investigating Authority may determine.

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

Article 9. (COMPARISON BETWEEN THE NORMAL VALUE AND THE EXPORT PRICE). A fair comparison shall be made between the export price and the normal value. This comparison shall be made at the same level of trade, normally at the ex-factory level, and in respect of transactions made at as nearly as possible the same time.

Interested parties shall be notified as to what information is necessary to ensure a fair comparison, and an unreasonable burden of proof shall not be imposed on those parties.

Where products are not imported directly from the country of origin but from another country, the price at which the products are sold from the country of export to the Plurinational State of Bolivia shall normally be compared with the comparable price in the country of export. However, comparison may be made by the Investigating Authority with the price in the country of origin, if, *inter alia*, the products are merely transhipped through the country of export, or such products are not produced in the country of export, or there is no comparable price for them in the country of export.

Article 10. (ADJUSTMENTS). The necessary adjustments shall be made in each case for differences which affect price comparability, including differences regarding:

- (a) Conditions and terms of sale;
- (b) Profits;
- (c) Levels of trade;
- (d) Quantities;
- (e) Physical characteristics; and
- (f) Any other differences shown to affect price comparability.

It shall not be necessary to duplicate the adjustments when more than one of the factors referred to in the aforementioned paragraphs overlap.

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

If the export price has been constructed and price comparison has been affected as a result, the Investigating Authority shall establish the normal value at a level of trade equivalent to the level of trade of the constructed export price or shall make due allowance for the adjustment elements provided in this Annex for this purpose.

Article 11. (ADJUSTMENT FOR EXCHANGE RATE). When the comparison provided for in Article 9 of these regulations requires a conversion of currencies, this conversion shall be made using the official exchange rate, as published by the Central Bank of Bolivia, on the date of sale.

When a sale of foreign currency on forward markets is directly linked to the export sale under investigation, the exchange rate in the forward sale shall be used.

Fluctuations in exchange rates shall be disregarded and, in the investigation, the Investigating Authority shall allow exporters up to 60 days to adjust their export prices to reflect sustained movements in exchange rates during the period of investigation.

Article 12. (ADJUSTMENTS TO THE EXPORT PRICE). The Investigating Authority may, among other adjustments, make those related to the following factors:

- (a) The amounts directly connected with the costs incurred by the exporter, taking into account conditions agreed with the buyer for delivery of the goods, according to Incoterms;
- (b) The amounts for costs in providing guarantees, technical assistance and other after-sales services for the product to be exported to the Plurinational State of Bolivia;
- (c) The costs of commission paid in connection with the sales under consideration; wages paid to full-time sales personnel;
- (d) In cases where the export price is constructed, costs, including duties and taxes incurred between import and resale, as well as the corresponding profits, shall be taken into account.

Article 13. (ADJUSTMENTS TO THE NORMAL VALUE). The Investigating Authority may make adjustments including those related to the following factors:

- (a) The amount corresponding to a reasonable estimate of the value of the difference in the characteristics of the product in question.
- (b) The amount of customs duties or indirect taxes actually payable for a like product or materials physically incorporated into it when destined for consumption in the country of origin or of export. If they are exempt or refunded when the product is exported to the Plurinational State of Bolivia, they shall not be adjusted.
- (c) The following selling costs:
 - 1. Costs of transport, insurance, maintenance, unloading and allied costs incurred in forwarding the product in question from the exporter's warehouse to the first independent buyer;
 - 2. Costs of packaging the product in question;
 - 3. Costs of the credits granted for the sales in question. The volume of the refund shall be calculated in relation to the currency of the invoice;
 - 4. Costs of commissions paid in connection with the sales in question;
 - 5. Wages paid to full-time sales personnel shall also be deducted;
 - 6. Direct costs of providing guarantees, technical assistance and other after-sales services.

Article 14. (MARGIN OF DUMPING). I. The margin of dumping shall be determined by the difference between the normal value and the export price.

II. The margin of dumping shall be determined on the basis of a comparison between:

- (a) The weighted average normal value and the weighted average price of all comparable export transactions; or

- (b) The normal value and the export price on a transaction-to-transaction basis.

In the cases set out in the above paragraphs, the margin of dumping calculation shall include all sales to the Plurinational State of Bolivia of the product under consideration, adding positive and negative results found for different transactions or models.

III. A normal value established on a weighted average basis may be compared to prices of individual export transactions if a pattern of export prices which differ significantly among different purchasers, regions, or time-frames is found, and if an explanation is provided as to why such differences cannot be taken into account appropriately by the use of the methodologies indicated in the paragraph above.

Article 15. (INDIVIDUAL DUMPING MARGIN). I. An individual dumping margin shall be determined, preferably for each known producer or exporter of the product under investigation.

II. If the number of exporters, producers, importers, or types of the product under investigation is so large as to make it impracticable to determine the individual dumping margins referred to in the paragraph above, individual determination may be limited to:

- (a) A valid statistical sample that includes a reasonable number of interested parties or types of products based on information available at the time of selection; or
- (b) A selection of the producers or exporters who account for the largest percentage of the volume of exports from the exporting country that can reasonably be investigated.
 - 1. The selection shall include the producers and exporters who, listed in decreasing order of volume, account for the largest export volumes to the Plurinational State of Bolivia.
 - 2. The dumping margin of producers or exporters who request to be excluded from the selection after confirming their participation or who fail to respond to the questionnaire shall be determined on the basis of the best information available.
 - 3. The Investigating Authority could, at its discretion, include another producer or exporter in the selection.
 - 4. Any selection of producers or exporters, importers or types of product made pursuant to this paragraph shall be carried out preferably after holding consultations with producers, exporters, or importers and obtaining their consent.
 - 5. The government of the exporting country may submit a statement on the selection, for the purpose of explaining whether the selected enterprises are exporters, trading enterprises, or producers of the product under investigation within a period of 10 working days from the date of acknowledgement of receipt of the initiation of the investigation.
 - 6. An individual dumping margin shall also be determined for any producer or exporter not included in the selection who submits the necessary information in time to be taken into consideration during the investigation. However, this provision shall not apply to situations in which the number of exporters or producers is so large that the examination of individual cases would prevent the completion of the investigation within the established time-frames.
 - 7. Any measure that discourages the submission of the information provided for in point 6 shall be prohibited.

For the purpose of determining the individual margin of dumping and of applying the anti-dumping duties, different legal entities may be treated as a single producer or exporter when it is demonstrated that the structural and trade relationship between such entities or with a third entity is sufficiently close.

CHAPTER III**SUBSIDY**

Article 16. (CONCEPT AND REQUISITE CHARACTERISTICS OF A SUBSIDY). A subsidy shall be deemed to exist where a benefit is granted in the following cases:

- (1) There is a financial contribution by a government or any public body (referred to in these regulations as "government") within the territory of a member country involving a direct transfer of funds or potential direct transfers of funds or liabilities;
- (2) If government revenue that is otherwise due is foregone or not collected. In accordance with the provisions of Article XVI of the GATT 1994 and Annexes I and III of the Agreement on Subsidies and Countervailing Measures, the exemption of an exported product from duties or taxes borne by the like product when destined for domestic consumption, or the remission of such duties or taxes in amounts not in excess of those which have accrued, shall not be deemed to be a subsidy;
- (3) When the government provides goods or services other than general infrastructure, or purchases goods;
- (4) When the government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of aforementioned functions which would normally be vested in the government and the practice, in no real sense, differs from practices normally followed by governments and a benefit is thereby conferred; or
- (5) There is any form of income or price support in the sense of the Subsidies Agreement and a benefit is thereby conferred.

Article 17. (SPECIFICITY). Subsidies may be specific or non-specific.

A specific subsidy shall be a subsidy that benefits an enterprise or industry or group of enterprises or industries. A subsidy which benefits certain enterprises located within a designated geographical region within the jurisdiction of the granting government shall also be specific.

A subsidy that benefits all industries in general shall be non-specific. The Subsidies Agreement establishes the criteria on which to determine whether a subsidy is specific or not.

Article 18. (CLASSIFICATION OF SUBSIDIES). Subsidies are classified as prohibited and actionable.

- (a) The following subsidies shall be prohibited:
 1. Subsidies contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance, including those illustrated in Annex I of the Subsidies Agreement;
 2. Subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods.

All prohibited subsidies shall be deemed specific. Countervailing measures and actions in response to this type of subsidy shall be governed by the provisions of Part V, Article 4, of the Subsidies Agreement.

- (b) Actionable subsidies are those that cause adverse effects to the interests of the Plurinational State of Bolivia, i.e.:
 1. They cause injury to the domestic industry;

2. Nullification or impairment of benefits accruing directly or indirectly under the GATT 1994, in particular the benefits of concessions bound under Article II of the GATT 1994;
3. Serious prejudice to the interests of the country, in accordance with the provisions of Article 6 of the Subsidies Agreement.

Countervailing measures and actions in response to actionable subsidies shall be governed by the provisions of Part V, Article 7 of the Subsidies Agreement, as applicable.

Article 19. (INDIRECT TAX REDUCTION SCHEMES AND DRAWBACK SCHEMES FOR IMPORT CHARGES AS SPECIFIC SUBSIDIES). Schemes for the reduction of indirect taxes on export production and drawback schemes for charges on imports consumed or utilized in export production shall only be deemed specific subsidies if the amount of the reduction or drawback exceeds the amount of the indirect taxes and import charges actually paid in the production process.

The Subsidies Agreement lays down the procedure for determining whether indirect tax reduction schemes and drawback schemes for import charges constitute subsidies.

Article 20. (AMOUNT OF THE SUBSIDY). I. In order to apply countervailing measures, the amount of the actionable subsidy shall be calculated by unit of subsidized goods exported to the Plurinational State of Bolivia, based on the benefits utilized during the period of investigation of actionable subsidies.

The term "subsidized product" shall be understood to be a product that benefits from an actionable subsidy.

The following shall not be deemed to confer a benefit:

- (a) Government provision of equity capital, unless the investment decision can be regarded as inconsistent with the usual investment practice (including for the provision of risk capital) of private investors in the territory of the exporting country;
- (b) Government loans, unless there is a difference between the amount that the firm receiving the loan pays on the government loan and the amount the firm would pay on a comparable commercial loan which the firm could have obtained on the market. In this case the benefit shall be the difference between these two amounts;
- (c) Loan guarantees by a government, unless there is a difference between the amount that the firm receiving the guarantee pays on a loan guaranteed by the government and the amount that the firm would pay on a comparable commercial loan absent the government guarantee. In this case the benefit shall be the difference between these two amounts adjusted for any differences in fees;
- (d) The provision of goods or services or purchase of goods by a government, unless the provision is made for less than adequate remuneration, or the purchase is made for more than adequate remuneration. The adequacy of remuneration shall be determined in relation to prevailing market conditions for the good or service in question in the country of provision or purchase, including price, quality, availability, marketability, transportation and other conditions of purchase or sale.

II. The individual amount of actionable subsidization shall be determined for each known foreign producer or exporter concerned of the product under investigation.

In case the number of known exporters, producers or importers or types of products or transactions under investigation is so large as to make the determinations referred to in this Article impracticable, the examination may be limited to:

- (a) A reasonable number of interested parties, transactions or products, determined using a sample that is statistically valid on the basis of information available at the time of the selection; or

- (b) The largest volume of production, sale, or export that is representative and may be investigated taking into account the established time-frames.

