



19 April 2021

(21-3297)

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Committee on Anti-Dumping Practices

Original: Spanish

**NOTIFICATION OF LAWS AND REGULATIONS UNDER
ARTICLE 18.5 OF THE AGREEMENT**

COLOMBIA

The following communication, dated and received on 14 April 2021, is being circulated at the request of the delegation of Colombia.

In accordance with Article 18.5 of the Anti-Dumping Agreement, the Government of Colombia encloses herewith the text of Decree No. 1794 of 2020 adding a chapter on the application of anti-dumping duties to Title 3 of Part 2 of Book 2 of Decree No. 1074 of 2015, Single Regulatory Decree for the Trade, Industry and Tourism Sector, and introducing other provisions.

OFFICIAL JOURNAL NO. 51.543 OF 30 DECEMBER 2020

**DECREE NO. 1794 OF 2020
(30 December)**

Adding a Chapter on the application of anti-dumping duties to Title 3 of Part 2 of Book 2 of Decree No. 1074 of 2015, Single Regulatory Decree for the Trade, Industry and Tourism Sector, and introducing other provisions

The President of the Republic of Colombia, in exercise of his constitutional powers, in particular those conferred upon him by paragraphs 11 and 25 of Article 189 of the Political Constitution, in conformity with Article 10 of Law No. 7 of 1991 and Law No. 170 of 1994, and

CONSIDERING:

That Article 10 of Law No. 7 of 1991 instructs the National Government to regulate the protection of domestic producers against unfair foreign trade practices and to fix requirements, procedures and factors for determining the imposition of duties as appropriate.

That Law No. 170 of 15 December 1994 approves the Agreement establishing the World Trade Organization (WTO), signed in Marrakech (Morocco) on 15 April 1994, the multilateral agreements annexed thereto, and the Plurilateral Agreement on bovine meat annexed thereto, which was declared enforceable by the Constitutional Court by way of Ruling C-137 of 28 March 1995.

That the Agreement Establishing the World Trade Organization contains the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (hereinafter the WTO Anti-Dumping Agreement), which constitutes the general regime for the application of anti-dumping duties.

That the National Government issued Decree No. 1750 of 1 September 2015 on the basis of the provisions of Article 10 of Law No. 7 of 1991, with the aim of regulating requirements, procedures and factors for determining the application of anti-dumping duties.

That the WTO Anti-Dumping Agreement sets forth rules for the application of anti-dumping duties, relating in particular to the calculation of dumping, procedures for initiating and pursuing an investigation, including the establishment and treatment of the facts, the imposition of provisional measures, the imposition and collection of anti-dumping duties, the duration and review of anti-dumping measures and the public disclosure of information relating to anti-dumping investigations.

That it is necessary to bring domestic legislation into line with the changes in foreign trade with regard to the applicable procedure, in light of the technical and legislative progress in this field, as well as the use of information and communications technology, especially the development and use of electronic processing through the web application or the system replacing it, such as those provided for in the WTO Anti-Dumping Agreement, for the purpose of counteracting injury to domestic production caused by dumping, by imposing anti-dumping duties.

That the exercise of the regulatory power of the President of the Republic is not exhausted, pursuant to paragraph 11 of Article 189 of the Political Constitution, but encompasses the authority conferred by paragraph 25 of Article 189, with regard to the regulation of foreign trade.

That it is necessary, in the interest of streamlining and simplifying legislation, to include in Decree No. 1074 of 2015, Single Regulatory Decree for the Trade, Industry and Tourism Sector, rules of a regulatory nature governing the trade, industry and tourism sector, issued under paragraph 25 of Article 189 of the Political Constitution, which are intended to be permanent and which regulate procedural matters. In light of the above,

HEREBY DECREES THE FOLLOWING:

Article 1. A preambular part is added to Decree No. 1074 of 2015, Single Regulatory Decree for the Trade, Industry and Tourism Sector, which reads as follows:

"That in order to simplify and streamline the legal system, the compilation referred to in this Decree includes the rules issued in accordance with the powers conferred upon the President of the Republic in paragraph 25 of Article 189 of the Political Constitution, which are of a permanent nature, with regard to the regulation of foreign trade".

Article 2. Chapter 7 is added to Title 3 of Part 2 of Book 2 of Decree No. 1074 of 2015, Single Regulatory Decree for the Trade, Industry and Tourism Sector, and reads as follows:

"CHAPTER 7

APPLICATION OF ANTI-DUMPING DUTIES

SECTION I

GENERAL PROVISIONS

ARTICLE 2.2.3.7.1.1. Definitions. For the purposes of this Decree, and in accordance with the provisions of the WTO Anti-Dumping Agreement, the following definitions apply:

a. Dumping. A product is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country

b. Threat of material injury. The risk of material injury to a domestic industry, as set forth in Article 3.7 and other relevant provisions of the WTO Anti-Dumping Agreement.

c. Investigating authority. The Foreign Trade Directorate of the Ministry of Trade, Industry and Tourism, through its Sub-Directorate of Trade Practices.

d. Injury. Unless otherwise specified, material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry, as set forth in Article 3 and other relevant provisions of the WTO Anti-Dumping Agreement.

e. Anti-dumping duty. Customs duty applicable to imports of products to restore the terms of competition distorted by the dumping.

f. Days. All the days mentioned in this Decree mean working days, unless otherwise specified. If the last day of a specified period is a holiday or rest day, the period shall be extended until the next working day.

g. Date of sale. As a general rule the date of sale is that indicated in the document establishing the essential conditions and terms of the sale, for example, the contract, the purchase order, the confirmation of the purchase order or the invoice.

h. Massive imports. Imports of the product subject to investigation, from the date of initiation of the investigation to the date of the imposition of provisional measures, the volume of which and other circumstances such as the rapid accumulation of stocks seriously impair or could seriously impair the remedial effect of the definitive anti-dumping duty.