III. Any selection of exporters, producers, importers or types of products or transactions made pursuant to the above paragraph shall be carried out after holding consultations with the governments of exporting countries, exporters, producers or importers and after obtaining their consent, on condition that they have provided the information necessary for the selection of the representative sample.

If one or more of the selected enterprises does not provide the information requested, another selection shall be made. If there is not enough time to make a new selection or if the new enterprises selected also fail to provide the requested information, the determination or decision shall be based on the best information available, in conformity with the provisions of Article 52 of this Annex.

Article 21. (DEDUCTIONS). In determining the subsidy amount, the total of the following items shall be deducted:

- (a) Taxes levied on the product upon export to the Plurinational State of Bolivia, when specifically intended to offset subsidies;
- (b) Expenditure that has necessarily been incurred in order to be eligible for the subsidy or to benefit therefrom.

When the interested government or party applies for such a deduction, it shall furnish evidence to justify the application.

CHAPTER IV

DETERMINATION OF INJURY

Article 22. (DETERMINATION OF MATERIAL INJURY). A determination of material injury shall be based on evidence and shall involve an objective examination of the effect of the dumped or subsidized imports on the domestic industry producing like goods.

This shall involve an examination of the following elements:

- (a) Volume of imports of products subject to unfair practices (dumped or subsidized), taking into consideration whether there has been a significant increase in such imports, *inter alia*, in absolute terms or relative to total production or consumption in the country;
- (b) The effects of imported products subject to unfair practices on prices of the like product in the market of the Plurinational State of Bolivia; taking into account:
 1. Whether there has been significant price undercutting by the imports subject to unfair practices as compared with the price of the like product in the Plurinational State of Bolivia;
 2. Whether the effect of such imports is to depress prices to a significant degree; or
 3. Whether the effect of such imports is to prevent, to a significant degree, price increases that would have occurred in the absence of such imports.
- (c) The resulting impact of the imports subject to unfair practices on the domestic industry which shall include an evaluation of all economic factors and indices having a bearing on the state of the industry, including:
 1. Actual and potential decline in:
 - i. Sales;

-
- ii. Profits;
 - iii. Production;
 - iv. Market share;
 - v. Productivity;
 - vi. Return on investments; and
 - vii. Utilization of capacity.
- 2. Factors affecting prices in the domestic market, including the magnitude of the margin of dumping and subsidization;
 - 3. Actual and potential negative effects on:
 - i. Cash flow;
 - ii. Inventories;
 - iii. Employment;
 - iv. Wages;
 - v. Growth of the domestic industry; and
 - vi. Ability to raise capital or investments.

None of the economic factors or indices referred to in this paragraph, considered in isolation or in tandem, can necessarily provide decisive guidance.

- (d) The Investigating Authority shall examine any other factors which at the same time are injuring the domestic industry in order to follow the principle of non-attribution of the injury caused by this other factor to the dumped or subsidized imports.

Article 23. (THREAT OF MATERIAL INJURY). When an applicant considers that the request for application of an anti-dumping or countervailing duty is justified even before the injury has occurred, it shall be based on facts and not merely on allegation, conjecture or remote possibility. The determination of this threat of material injury from dumped or subsidized imports shall also take into account the imminent occurrence of the factors described in the previous Article of these regulations, including the existence of factors such as:

- (a) A significant rate of increase of dumped or subsidized imports into the Bolivian market indicating the likelihood of substantially increased imports. The likelihood of substantially increased importation may be determined on the basis of, *inter alia*, the following: the existence of a supply or sales contract, the award of a tender, a negotiable offer or other comparable contract. The existence of letters of credit for payment abroad of imports of the product under consideration may also be taken into account.
- (b) Sufficient freely disposable reserve capacity, or an imminent, substantial increase in the productive capacity of the exporter indicating the likelihood of substantially increased dumped or subsidized exports to the market of the Plurinational State of Bolivia.

Any analysis of the factor referred to in this paragraph shall take into consideration the existence of other markets able to absorb a potential increase in exports. Consideration may also be given to trade defence measures in force or investigations under way in third countries that could explain the redirection of sales of the product under consideration to the Plurinational State of Bolivia.

- (c) The fact that the product under consideration is being imported at prices that will have a significant depressing or suppressing effect on domestic prices or the sales volumes of domestic producers and would likely increase demand for further imports.
- (d) Inventories of the product under consideration in the country of export.

None of these factors, considered in isolation, can necessarily provide decisive guidance, but the presence of some or all of them must lead to the conclusion that further exports at dumping prices or benefiting from subsidies are imminent and that, unless remedial action is taken, material injury will occur.

Article 24. (MATERIAL RETARDATION OF THE ESTABLISHMENT OF A DOMESTIC INDUSTRY). In determining material retardation of the establishment or the expansion of an industry in the Plurinational State of Bolivia, the Investigating Authority shall examine, *inter alia*, the following factors:

- (a) Feasibility studies, loans negotiated and/or contracts for procurement of machinery relating to new investment projects or the expansion of existing plants or proof of the cancellation or retardation of a planned project;
- (b) Existence of dumped or subsidized imports;
- (c) The appropriate and adequate supply of the market, taking into account the volume of dumped or subsidized imports, the volume of other imports and the actual and potential output of the project;
- (d) The volume of domestic production compared to the size of the domestic market.

None of these factors, considered in isolation, can necessarily provide decisive guidance. Specific information shall be submitted in order to support claims of retardation.

Article 25. (CUMULATIVE ASSESSMENT OF INJURY IN RESPECT OF THE ESTABLISHMENT OF A DOMESTIC INDUSTRY). Where imports of a product under consideration come from more than one country and are simultaneously subject to an anti-dumping or countervailing investigation, the Investigating Authority may cumulatively assess the effects of such imports if it determines that:

- (a) The margin of dumping or subsidization established in relation to the imports of the product under consideration from each country is not *de minimis*;
- (b) The volume of imports of the product under consideration from each country is not negligible; and
- (c) The cumulative assessment of the effects of the imports is appropriate in the light of the conditions of competition between the imported products and the like domestic product.

Article 26. (NEGLIGIBLE IMPORTS AND DE MINIMIS CONDITIONS). For the purposes of this Annex, the following criteria shall be taken into account:

- (a) In the case of dumped imports, it shall be considered negligible when:
 - 1. The volume of imports under investigation or the volume of dumped imports from a given country is found to account for less than 3% of total imports of the product under investigation and of the like product in the Plurinational State of Bolivia;
 - 2. The volume of imports under investigation or the volume of dumped imports from countries that individually account for less than 3% of total imports of the product under investigation in the Plurinational State of Bolivia are found to collectively account for less than 7% of such imports.

- (b) In the case of subsidized imports, it shall be considered negligible when:
 - 1. The volume of subsidized imports from a given developed country accounts for less than 3% of total imports of that product;
 - 2. The volume of subsidized imports from developed countries individually accounts for less than 3% of imports of the like product and collectively accounts for less than 7% of those imports;
 - 3. The volume of subsidized imports from a given developing country accounts for less than 4% of total imports of that product;
 - 4. The volume of imports from developing countries individually accounts for less than 4% of imports of the like product and collectively accounts for less than 9% of those imports.
- (c) A margin of dumping of less than 2%, expressed as a percentage of the export price, shall be regarded as *de minimis*:
- (d) Subsidies granted to the investigated product shall be considered *de minimis* if their global level calculated on a per unit basis is less than:
 - 1. 1% of the value of the product in the case of imports originating in developed countries; and
 - 2. 2% of the value of the product in the case of imports originating in developing countries.

Article 27. (CAUSAL LINK). I. It must be demonstrated that the imports subject to unfair practices (dumping or subsidies) have significantly contributed to the injury affecting the domestic industry, by means of:

- (a) All relevant evidence submitted; and
- (b) Any known factors other than the dumped or subsidized imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the imports subject to unfair practices, which shall include:
 - 1. The volume and prices of imports not sold at dumping prices or subsidized;
 - 2. The impact of possible import liberalization processes on prices in the domestic market;
 - 3. Contraction in demand or changes in the patterns of consumption;
 - 4. Trade restrictive practices of foreign and domestic producers;
 - 5. Competition between foreign and domestic producers;
 - 6. Technological developments;
 - 7. Export performance;
 - 8. Productivity of the domestic industry;
 - 9. Captive consumption; and
 - 10. Imports or resale of the imported product by the domestic industry.

II. The effect of the dumped or subsidized imports shall be assessed in relation to the domestic production of the like product when available data permit the separate identification of that production on the basis of criteria such as:

- (a) The production process; and
- (b) Producers' sales and profits.

If separate identification of that production is not possible, the effects of the dumped and subsidized imports shall be assessed by the examination of the production of the narrowest group or range of products, including the domestic like product, for which the necessary information can be provided.

III. It is necessary to separate and distinguish the effects of dumped and subsidized imports from the effects of other possible factors causing injury to the domestic industry.

IV. The Investigating Authority may consider other possible causes expressly indicated by the interested parties, provided that they are accompanied by reasonable justification and relevant evidence, and any other causes known to the Investigating Authority.

V. The proof of the causal link between the dumped or subsidized imports and the material retardation of the establishment or the expansion of a domestic industry shall be based on an examination of the relevant evidence available to the Investigating Authority at each stage of the investigation.

Article 28. (PERIOD OF EXAMINATION OF THE FACTORS). Unless the Investigating Authority establishes otherwise, the factors mentioned in this Annex for determining material injury shall be examined with reference to a period comprising the five years preceding the submission of the application.

With regard to threat of injury or material retardation of the establishment of a domestic industry, the examination period shall be that indicated in this Article, unless the domestic producers show that this period is not appropriate.

CHAPTER V

DOMESTIC INDUSTRY

Article 29. (SCOPE). For the purposes of the present regulations, a "domestic industry" shall be understood to mean the producers as a whole of the like products operating within Bolivian territory, or those whose collective output of the like domestic product constitutes a major proportion of the total domestic production of those products.

Domestic producers who are associated with or related to exporters or importers of the goods in question, or who are themselves importers of such products, shall not be considered part of the domestic industry.

Article 30. (ASSOCIATED OR RELATED PARTIES). I. Foreign producers are deemed to be related to exporters or importers in the following cases:

- (a) Where one of them directly or indirectly controls the other;
- (b) Where both of them are directly or indirectly controlled by a third person;
- (c) Where both directly or indirectly control a third person, provided that there are grounds for believing or assuming that the effect of the relationship is such as to cause the producer to behave differently from non-related producers.

II. One person is deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

III. The cases set forth in the above paragraphs shall only lead to the exclusion of the associated or related producer from the concept of domestic industry if there is reason to believe that the relationship leads the producer in question to act differently from the way in which producers without such a relationship would act.

Article 31. (SPECIAL CONDITIONS). I. In exceptional circumstances in which the territory of the Plurinational State of Bolivia may be divided into two or more competitive markets, "domestic industry" may be understood to mean the group of domestic producers of each one of those markets separately.

II. The group of domestic producers of each of the domestic markets referred to may be considered an isolated market if:

- (a) The producers within that market sell all or almost all of their production of the like product in that market; and
- (b) The demand in that market is not, to any substantial degree, supplied by producers of the like product located inside that market.

III. In the case set forth in paragraph II, injury may be found to exist even where a major portion of the total domestic industry is not injured, provided there is a concentration of dumped or subsidized imports in an isolated market and provided further that the imports that are the subject of unfair practices are causing injury to that isolated market.

CHAPTER VI

APPLICATION PROCEDURES AND INITIATION OF THE INVESTIGATION

Article 32. (SUBMISSION OF THE APPLICATION). I. An investigation to determine the existence of dumping or subsidies, injury and a causal link between the imports that are the subject of unfair practices and the alleged injury shall be requested, in writing, to the Investigating Authority by or on behalf of the domestic industry.

II. The application shall be considered to have been made "by or on behalf of the domestic industry" when:

- (a) Consultations have been held with other domestic producers within the domestic industry that produced the like product during the period of investigation; and
- (b) The application has been supported by those domestic producers whose collective output represents more than 50% of the total production of the like product produced by the portion of the domestic industry which expressed either support for or opposition to the application during the consultations referred to in the subparagraph above.

The application shall not be considered to have been made "by or on behalf of the domestic industry" when domestic producers expressly supporting the application account for less than 25% of the total production of the like product produced by the domestic industry during the period under investigation.

III. In the case of fragmented industries involving an exceptionally large number of domestic producers, the degree of support for or opposition to the application may be determined by using statistically valid sampling techniques.

In the specific situation mentioned in this paragraph, an application containing information on domestic producers accounting for less than 25% of total production of the like product during the period under investigation may be accepted.

IV. A statement of support for or opposition to the application shall only be considered when accompanied by information on the volume or value of production and on the volume of sales in the domestic market for the period of investigation into the existence of injury.

V. If the application does not include information on all domestic producers of the like product, it must be justified that the information presented is for domestic producers whose collective output of the like domestic product constitutes a major proportion of total domestic production of that product.

VI. The application shall contain all information needed to determine the injury to the domestic industry related to the domestic producers expressly stating support for the application.

VII. The application shall include evidence of dumping or subsidies, injury to the domestic industry, and the causal link between the imports that are the subject of unfair practices and the alleged injury. Simple assertion shall not be considered sufficient to meet the requirements of this paragraph.

VIII. The Investigating Authority shall publish a ruling setting forth the information to be included in the application and the format in which it shall be presented.

The application shall be accompanied by the "Questionnaire for the domestic industry requesting the initiation of an investigation into alleged dumping or subsidies", which shall be duly completed, publicly accessible and approved by the Investigating Authority.

Applications that do not meet the requirements set forth in this Article shall not be considered.

Article 33. (EVALUATION OF THE APPLICATION). I. In accordance with the above Article, applications shall be evaluated by the Investigating Authority within 15 working days of their submission.

Where the application is properly documented and does not require further information, the applicant shall be notified of the initiation of the investigation or denial of the application within an additional period of 15 working days.

If only minor additional information or specific corrections and adjustments to the application are required, the applicant shall be instructed to make the relevant changes within a period of five working days from the date on which the request was made.

Further information, corrections or adjustments shall be evaluated within a period of 10 working days from the date of the receipt thereof. At the end of that period, the applicant shall be notified of the initiation of the investigation or denial of the application within a period of 15 working days.

One confidential version and one non-confidential version of the application shall be filed simultaneously. Filed documents not labelled "confidential" or "restricted" shall be treated as public documents.

II. The application shall be evaluated regarding evidence of the existence of dumping or subsidies, injury to the domestic industry, and the causal link between the imports that are the subject of unfair practices and the alleged injury.

The accuracy and adequacy of data and evidence in the application shall be examined on the basis of information from promptly available sources with a view to determining whether initiation of the investigation is justified.

Applications that lack the evidence mentioned in this paragraph, that do not meet the requirements and time-limits set forth in the above paragraph for the interested parties, or that require substantial supplementary information or significant corrections and adjustments shall be denied.

An investigation shall not be initiated in cases where the volume of dumped or subsidized imports is negligible, where the margin of dumping or the global level of subsidization is *de minimis* or where the injury caused by the imports in question is negligible.

III. To check the level of support or opposition to the application being made by or on behalf of the domestic industry, the Investigating Authority may send notifications to the known domestic producers or associations, which, within 10 working days from the day following the date of dispatch

of the notification, shall express in writing their support for, or opposition to, the application. If no reply is received within the specified period, this shall indicate that there has been no expression of interest on the part of the domestic producer or association concerned.

IV. Producers or exporters exclusively within the realm of formalized investigations, regardless of their inclusion in the application, shall be identified on the basis of the detailed import data provided by Bolivian National Customs.

Article 34. (CONSULTATIONS REGARDING REQUESTS FOR APPLICATION OF COUNTERVAILING DUTIES). In the case of a request for the application of countervailing duties, once an application that is compliant with the requirements has been received, before the Investigating Authority initiates its investigation it shall invite the government of the country of origin or exportation to hold consultations with the aim of reaching a mutually agreed solution regarding the request made for application of duties.

Notwithstanding the above, the Investigating Authority may initiate an investigation or apply provisional or definitive duties, as set out in Article 13.3 of the Subsidies Agreement.

Article 35. (INITIATION OF THE INVESTIGATION). I. In exceptional and duly justified circumstances, the Investigating Authority may initiate an investigation *ex officio*, provided it has sufficient evidence of the existence of dumping or subsidies, injury, and a causal link between the imports that are the subject of unfair practices and the alleged injury.

II. The Investigating Authority shall publish a notice announcing the initiation of the investigation to the interested parties of which it is aware and to the Ministry of Foreign Affairs within 10 working days following the date that the notice was published.

The notice shall specify the countries of the exporters or producers subject to investigation, the product under investigation, the date of initiation of the investigation, and the time-limits for the interested parties to submit statements, and shall include the information obtained on dumping and subsidies, injury to the domestic industry, and the causal link between the imports that are the subject of unfair practices and the alleged injury.

III. Other parties wishing to be considered interested parties shall be granted a period of 10 working days from the date of publication of the Investigating Authority notice to submit eligibility applications for themselves and their respective legal representatives.

IV. Upon initiation of the investigation, the full contents of the application which originated the investigation shall be sent to all known producers or exporters and to the government of the exporting country and attached to the case file.

If the number of producers or exporters is particularly large, the full text of the application shall be sent only to the government of the exporting country or to the corresponding representative trade association.

V. All official communications with the government of the exporting country shall be sent to its official representation in the Plurinational State of Bolivia. In the absence of an official representation, official communications with the government of the exporting country shall be submitted through the Ministry of Foreign Affairs.

VI. The Government of the Plurinational State of Bolivia shall not disclose the existence of applications prior to the publication of the Investigating Authority's notice publicly announcing the initiation of the investigation, except to the government of the exporting country, which shall be notified of the existence of a properly documented application prior to publication of the notice authorizing the initiation of the investigation.

VII. If the Investigating Authority decides not to open an investigation, it shall notify the applicant.

Article 36. (IMPORTATION OF PRODUCTS UNDER INVESTIGATION). The initiation of an investigation shall not impede the customs clearance of the product under investigation.

Article 37. (DISTRIBUTION OF QUESTIONNAIRES). The interested parties shall receive questionnaires indicating the information needed for the investigation and shall have a period of 30 calendar days from the date of acknowledgement to return those questionnaires, without limitation to the distribution of questionnaires to other interested parties.

A 30 calendar day extension of the time-limit for returning questionnaires shall be granted upon request whenever possible.

Additional information to that provided in the responses to the questionnaires may be requested. A period of 10 working days from the date of acknowledgement of the request shall be granted for the parties to reply to such a request. A further 10 working days may be granted upon request, when duly justified.

Replies sent by interested parties shall be submitted in Spanish or, failing that, shall be accompanied by an official translation. The replies shall be accompanied by two copies, one to be placed in the public file and the other in the confidential or restricted file. These requirements shall apply to all the documents intended to substantiate the claims made by each interested party in the investigation.

The replies to the questionnaire by the interested parties may be dispatched and received electronically in accordance with the relevant guidelines drawn up by the Investigating Authority.

Article 38. (FILE CONTAINING INFORMATION). All documents, evidence and information submitted by the interested parties or collected by the Investigating Authority shall be archived chronologically in a single file consisting of two parts: one containing public information and another containing confidential information.

Upon request in writing, the interested parties shall have access to all the information contained in the public part of the file.

Article 39. (CRITERIA FOR THE CALCULATION OF DUTIES). In determining the amount of anti-dumping or countervailing duties, the Investigating Authority shall use statistical or sampling techniques generally accepted for cases involving a large volume or number of transactions or adjustments. These techniques shall be representative of the transactions investigated and generally accepted accounting principles shall always apply.

In calculating the duties, the Investigating Authority shall take into account the amount required to remove the injury. In doing so, it may consider the following:

1. The price of the imported product on the domestic market compared with the price of the domestic product during the period of investigation;
2. The price of the domestic product if there were no unfair trade practice compared with the price of the imported product on the domestic market; and
3. The price of the product in different markets.

The amount of the duties may be expressed in one of the following forms or any combination thereof, if necessary: absolute terms, *ad valorem* percentages, relative or variable terms in accordance with the indicative price.

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

CHAPTER VII

CONFIDENTIALITY

Article 40. (CONFIDENTIAL INFORMATION). Any confidential information submitted by the parties in an investigation concerning the application of the measures envisaged in this Annex shall be treated as such by the Investigating Authority, upon cause being shown, and shall not be

disclosed without the express consent of the party submitting it. Information shall be considered confidential either if its disclosure or publication might injure the competitive position of the enterprise concerned or have a significantly adverse effect upon the person supplying the information or if it is provided on a confidential basis.

A separate file, which may be inspected only by the Investigating Authority, shall be opened for confidential information provided by the applicant or other interested parties.

Any party that submits confidential information shall attach a non-confidential summary that shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. In exceptional circumstances, such parties may explain why such information is not susceptible of summary.

If the Investigating Authority believes that a request for confidentiality is not warranted and if the party concerned does not wish to make the information public or to authorize its disclosure in generalized or summary form, the Investigating Authority shall disregard such information. The provider may request that such information be removed from the file.

Article 41. (THE PROCESSING OF CONFIDENTIAL INFORMATION). No confidential information contained in any document prepared by the Investigating Authority that contains confidential information shall be divulged, except in the cases permitted by these regulations.

The designation of information as confidential shall not impede the provision of general information and the evidence on which decisions adopted are based.

The interested parties identified as such by the Investigating Authority and the representatives of exporting countries may have access to any information gathered during the investigation, except that of a confidential nature.

Article 42. (ACCESS TO CONFIDENTIAL INFORMATION). Government officials appointed by the Investigating Authority to conduct the investigation shall have access to confidential information as part of their official duties.

Where documents contain confidential information, the Investigating Authority shall clearly identify them as confidential at the start of the document and shall mark the confidential parts within the relevant texts and tables.

Documents containing confidential information held by government may only be reproduced by the Investigating Authority.

CHAPTER VIII

DETERMINATION AND IMPOSITION OF PROVISIONAL MEASURES

Article 43. (PRELIMINARY DETERMINATION). If there is sufficient evidence for an anti-dumping or countervailing measure to be imposed, the Investigating Authority shall issue a preliminary technical report with a recommendation on whether imposing the measure is appropriate.

Furthermore, the Investigating Authority shall submit the file, the technical report and any other necessary documents to the Committee on the Evaluation of Trade Practices, which shall analyse and determine the appropriateness of the anti-dumping measure and the countervailing duties for the application of the measure.

Based on the aforementioned technical report and the accompanying recommendation on the appropriateness of the provisional anti-dumping or countervailing measure, the Committee on the Evaluation of Trade Practices shall analyse the file and other necessary documents presented by the Investigating Authority.

Based on analysis of the general interest, the Committee on the Evaluation of Trade Practices shall determine whether the measure is appropriate. If the measure is deemed appropriate, it shall determine the level of the anti-dumping and provisional countervailing duties and the period for

which they shall apply and shall authorize the Ministry of the Economy and Public Finance to develop a draft Supreme Decree establishing how the measure will be applied.

Provisional measures shall not be implemented during the two months following the initiation of the investigation.

Preliminary negative determinations of injury to the domestic industry or a causal link between the imports that are the subject of unfair practices and the alleged material injury, threat thereof or retardation to the domestic industry may provide grounds for terminating the investigation.

Article 44. (PROVISIONAL DUTIES). **I.** Provisional measures shall be adopted by Supreme Decree based on the determination made by the Committee on the Evaluation of Trade Practices and the Investigating Authority's technical report.

II. Provisional anti-dumping and countervailing duties shall be paid according to the goods' c.i.f. value at the border, their weight or any other unit of measurement, as set out in the Supreme Decree on the adoption of measures, and are due as soon as the goods declaration is accepted.

Article 45. (TYPE OF MEASURE). **I.** In the case of dumping, any provisional measures may take the form of a provisional duty or a security – by cash deposit or any other type of security envisaged in the General Customs Law (Law No. 1990) and its implementing regulations – equal to the amount of the anti-dumping duty provisionally estimated.

II. In the case of subsidies, the provisional measures may take the form of provisional countervailing duties guaranteed by cash deposits or any other type of security envisaged in the General Customs Law (Law No. 1990) with a value equal to the provisionally calculated amount of subsidization.

III. Duties shall be paid on imports of the products under investigation, irrespective of the importer.

IV. The securities mentioned in paragraphs I and II of this Article shall take the form and comply with the requirements specified in the General Customs Law (Law No. 1990) and its implementing regulations.

V. The provisional anti-dumping measures shall apply for as short a period as possible, and in any case no longer than four months, except in cases in which, upon request of exporters representing a significant percentage of the trade in question, a period of up to six months is ordered.

If a provisional anti-dumping measure is applied that is smaller than the margin of dumping, the periods in the previous paragraph shall be six months and nine months, respectively.

The application of provisional countervailing duties shall be limited to as short a period as possible, not exceeding four months.

When a decision is made to adopt a definitive anti-dumping or countervailing measure, the period of the application of a provisional measure shall be counted as part of the total duration of the measure.

VI. Provisional duties shall not be imposed if the Investigating Authority determines that the volume of dumped or subsidized imports is negligible, if the margin of dumping or the global level of subsidization is *de minimis*, or if the injury caused by the imports in question is negligible. For such purposes, the criteria set out in the present regulations shall apply.

CHAPTER IX

PRICE UNDERTAKINGS

Article 46. (PRICE UNDERTAKINGS). When, during the course of an investigation, the exporter or the government of the country exporting the goods at alleged dumped or subsidized prices voluntarily makes price undertakings to eliminate the injury to domestic production, the Investigating Authority shall bring the situation to the attention of the Committee on the Evaluation of Trade Practices.

If the Committee is persuaded that the commitment eliminates the injurious effect of the dumping or subsidy, it shall authorize the Investigating Authority to enter into an agreement and shall suspend or terminate the investigation without imposing provisional or definitive measures. If, however, the Committee believes such a commitment would be unrealistic, it shall order the Investigating Authority to reject it.

The exporters or the government of the exporting country may offer price undertakings or accept those offered by the Investigating Authority only during the two months following the date of the preliminary technical report.

Exporters and the government of the exporting country shall not be required to offer price undertakings or be forced to accept price or subsidy adjustments offered by the Investigating Authority.

Price increases under such undertakings shall not be higher than necessary to eliminate the margin of dumping or subsidy.

Offers shall not be considered when they do not include the provision of information and an authorization to carry out the verifications which the Investigating Authority deems necessary to verify that such offers are being met or when they offer quantitative restrictions.

Article 47. (MONITORING OF PRICE UNDERTAKINGS). The exporter or government of the exporting country subject to the price undertaking shall provide periodically, if requested, information related to the fulfilment of the undertaking and all *in situ* investigations of relevant data. Failure to do so shall constitute a violation of the terms of the price undertaking.

If evidence of a violation of the price undertaking emerges, the producer or the government of the exporting country shall be given the opportunity to submit comments thereon.

In the event the violation of the price undertaking is verified, the Investigating Authority shall notify the exporter or the government of the exporting country of the resumption of the investigation and shall process the application of provisional or definitive measures with the corresponding authorities following the procedure set out in Articles 43 and 55 of these regulations.

The interested parties shall be notified of the termination of the undertaking and of the provisional or definitive measures applied.

CHAPTER X

INVESTIGATION PERIOD AND EVIDENTIARY ASPECTS FOR THE DETERMINATION AND IMPOSITION OF DEFINITIVE MEASURES

Article 48. (INVESTIGATION PERIOD). The Investigating Authority shall have a maximum period of seven months from the date of publication of the notice announcing the initiation of the investigation to conduct and conclude the investigation. In exceptional circumstances, the investigation period may be extended for an additional two months.

The applicant may, at any time and upon justification, request that the investigation be terminated. Where the request is granted, the proceeding shall be filed and the Investigating Authority shall publish a notice announcing the termination of the investigation without a decision on the merits.

Article 49. (EVIDENCE AND INFORMATION REQUESTED OR PROVIDED DURING THE INVESTIGATION). During the investigation period, the Investigating Authority may request and gather any evidence it considers to be pertinent. The Investigating Authority may request any data that it deems necessary for the fulfilment of its tasks or that may contribute to the smooth running of its investigation from the various public administration departments or private sector bodies, which shall provide a sufficiently detailed response to the request within 10 working days, unless otherwise specified by the Investigating Authority.

The Investigating Authority shall provide opportunities for industrial users of the product under investigation, and for representative consumer organizations in cases where the product is

commonly sold at the retail level, to provide any information that is relevant to the investigation regarding dumping or subsidies, injury and causality. The Investigating Authority shall duly take into account any problems that may be faced by interested parties, in particular small enterprises, in presenting the information requested and shall provide them with any feasible assistance.

Likewise, interested parties and all those who demonstrate a legitimate interest in participating in the investigation may furnish pertinent evidence, reports and documents, up to 15 working days before the day on which the Investigating Authority concludes the investigation.

Article 50. (CLARIFICATORY HEARINGS). At any stage of the investigation, and preferably after the preliminary determination, the Investigating Authority, *ex officio* or upon application by any interested party, may request the holding of public hearings attended by representatives of various interests for the purpose of clarifying questionable or controversial points within the investigation and explaining the methods used for determining the margins of dumping and calculating the subsidies, the determination of injury or threat thereof and arguments concerning causality, as well as the effects on domestic industrial users and consumers. There shall be no obligation on any party to attend such hearings, and failure to do so shall not be prejudicial to that party's case. Once convened, the hearing must be held within the next eight working days, but the fact that it is being held shall not interrupt or suspend the course of the investigation, or the periods specified for its various stages.

Once a hearing has been opened, a representative of the Investigating Authority shall put forward for discussion the items he or she considers necessary, together with the evidence submitted by the applicant. Subsequently, the representative shall act as moderator and give the floor to the importers, foreign exporters, domestic producers, industrial users of the product investigated and the consumers or their delegates, in that order. Each party shall have the floor in turn, twice with respect to the evidence submitted by the other parties. At these hearings, the rules of confidentiality laid down in these regulations must be respected. The conclusions of the hearing shall be recorded in the minutes, which shall be signed by the representatives of the Investigating Authority and by the parties involved.

Within five working days following the hearing, the parties shall submit in writing all the arguments put forward orally during the hearing. In evaluating the hearing, the Investigating Authority shall only take into account arguments expressed in writing.

Article 51. (VERIFICATION VISITS). The Investigating Authority is authorized to visit offices or premises where information relating to the case is to be found to check and verify the contents of the information sent in response to the questionnaires and the documentation and evidence submitted in the course of the investigation.

These visits shall include trips to domestic producers and importers of the products under investigation and to producers and exporters of the country of origin or exportation for the purpose of verifying the content and truthfulness of the information furnished by the parties, provided that the enterprises investigated or the interested parties agree thereto.

The enterprises of the exporting country concerned shall be given no less than 15 working days' notice of the visit, together with details of the information to be verified. Where the government of the exporting country or, where appropriate, the manufacturer of the product under investigation does not agree to verification, the Investigating Authority shall base its decisions on the best information available. The results of the on-the-spot investigation must be recorded, in summary form, in minutes signed by the parties concerned.

Article 52. (BEST INFORMATION AVAILABLE). If an interested party refuses access to, or otherwise does not provide, the necessary information within a reasonable period or significantly impedes the investigation, all decisions in the course of the proceeding shall be taken on the basis of the best information available.

When the Investigating Authority requires the participation of the applicant or any interested party in order to verify information provided for the investigation in good time and proper form, it shall inform the applicant or interested party thereof in advance. If the applicant or an interested party does not agree to verification, the information provided by the other party shall be deemed to be

correct, unless there is evidence to the contrary. During the investigation period, any interested party may submit its arguments, together with evidence which, in its opinion, supports those arguments.

Article 53. (CONCLUDING ARGUMENTS). Up to 15 working days before the expiration of the established period for the Investigating Authority to terminate the investigation, the interested parties may submit written arguments that support their case. Once this period has expired, no further reports, documents or evidence may be introduced. The Investigating Authority shall give the interested parties 15 working days' notice of the expiry of the period for the submission of arguments.

Article 54. (TERMINATION OF THE INVESTIGATION). Once the period for concluding arguments has expired and before the expiration of the investigation period, the Investigating Authority, on the basis of the evidence and information in the file, shall draw up a technical report that shall terminate the investigation.

Article 55. (TECHNICAL REPORT). I. For the positive or negative determination of material injury or threat thereof or material retardation of the establishment of a domestic industry, the Investigating Authority shall produce a technical report for closure of the investigation.

The technical report shall contain all the relevant information available; set out all factors of an objective or quantifiable nature having a bearing on the determination; include evidence of unfair practices in imports of the product under investigation and the alleged serious injury or threat thereof that those imports inflict on the domestic industry; evaluate or estimate the likely effects of a provisional or definitive measure, as appropriate; state the Investigating Authority's findings and conclusions regarding relevant matters of fact and law; and provide the recommendation on the appropriateness of the anti-dumping or countervailing measure. The technical report shall be part of the file.

II. Where there is sufficient evidence that unfair practices in the import of the product under investigation has caused material injury, a threat thereof or material retardation of the establishment of a domestic industry, the Investigating Authority shall deem the investigation closed through a technical report and make a recommendation on the appropriateness of imposing anti-dumping measures or provisional or definitive countervailing measures.

Furthermore, the Investigating Authority shall submit the file, the technical report and any other necessary documents to the Committee on the Evaluation of Trade Practices, which shall analyse and determine the appropriateness of any anti-dumping measures and countervailing duties for the application of the measure.

Based on the aforementioned technical report and the accompanying recommendation on the appropriateness of the anti-dumping measure or definitive countervailing duties, the Committee on the Evaluation of Trade Practices shall analyse the file, the technical report and other necessary documents presented by the Investigating Authority.

Based on analysis of the general interest, the Committee on the Evaluation of Trade Practices shall determine whether the measure is appropriate. If the measure is deemed appropriate, it shall determine the level of the anti-dumping and countervailing duties and shall authorize the Ministry of the Economy and Public Finance to develop a draft supreme decree.

III. Definitive measures shall be adopted by Supreme Decree.

IV. If the technical report does not establish that there is sufficient evidence that the material injury, threat thereof or material retardation of the establishment of a domestic industry is caused by unfair trade practices in relation to the product under investigation, the Investigating Authority shall deem the investigation to be closed without imposing definitive anti-dumping or countervailing duties, in which case it shall also request the release of any securities established as provisional anti-dumping or countervailing measures. The determination referred to in this paragraph shall be published in a national morning newspaper.

CHAPTER XI

DEFINITIVE DUTIES

Article 56. (DEFINITIVE DUTIES). When a definitive anti-dumping or countervailing duty is imposed, it shall be levied in the amounts indicated in the Supreme Decree, irrespective of the importer, on imports of the product found to be dumped or subsidized and causing injury to an industry in the Plurinational State of Bolivia.

Article 57. (PAYMENT OF ANTI-DUMPING AND COUNTERVAILING DUTIES). **I.** Definitive duties may not be secured and must be paid in cash. Bolivian National Customs shall not authorize the clearance of goods affected by definitive anti-dumping or countervailing duties unless indisputable evidence has been provided that the duties have been paid.

II. Definitive anti-dumping and countervailing duties shall be paid according to the goods' c.i.f. value at the border, their weight, or their volume using any other unit of measurement, as set out in the Supreme Decree on the adoption of measures, and are due as soon as the goods declaration is accepted.

CHAPTER XII

RETROACTIVITY AND IMPLEMENTATION MEASURES

Article 58. (RETROSPECTIVE APPLICATION OF DUTIES). Anti-dumping and countervailing duties may be applied retroactively only in cases of a final affirmative determination of material injury to the domestic industry.

When a final affirmative determination of threat of material injury to the domestic industry is made, the retroactive application of anti-dumping or countervailing duties shall only be allowed where the effect of the dumped or subsidized imports in the absence of the provisional measures would have led to a determination of material injury to the domestic industry.

A definitive anti-dumping or countervailing duty may only be collected on imports that are the subject of unfair practices whose date of shipping, as certified in the corresponding document of carriage, is up to 90 days prior to the application of the provisional measures and where it is verified that:

- (a) There is a history of dumping or subsidies causing injury to the domestic industry or the importer was, or should have been, aware that the producer or exporter practised dumping or that the goods were subsidised and the dumping or subsidies would cause injury; and
- (b) The injury is attributable to massive dumped or subsidized imports of a product within a relatively short time which are likely to seriously undermine the remedial effect of the definitive anti-dumping or countervailing duty to be applied.

Interested importers will be given an opportunity to put forward comments they deem relevant.

No anti-dumping or countervailing duties shall be levied on products whose known date of shipping, as reflected in the document of carriage, is prior to the initiation of the investigation or to the violation of the price undertaking.

Article 59. (EXCESS AMOUNTS AND REFUNDS). If it is concluded that the margin of the definitive anti-dumping or countervailing duties was less than the amount of the provisional duties applied, an order shall be issued promptly for the overpayment to be reimbursed or for the security assigned for the value of the provisional duties imposed to be repaid or unblocked upon payment of the definitive duties applied.

Any refunds shall be made by the Bolivian National Customs in accordance with the procedures established for that purpose.

If the definitive anti-dumping or countervailing duty is greater than the provisional duty paid or payable or the amount estimated for the purpose of determining the security, the importer shall not be required to pay the difference.

When the decision to impose definitive measures is based on the existence of threat of injury or material retardation (the injury not yet having occurred), definitive anti-dumping or countervailing duties may be established only from date of determination of the existence of threat of injury or material retardation in the establishment of a domestic industry.

Article 60. (APPLICATION OF THE MEASURE). Bolivian National Customs is the body responsible for collecting the anti-dumping and countervailing duties established in the Supreme Decree that imposed these measures, in accordance with the provisions of the present regulations.

Article 61. (DURATION OF THE MEASURE). The anti-dumping or countervailing duty shall remain in effect for as long as the causes of the injury or threat thereof that gave rise to the duty continue, up to a maximum of five years.

CHAPTER XIII

REVIEWS RELATED TO THE APPLICATION OF DUTIES

Article 62. (REVIEW OF DUTIES). After one year of imposition of definitive duties, the Investigating Authority may, *ex officio* or upon application by an interested party, order the investigation to be re-opened in order to review the duties, if it considers that the conditions which led to their being imposed have changed. Once the investigation has been reopened by means of a public notice, it shall be completed within a period not exceeding seven months. Any anti-dumping or countervailing duties that have been imposed shall be applied in full until the investigation is terminated.

Article 63. (PURPOSE OF THE REVIEW). In the application for review, interested parties may request that the Investigating Authority examine the margins of dumping or subsidies, the normal value and the export price determined during the immediately preceding year and, as a consequence of such review, to vary or remove the duty imposed or terminate acceptance of the price undertaking.

Likewise, interested parties may request that the Investigating Authority examine whether the continued imposition of the anti-dumping or countervailing duty or acceptance of the price undertaking is necessary to offset the adverse effects of dumping or subsidies.

Article 64. (SUNSET REVIEW). The time-period for the imposition established in Article 61 may be extended where the Investigating Authority, by means of a sunset review initiated *ex officio* or upon a duly substantiated request made by or on behalf of the domestic industry at least four months before the fifth year, establishes that removing the measure would probably lead to continuation or recurrence of the injury that the removal was intended to correct.

The review shall be concluded within a period of seven months from the date it commences, which may be extended for up to two months in exceptional circumstances.

The anti-dumping or countervailing duties shall remain in force pending the outcome of the review.

Article 65. (REVIEW OF THE ACCEPTANCE OF PRICE UNDERTAKINGS). The Investigating Authority may carry out reviews for the purpose of determining whether the agreement accepting the price undertakings should be extended.

If, as a result of the review, it is concluded that it is not necessary to maintain the price undertakings that have been acquired, the Investigating Authority shall order the termination of the undertakings, as well as of the investigation if the latter has been suspended.

Article 66. (REVIEW FOR NEW PRODUCERS OR EXPORTERS). I. The Investigating Authority, at the written request of an exporter or producer of the product subject to definitive anti-dumping

or countervailing duties, may initiate a review procedure to determine the appropriate individual margins of dumping or the amount that may be owed in countervailing duties.

For these purposes, the exporter or producer of the product subject to definitive anti-dumping or countervailing duties shall submit an application accompanied by documentation showing that the exporter or producer did not export the product subject to the imposition of anti-dumping or countervailing duties during the investigation period and is not related to any exporter or producer in the country of the product subject to anti-dumping or countervailing duties in the Plurinational State of Bolivia.

The Investigating Authority shall carry out a review for the purpose of establishing an individual weighted average margin of dumping or the amount of countervailing duties for that exporter or producer.

II. If the exporter is not considered to be an exchange economy, a product in the same third country used in the procedure immediately prior to initiation of the review shall be indicated for the purpose of determining the normal value.

III. The applications shall contain at least the following information and evidence:

- (a) The identity of the applicant;
- (b) Evidence to support the determination of the individual margin;
- (c) Evidence of what is intended to be added;
- (d) Accounts and financial information concerning production, sales, inventories, prices and profits and information on the plant capacity and employment;
- (e) Identification and justification of confidential information, and a non-confidential summary thereof. If it is indicated that the information is not susceptible of summary, a statement of the reasons why summarization is not possible shall be provided;
- (f) An offer to provide the Investigating Authority with any additional documents they may request and to facilitate the verification of the information supplied; and
- (g) Information on the normal value and export prices.

IV. The Investigating Authority shall have two months to determine whether the application was properly documented.

V. While the review under this Article is being carried out, the Investigating Authority shall do the necessary procedures with the corresponding authorities established in the present regulations to suspend the application of definitive anti-dumping or countervailing duties on the exports of these producers or exporters. However, imports made after the commencement of the procedure may be subject to security while it is decided whether definitive anti-dumping or countervailing duties should be imposed on the exports of the said producers or exporters and their individual margins of dumping or the amount of countervailing duties. If the decision is affirmative, anti-dumping or countervailing duties may also be imposed retroactively, from the date of initiation of the review procedure.

VI. The reviews provided for in this Article shall be concluded within a period of four months from the date of their initiation, with the final determination establishing the appropriateness of the new individual margin of dumping or the amount of countervailing duties. The Investigating Authority shall follow the procedure set out in this Annex regarding the imposition or non-imposition of the individual dumping margin and the value of countervailing duties.

CHAPTER XIV

ANTI-CIRCUMVENTION REVIEW

Article 67. (ANTI-CIRCUMVENTION MEASURES). Circumvention shall be defined as a change in the pattern of trade between the country on which the anti-dumping or countervailing duty has been imposed or third countries, on the one hand, and Colombia, on the other, stemming from a practice, process or work for which there is insufficient cause or economic justification other than the imposition of the anti-dumping or countervailing duty, and where there is evidence that the remedial effects of the duty are being nullified in terms of the prices or quantities of the like product.

If the measures in force are circumvented, the anti-dumping or countervailing duties imposed pursuant to these regulations may be extended to imports of like products or parts thereof from third countries or countries subject to the anti-dumping duty.

Without prejudice to other cases of circumvention, an assembly operation in the Plurinational State of Bolivia or in a third country shall be considered to circumvent the measures in force if the following conditions are met:

- (a) Imports coming from the country subject to the duty of another product that has the same general characteristics and uses as the product under consideration;
- (b) The parts or components have been obtained in a country subject to the duties in force from the exporter or producer to whom the definitive duty is applied, from suppliers of the exporter or the producer or from a party in the exporting country which acts as supplier on behalf of the exporter or producer;
- (c) The product assembled or finished with such parts or components in the Plurinational State of Bolivia is a like product to that subject to definitive duties;
- (d) There is evidence of dumping or subsidization of the product produced with such parts, on the basis of a comparison of the price of the product assembled or finished in the Plurinational State of Bolivia or in a third country and the normal value previously established for the like product when subjected to the definitive duty;
- (e) The operation began or increased substantially from the moment of initiation of the anti-dumping or subsidy investigation or just before its initiation;
- (f) The parts account for 60% or more of the total value of the parts of the assembled product. Nevertheless, circumvention shall not be deemed to exist if the combined value added of the parts used during the assembly operation is 40% or more of the cost of production or meets the rules of origin requirements in the agreements signed by the Plurinational State of Bolivia.

The facts described above may be evaluated in an investigation to be initiated by the Investigating Authority at the request of a party and in respect of which the provision of security may be required for imports of the products from the countries of origin under investigation. The request shall contain sufficient evidence of the factors that cause the circumvention.

The investigation shall be concluded within a maximum of four months. If the facts justify the extension of the measures, the Investigating Authority shall do the necessary procedures with the corresponding authorities established in the present regulations to apply the measures.

CHAPTER XV

PUBLICATIONS AND NOTIFICATIONS

Article 68. (PUBLICATIONS AND NOTIFICATIONS). Both for dumping and for subsidies, once the application has been accepted, before initiating the investigation the Investigating Authority, through the Ministry of Foreign Affairs, shall notify the government of the exporting country concerned.

If it is appropriate to initiate an investigation, the Investigating Authority shall likewise publish in a newspaper with a wide circulation the notice initiating the dumping investigation, expressly indicating the dates of initiation and completion of the investigation, the name of the exporting country or countries and the product concerned, the basis of the dumping or subsidy allegation made in the application, a summary of the factors on which the injury allegation is based, a contact address for the interested parties and the time-period in which they may submit their views.

The initiation of the investigation shall be notified through the Ministry of Foreign Affairs to the interested parties, as well as to the World Trade Organization's Committee on Anti-Dumping Practices and Committee on Subsidies and Countervailing Measures if the country involved is a WTO Member, and the Andean Community of Nations if the country is a member of the trade bloc.

The same procedure shall be followed when the Executive Branch orders provisional and definitive measures to prevent and remedy the unfair trade practices. Furthermore, the Supreme Decree implementing these measures shall be published in a newspaper with a large circulation in the Plurinational State of Bolivia, for the information of all concerned.

For the purposes of publication and notification, the Investigating Authority and the Ministry of Foreign Affairs shall have a period of 10 working days from the date of the notice ordering the initiation of the investigation and the Supreme Decree establishing the application of definitive or provisional measures.

Unless a decision has been made to initiate an investigation, the Investigating Authority shall avoid publicizing the application for an investigation to be initiated.

The WTO Committee on Anti-Dumping Practices and the Committee on Subsidies and Countervailing Measures, as appropriate, shall be notified before the measure is published.

ANNEX II**RULES GOVERNING THE IMPLEMENTATION OF SAFEGUARD MEASURES****CHAPTER I****GENERAL PROVISIONS**

Article 1. (SCOPE OF APPLICATION). The present Annex establishes the provisions for applying safeguard measures – referring to the measures set out in Article XIX of the GATT 1994 (Emergency Action on Imports of Particular Products) – in accordance with the WTO Agreement on Safeguards, the Cartagena Agreement, the Andean Decisions and the agreements signed by the Plurinational State of Bolivia.

These rules shall be applied in accordance with the relevant provisions of the WTO Agreements. For matters not covered by these regulations, WTO and Andean Community of Nations regulations shall apply where appropriate, taking precedence over domestic legislation.

Article 2. (DEFINITIONS). For the purposes of these regulations, the following definitions shall apply:

Investigating Authority.- The Vice-Ministry of Fiscal Policy, under the Ministry of the Economy and Public Finance, shall be the Investigating Authority responsible for the investigation provided for under the procedure for the implementation of safeguard measures pursuant to these rules.

Committee on the Evaluation of Trade Practices.- The Committee shall comprise the Ministries of Development Planning, the Economy and Public Finance, Production Development and the Plural Economy, Foreign Affairs and Rural Development and Lands, through its Higher Executive Authority or its duly accredited representative.

Serious injury to the domestic industry.- A significant overall impairment in the position of the domestic industry.

Safeguard measure.- An urgent, temporary measure to counteract serious injury or the threat thereof to national production by a significant increase in imports either in absolute terms or relative to domestic production.

Interested parties.- Interested parties shall be parties that have shown interest in participating in the investigation, including exporters; foreign producers; governments of supplying countries; importers; Bolivian producers; representatives of governments that produce, export or import the like or directly competitive product; consumers; and consumer associations.

Directly competitive product.- A product whose physical characteristics and composition differ from those of the imported product under investigation but that fulfils the same functions, meets the same needs and is commercially substitutable.

Like product.- A product which is identical, i.e. alike in all respects to the imported product, or another product which, although not alike in all respects, has characteristics closely resembling those of the product imported.

General Safeguard.- The Investigating Authority may apply a safeguard measure when the product is being imported into its territory 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.

Article 3. (NON-DISCRIMINATION). Safeguard measures adopted pursuant to the provisions of these regulations shall apply to all imports of the product under investigation, irrespective of their origin.

CHAPTER II

DOMESTIC INDUSTRY

Article 4. (SCOPE). For the purposes of the present regulations, "domestic industry" shall refer to the producers as a whole of the like or directly competitive products operating in the Plurinational State of Bolivia or those whose collective output of the like or directly competitive products constitutes a major proportion of the domestic production of those products.

Article 5. (MAJOR PROPORTION OF THE DOMESTIC INDUSTRY). All domestic producers of the like or directly competitive products whose collective output accounts for more than 50% of total domestic production of the like product or directly competitive products.

If the domestic industry formed by the like or directly competitive products is fragmented, with a huge number of producers, 25% could be considered to constitute a major proportion of the domestic industry for such products, provided that the situation is substantiated and duly verified at the discretion of the Investigating Authority.

CHAPTER III

SERIOUS INJURY OR THREAT THEREOF TO THE DOMESTIC INDUSTRY

Article 6. (EXISTENCE OF SERIOUS INJURY). A safeguard measure can only be adopted for a product or group of products if, following a prior investigation, it is determined that there is serious injury or threat of serious injury to the domestic industry as a result of a significant increase in the volume of imports of the imported product. Where factors other than those related to the imports are causing or threatening to cause serious injury to the domestic industry, their impact shall not be attributed to increased imports.

For the purposes of determining whether there is serious injury to the domestic industry or a threat thereof, the volume of imports of the product under investigation and its effect on the aforementioned domestic industry shall be examined, taking into account the following factors.

- (a) Import trends: A significant increase in the volume of imports of the product under investigation, whether in absolute terms or as a share of domestic production or consumption.
- (b) Production and sales trends: The effect of the imports under investigation on domestic industry variables, including prices, output, profits, utilization of installed capacity, inventories, sales, market share and employment level.
- (c) Price trends and impact of the imports: The trend in selling prices for the product on the domestic market, as well as the performance that could reasonably have been expected in the light of fluctuations in the exchange rate and the performance of price indices in the economy, shall be examined in order to determine whether the imports have depressed prices or have prevented price increases that otherwise would have occurred.
- (d) The accumulation of inventories of the imported product under investigation in the Plurinational State of Bolivia.
- (e) The effect on government policies for the development of the sector or sub sector; and
- (f) Any other factor causing or threatening to cause serious injury to the domestic industry due to the imports under investigation.

This list of factors is not exhaustive and does not necessarily constitute decisive guidance.

Article 7. (EXISTENCE OF A THREAT OF SERIOUS INJURY). For it to be determined that the imports pose a threat of serious injury it must be demonstrated that a situation could become a real

injury. Such a determination shall not be based on allegations, conjecture, remote possibility or random possibility.

When factors other than increased imports are also causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports.

Article 8. (PERIOD OF EXAMINATION OF THE FACTORS). Unless the Investigating Authority determines otherwise, the factors mentioned in this Annex for determining serious injury shall be examined with reference to a period comprising the five years preceding the submission of the application.

With regard to threat of serious injury, the examination period shall be that indicated in this Article, unless the domestic producers show that this period is not relevant.

CHAPTER IV

APPLICATION PROCEDURES AND INITIATION OF THE INVESTIGATION

Article 9. (SUBMISSION OF THE APPLICATION). **I.** A major proportion of the domestic industry of the product under investigation or the association representing that industry may apply in writing to the Investigating Authority for it to open an investigation regarding whether to implement safeguard measures.

II. The application mentioned in the previous paragraph shall include evidence showing and proving that the injury or threat of injury to the domestic industry is caused by the additional imports. Simple assertion shall not be considered sufficient to meet the requirements of this Article.

The Investigating Authority shall publish a ruling setting forth the information to be included in the application and the format in which it shall be presented.

The application shall be accompanied by the "Questionnaire for the domestic industry requesting the initiation of an investigation", which shall be duly completed, publicly accessible and approved by the Investigating Authority.

Article 10. (RECEIPT AND EVALUATION OF THE APPLICATION). In accordance with the above Article, applications shall be evaluated by the Investigating Authority within 15 working days of their submission.

Where the application is properly documented and does not require further information, the applicant shall be notified of the initiation of the investigation or denial of the application within an additional period of 15 working days.

If only minor additional information or specific corrections and adjustments to the application are required, the applicant shall be instructed to make the relevant changes within a period of five working days from the date on which the request was made.

Further information, corrections or adjustments shall be evaluated within a period of 10 working days from the date of the receipt thereof. At the end of that period, the applicant shall be notified of the initiation of the investigation or denial of the application within a period of 15 working days.

Article 11. (INITIATION OF THE INVESTIGATION). **I.** In exceptional circumstances, the Investigating Authority may initiate the investigation into the implementation of safeguard measures *ex officio*, provided that doing so is in the national interest and that it has sufficient evidence of injury or threat thereof to the domestic industry.

II. The Investigating Authority shall publish a notice announcing the initiation of the investigation to the interested parties of which it is aware and to the Ministry of Foreign Affairs within 10 working days following the date that the notice was published.

III. Within 20 working days following the publication date of the notice of initiation of the investigation, the Investigating Authority, through a public notice, shall invite the interested parties

to express their duly substantiated opinion. The interested parties shall have a period of 20 working days from the day following the date of publication of the notice in which to respond. Upon expiry of this period, only parties that have indicated their interest in taking part in the investigation shall be considered interested parties.

Article 12. (IMPORTATION OF PRODUCTS UNDER INVESTIGATION). The initiation of an investigation shall not impede the customs clearance of the product under investigation.

Article 13. (ADJUSTMENT PROGRAMME). During the 30 calendar days following publication of the notice of initiation of the investigation, the applicant domestic industry shall propose the adjustment programme in accordance with Article 35 of the present regulations.

Should the domestic industry fail to present the adjustment programme in a timely fashion, the Investigating Authority shall deem the investigation to be closed.

CHAPTER V

PROVISIONAL SAFEGUARD MEASURES

Article 14. (PROVISIONAL SAFEGUARD). In critical circumstances in which any delay would cause damage to the domestic industry which it would be difficult to repair, once the notice of initiation of the investigation has been published, the Investigating Authority, at any stage of the investigation and at the request of a party or of its own initiative, shall draft a preliminary technical report recommending whether provisional safeguard measures are appropriate.

Article 15. (TECHNICAL REPORT). Within 30 calendar days following the date on which the application for provisional safeguard measures was received, the Investigating Authority shall present a preliminary technical report containing relevant factors of an objective and quantifiable nature and the preliminary determination of whether there is clear evidence that the imports have caused or threatened to cause serious damage to the domestic industry.

The analysis shall be based on clear evidence that there has been a substantial increase in imports over the last six months for which statistics are available, taking into account their volume and whether or not there has been a rapid accumulation of inventories of the domestic product and a reduction in sales and profit margins. The preliminary technical report shall be part of the file.

If there is sufficient evidence for a provisional safeguard measure to be imposed, the Investigating Authority shall recommend that provisional safeguard measures would be appropriate.

If there is insufficient evidence for a provisional safeguard measure, the Investigating Authority shall reject the application for the measure and shall not impose it.

The Investigating Authority shall submit the file, the preliminary technical report and any other necessary documents to the Committee on the Evaluation of Trade Practices, which shall analyse and determine the appropriateness of implementing the provisional safeguard measure.

Article 16. (DETERMINATION OF THE PROVISIONAL MEASURE). Based on the aforementioned preliminary technical report, which concludes with the recommendation on the appropriateness of implementing the provisional safeguard measure, the Committee on the Evaluation of Trade Practices shall analyse the file, the preliminary technical report and other necessary documents presented by the Investigating Authority.

Based on analysis of the public interest and the interest of the State, the Committee on the Evaluation of Trade Practices shall determine whether the measure is appropriate. If the measure is deemed appropriate, it shall determine the implementation method (*ad valorem*, specific, mixed or composite duties) for the safeguard measure and shall authorize the Ministry of the Economy and Public Finance to develop a draft supreme decree establishing how the measure will be applied.

The proposed measure shall be implemented by Supreme Decree.

Article 17. (CONSULTATIONS). Should a provisional safeguard measure be adopted that affects exporting countries that are WTO Members, the Investigating Authority shall immediately work with the Ministry of Foreign Affairs to coordinate consultations with the exporting country governments that have a substantial interest in the product in question, as stipulated in Article 40 of these regulations.

Article 18. (TYPE OF MEASURE). The provisional safeguard measure shall apply only in the form of an increase in tariffs.

Any provisional measures may take the form of a provisional duty or a security – by cash deposit or any other type of security envisaged in the General Customs Law (Law No. 1990) and its implementing regulations – equal to the amount of the safeguard tariff provisionally estimated.

Article 19. (DURATION). A provisional safeguard measure shall remain in effect until a definitive safeguard measure is adopted or it is decided not to impose one. Its duration shall not in any case exceed 200 calendar days.

During this period, the investigation shall continue as provided in these regulations in order to decide whether or not a definitive safeguard measure should be imposed.

The duration of a provisional safeguard measure shall be added to the initial period of application of the definitive measure.

Provisional measures shall not be implemented during the two months following the initiation of the investigation.

CHAPTER VI

INVESTIGATION PERIOD AND EVIDENTIARY ASPECTS FOR THE DETERMINATION AND IMPOSITION OF DEFINITIVE MEASURES

Article 20. (INVESTIGATION PERIOD). The Investigating Authority shall have a maximum period of seven months from the date of publication of the notice announcing the initiation of the investigation to conduct and conclude the investigation. In exceptional circumstances, the investigation period may be extended for an additional two months.

Within the aforementioned period, the Investigating Authority may request, receive, collect and verify information, receive allegations from interested parties regarding whether implementing the safeguard measure is in the public interest, hold public hearings and request any evidence it deems relevant.

Article 21. (INFORMATION REQUESTS). During the investigation period, the Investigating Authority may request and gather any evidence it considers to be pertinent. The Investigating Authority may request any data that it deems necessary for the fulfilment of its tasks or that may contribute to the smooth running of its investigation from the various public administration departments of or private sector bodies, which shall provide a sufficiently detailed response to the request within 10 working days, unless otherwise specified by the Investigating Authority.

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

Article 22. (PRESENTATION OF INFORMATION FROM THE INTERESTED PARTIES). The interested parties shall respond to information requests from the Investigating Authority within 30 calendar days, counting from the day after the one on which the request was made.

The information, responses, supporting documents and other evidence submitted by the parties shall be submitted in writing and shall be in Spanish or accompanied by an official translation.

If required by the Investigating Authority for its analysis, the information shall be submitted in electronic form.

Article 23. (PUBLIC HEARING). At the request of a party or *ex officio*, the Investigating Authority may, once only, convene the interested parties to a public hearing within the period referred to in Article 20 so that they may put forward their arguments and comments on the claims made by the parties during the investigation.

The interested parties shall be convened by public notice up to 10 working days before the date set by the public notice.

The interested parties shall have the right to present information orally at the public hearing. Such information may be considered for the determinations during the course of the investigation. The conclusions of the hearing shall be recorded in the minutes, which shall be signed by the representatives of the Investigating Authority and by the parties involved.

Within five working days following the hearing, the parties shall submit in writing all the arguments put forward orally during the hearing. In evaluating the hearing, the Investigating Authority shall only take into account arguments expressed in writing.

There shall be no obligation on any party to attend a hearing, and failure to do so shall not be prejudicial to that party's case.

Article 24. (VERIFICATION VISITS). The Investigating Authority is authorized to visit offices or premises where information relating to the case is to be found to check and verify the contents of the information sent in response to the questionnaires and the documentation and evidence submitted in the course of the investigation.

These visits shall include trips to domestic producers and importers of the products under investigation for the purpose of verifying the content and truthfulness of the information furnished by the parties, provided that the enterprises investigated or the interested parties agree thereto.

The enterprises shall be given no less than 15 working days' notice of the visit, together with details of the information to be verified. Where the manufacturer of the product under investigation does not agree to verification, the Investigating Authority shall adopt decisions based on the best available information. The results of the on-the-spot investigation must be recorded, in summary form, in minutes signed by the parties concerned.

Article 25. (BEST INFORMATION AVAILABLE). If an interested party refuses access to, or otherwise does not provide, the necessary information within a reasonable period or significantly impedes the investigation, all decisions in the course of the proceeding shall be taken on the basis of the best information available.

Likewise, where the Investigating Authority finds that an interested party has submitted incorrect or misleading information, this shall not be taken into account in its evaluation and findings.

Article 26. (FILE CONTAINING INFORMATION). All documents, evidence and information submitted by the interested parties or collected by the Investigating Authority shall be archived chronologically in a single file consisting of two parts: one containing public information and another containing confidential information.

Upon request in writing, the interested parties shall have access to all the information contained in the public part of the file.

Article 27. (TERMINATION OF THE INVESTIGATION). Once the public hearing has taken place, the Investigating Authority, if necessary and on the basis of the evidence and information in the file, shall draw up a technical report that shall terminate the investigation referred to in this Chapter.

Article 28. (TECHNICAL REPORT). I. For the positive or negative determination of serious injury or threat thereof, the Investigating Authority shall produce a technical report for closure of the investigation.

The technical report shall contain all the relevant information available and shall set out all factors of an objective or quantifiable nature having a bearing on the situation of the domestic industry,

especially the pace and size of the increase in imports of the product in absolute and relative terms; the share of the domestic market taken by the additional imports; and changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment. The report shall also provide objective evidence of a causal link between the additional imports of the product in question and the serious injury or threat thereof; provide evidence of the alleged serious injury or threat thereof that those imports inflict on the domestic industry; evaluate or estimate the likely effects of a provisional or definitive measure; evaluate the information presented or collected in terms of the public interest; state the Investigating Authority's findings and conclusions regarding relevant matters of fact and law; and provide the recommendation on the appropriateness of the safeguard measure. The technical report shall be part of the file.

II. Where there is sufficient evidence that the additional imports of the product under investigation have caused or threatened to cause serious injury to the domestic industry and that there is a causal link, the Investigating Authority shall deem the investigation closed through a technical report and make a recommendation on the appropriateness of imposing anti-dumping measures or provisional or definitive safeguard measures and what form such measures should take.

Moreover, the Investigating Authority shall submit the file, the technical report and any other necessary documents to the Committee on the Evaluation of Trade Practices, which shall analyse and determine whether the safeguard measure should be implemented and what form it should take.

Based on analysis of the public interest, the Committee on the Evaluation of Trade Practices shall determine whether the measure is appropriate. If the measure is deemed appropriate, it shall determine the quantity and type of safeguard measures and shall authorize the Ministry of the Economy and Public Finance to develop a draft supreme decree.

III. Safeguard measures shall be adopted by Supreme Decree.

IV. If the technical report does not establish that there is sufficient evidence that the serious damage or threat thereof to the domestic industry is caused by imports of the product under investigation and the causal link, the Investigating Authority shall deem the investigation to be closed without imposing definitive safeguard measures and shall also request the release of any securities established as provisional safeguard measures. The determination referred to in this paragraph shall be published in a national morning newspaper.

CHAPTER VII

ADOPTION OF SAFEGUARD MEASURES

Article 29. (SAFEGUARD MEASURES). A safeguard measure shall be applied only to the extent necessary to prevent or remedy serious injury or threat thereof to the domestic industry and to facilitate adjustment.

The safeguard measure applied shall preferably be a tariff increase and a quantitative restriction shall be applied to the product under investigation only if it is not possible to apply a tariff increase.

Article 30. (SAFEGUARD MEASURES IN THE FORM OF TARIFFS). I. Definitive duties may not be secured and must be paid in cash. Bolivian National Customs shall not authorize the clearance of goods affected by safeguard measures in the form of tariffs unless indisputable evidence has been provided that the duties have been paid.

II. Definitive safeguard measures in the form of tariffs shall be paid according to the goods' c.i.f. value at the border, their weight or their volume using any other unit of measurement, as set out in the Supreme Decree on the adoption of measures, and are due as soon as the goods declaration is accepted.

Article 31. (QUANTITATIVE RESTRICTIONS). Where the safeguard measure adopted is in the form of a quantitative restriction, the following obligations shall be taken into account:

- (a) A quantitative restriction shall not reduce the volume of imports below the average level of imports over the last three years representative of regular trade flows for which

statistics are available, unless it can be shown that a different level is necessary to prevent or remedy the serious injury to the domestic industry; and

- (b) In cases in which a quota is allocated among supplying countries, the allocation of shares in the quota may be agreed with member countries that have a substantial interest in supplying the product concerned. In cases in which this method is not reasonably practicable, shares shall be allotted to supplying members having a substantial interest in supplying the product based upon the proportions of the total quantity or value of imports of the product supplied by each member during the representative period, due account being taken of any special factors which may have affected or may be affecting the trade in the product.

Subject to consultation with exporting members that have a substantial interest and under the auspices of the WTO Committee on Safeguards, a different form of allotting shares may be used in exceptional circumstances if it can be demonstrated that:

- (i) Imports from certain members have increased by a disproportionate percentage in relation to the total increase in imports of the product under investigation in the representative period;
- (ii) There are justified reasons for making an exception; and
- (iii) The conditions of distribution are equitable to all suppliers of the product under investigation.

This exception may not be applied in cases of a threat of serious injury.

The criteria for allotting import quotas regulated in this Article shall be established in the Supreme Decree determining how the measure will be implemented.

Article 32. (APPLICATION OF THE MEASURE). Bolivian National Customs is the body responsible for collecting tariffs and for applying the quantitative restrictions established in the Supreme Decree determining how the measure will be implemented, in accordance with the provisions of the present regulations.

Article 33. (EXCESS AMOUNTS AND REFUNDS). If it is concluded that the amount of a definitive safeguard measure is smaller than the amount of the provisional measure applied, an order shall be issued promptly for the overpayment to be reimbursed or for the security assigned for the value of the provisional duties imposed to be repaid or unblocked upon payment of the definitive duties applied.

Any refunds shall be made by the Bolivian National Customs in accordance with the procedures established for that purpose.

If the amount of the definitive safeguard measure is greater than the provisional duty paid or payable or greater than the amount estimated for the purpose of determining the security, the importer shall not be required to pay the difference.

Article 34. (DURATION OF THE MEASURE). Safeguard measures shall only be applied for as long as may be necessary to prevent or remedy serious injury or threat thereof and to facilitate adjustment of the domestic industry concerned. The period shall not exceed four years, including the period of application of any provisional measure, unless it is extended pursuant to Chapter XIII of these regulations.

In any event, the total period of application 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 10 years, as set out in Article 9 of the Agreement on Safeguards.

CHAPTER VIII

ADJUSTMENT PROGRAMME

Article 35. (ADJUSTMENT PROGRAMME). The adjustment programme is the set of actions that the party requesting the safeguard measures commits to undertake to supplement a safeguard measure during the entire period that it is implemented. The purpose of the programme is to improve producers' competitiveness and adjust their production activities to foreign competition, which shall be approved by the Investigating Authority.

All non-government economic entities linked to the activity in question may participate in drawing up the draft adjustment programme.

The adjustment programme shall derive from analysis of the factors that influence and determine the competitiveness of the sector. The programme shall establish the action to be carried out and estimate the period it will take to implement that action. If the safeguard measure is imposed, those actions and periods shall be monitored and inspected by the Investigating Authority.

In terms of the applicability of the adjustment programme for the period during which the definitive safeguard measures are valid, the party requesting the safeguard measures may make appropriate changes to the programme. The Investigating Authority must approve the programme.

Article 36. (FAILURE TO PRESENT THE ADJUSTMENT PROGRAMME). Should the domestic industry fail to present the adjustment programme, its progress or its goals in a proper and timely fashion, either the Investigating Authority shall issue a notification ending the investigation or a Supreme Decree shall be issued suspending the safeguard measure.

CHAPTER IX

CONFIDENTIALITY

Article 37. (CONFIDENTIAL INFORMATION). Any confidential information submitted by the parties in an investigation concerning the application of safeguard measures shall be treated as such by the Investigating Authority, upon cause being shown, and shall not be disclosed without the express consent of the party submitting it. Information shall be considered confidential either if its disclosure or publication might injure the competitive position of the enterprise concerned or have a significantly adverse effect upon the person supplying the information or if it is provided on a confidential basis.

A separate file, which may be inspected only by the Investigating Authority, shall be opened for confidential information provided by the applicant or other interested parties.

Any party that submits confidential information shall attach a non-confidential summary that shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. In exceptional circumstances, such parties may explain why such information is not susceptible of summary.

If the Investigating Authority believes that a request for confidentiality is not warranted and if the party concerned does not wish to make the information public or to authorize its disclosure in generalized or summary form, the Investigating Authority shall disregard such information. The provider may request that such information be removed from the file.

Article 38. (THE PROCESSING OF CONFIDENTIAL INFORMATION). No confidential information contained in any document prepared by the Investigating Authority that contains confidential information shall be divulged, except in the cases permitted by these regulations.

The designation of information as confidential shall not impede the provision of general information and the evidence on which decisions adopted are based.

The interested parties identified as such by the Investigating Authority and the representatives of exporting countries may have access to any information gathered during the investigation, except that of a confidential nature.

Article 39. (ACCESS TO CONFIDENTIAL INFORMATION). Government officials appointed by the Investigating Authority to conduct the investigation shall have access to confidential information as part of their official duties.

Where documents contain confidential information, the Investigating Authority shall clearly identify them as confidential at the start of the document and shall mark the confidential parts within the relevant texts and tables.

Documents containing confidential information held by government may only be reproduced by the Investigating Authority.

CHAPTER X

LEVEL OF CONCESSIONS AND CONSULTATIONS

Article 40. (CONSULTATIONS). As soon as a provisional measure is adopted and before a definitive safeguard measure is imposed or extended, the Investigating Authority shall work in coordination with the Ministry of Foreign Affairs to initiate consultations with the governments of the exporting countries involved that have a substantial interest.

The consultations shall be held within 30 days and serve, *inter alia*, to consider the evidence of serious injury or threat thereof to the domestic industry as a result of imports of the product under investigation, to exchange views on the measure and to seek an understanding on ways of concluding trade compensation agreements to compensate for the measure's adverse effects on trade.

Once the consultation period has ended, the Plurinational State of Bolivia may adopt the safeguard measure it deems appropriate even if there is no agreement with the governments of the exporting countries involved.

Article 41. (CONCESSIONS). By implementing safeguard measures or extending their duration, the Plurinational State of Bolivia will try to maintain a substantially equivalent level of concessions and other obligations to that existing under GATT 1994 between it and the exporting Members which would be affected by such a measure.

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 Bolivian 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 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 (3) years that a safeguard measure is in effect, provided that it has been adopted as a result of an absolute increase in imports.

CHAPTER XI

NOTIFICATIONS

Article 42. (AUTHORITY RESPONSIBLE FOR NOTIFICATIONS). The Ministry of Foreign Affairs shall be responsible for issuing notifications to the relevant WTO bodies, as stipulated in the present regulations.

Article 43. (NOTIFICATION TO THE COMMITTEE ON SAFEGUARDS). In compliance with the requirements set by the WTO Safeguards Committee, the Ministry of Foreign Affairs, within 10 working days following publication of the corresponding decision, should notify the WTO Safeguards Committee of the following:

- (a) The initiation of an investigation;
- (b) A decision by the Plurinational State of Bolivia to impose a provisional safeguard measure, which shall be notified following its adoption;
- (c) The Bolivian Government's decision to apply or extend a safeguard measure; and
- (d) The outcome of the consultations referred to in Articles 31 and 40 of these regulations and, where appropriate, the agreed compensation or the suspension of concessions or other obligations.

Article 44. (NOTIFICATION TO THE COUNCIL FOR TRADE IN GOODS). The Ministry of Foreign Affairs, within 10 working days following publication of the corresponding decision, shall notify the Council for Trade in Goods of the following, through the WTO Committee on Safeguards:

- (a) The outcome of the consultations referred to in Article 40 of these regulations;
- (b) Trade compensation agreements;
- (c) Suspension of concessions and other obligations.

CHAPTER XII

MONITORING AND REVOCATION OF SAFEGUARD MEASURES

Article 45. (MONITORING). For the purposes of monitoring the implementation of safeguard measures, Bolivian National Customs shall inform the Investigating Authority once a quarter of the volumes and values of imports of products subject to safeguard measures, according to the country of origin and country source, and volumes and values of duties collected or guaranteed.

Article 46. (MID-TERM REVIEW). When a safeguard measure is adopted for an initial period exceeding three years, half way through the period of application of the measure, the Investigating Authority shall *ex officio* review the situation, including trends in the factors that determined the serious injury or threat thereof, in order to establish whether it is necessary to maintain the measure, withdraw it or increase the pace of liberalization.

For this purpose, the Investigating Authority shall require the producers identified in the initial application to submit, *inter alia*, the following information:

- (a) Import trends over the preceding years (volume, price and country of origin) for which information is available;
- (b) Information on production levels, utilization of installed capacity, inventories, productivity, sales and prices on the domestic market, domestic market share, profit and loss accounts, and employment for the preceding calendar years and the quarters of the current year completed one month before the request for information; and
- (c) Detailed information on the adjustment or modernization programme adopted or being implemented by each producer.

Depending on the circumstances, the Investigating Authority may request additional relevant information in order to establish whether it is necessary to maintain the safeguard, withdraw it or increase the pace of liberalization.

Within the following 30 calendar days, the enterprises concerned shall submit the information requested and the supporting evidence and shall request the information and evidence they deem necessary. They shall also identify the information they consider confidential, giving their reasons for doing so.

Where it deems necessary, the Investigating Authority shall hold a hearing or visit the facilities of the domestic producers it considers relevant, notifying its intention and purpose at least 15 working days before the hearing or visit.

Within 60 calendar days following receipt of the information or the date of the hearing or visit mentioned in the preceding paragraph, as appropriate, the Investigating Authority shall carry out its mid-term evaluation report in order to determine whether or not it is appropriate to maintain or withdraw the measure or increase the pace of liberalization.

The mid-term evaluation report and its recommendation on whether or not it is appropriate to maintain or withdraw the measure or increase the pace of liberalization shall be forwarded to the Committee on the Evaluation of Trade Practices for analysis. If the Committee deems that the measure should be revoked or amended to accelerate the pace of liberalization, it shall authorize the Ministry of the Economy and Public Finance to draft the appropriate Supreme Decree.

Article 47. (EVALUATION OF THE ADJUSTMENT PROGRAMME). During the investigation or the mid-term review, the Investigating Authority shall evaluate the adjustment programme submitted and may propose amendments thereto.

Verification of compliance with the adjustment programme proposed by the applicant party shall be a necessary requirement for extension of the measure applied.

Article 48. (GRADUAL LIBERALIZATION OF THE MEASURE). In order to facilitate adjustment in a situation where the expected duration of a safeguard measure is over one year, the measure shall be progressively liberalized at regular intervals during the period of application.

The pace of liberalization of measures shall be specified in the Supreme Decree adopting them, taking into account the period necessary to prevent or remedy the serious injury and facilitate adjustment, as well as the possibilities of extending the measure.

CHAPTER XIII

EXTENSION OF SAFEGUARD MEASURES

Article 49. (CONDITIONS FOR EXTENDING THE MEASURE). A request to extend the implementation period of a safeguard measure can be made *ex officio* or at the request of a major proportion of the domestic industry affected, provided that another investigation is held according to the procedure laid down in this Annex, that there are grounds for continuing to impose the safeguard measure in order to prevent or remedy the serious injury or threat thereof, and that there is evidence that the domestic industry is adjusting.

A request for extension shall be submitted seven months before the expiry of the term of the safeguard measure being applied and the relevant provisions regarding the intended procedure for adopting the original measure, the level of concessions, notifications and consultations established in the present regulations.

Article 50. (CONSULTATIONS). If the Investigating Authority decides to recommend extending the definitive safeguard measure involving exporting WTO-member countries and provisional measures have not been established as part of the investigation, the Investigating Authority will immediately work with the Ministry of Foreign Affairs in coordinating the start of consultations with the governments of the exporting countries involved that have a substantial interest.

Article 51. (MODIFICATION OF TIME-PERIODS). In order to extend a safeguard measure, the maximum period during which interested parties may inform the Investigating Authority of their interest in participating in the investigation is 10 working days.

The maximum period for the Investigating Authority to conduct tests and draft the Technical Report is 20 working days.

Article 52. (TYPE OF MEASURE). When a safeguard measure is extended, it shall not be more restrictive than the one in force at the end of the initial period. The progressive liberalization considered appropriate in relation to the adjustment plan shall continue during the period of extension.

CHAPTER XIV

RENEWED APPLICATION OF A SAFEGUARD MEASURE

Article 53. (PROHIBITION AND RENEWED APPLICATION). 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 the 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.

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

- (a) At least one year has elapsed since the date of introduction of the safeguard measure on the import of the product concerned; and
 - (b) Such a measure has not been applied to the same product more than twice in the five-year period immediately preceding the date of introduction of the safeguard measure.
-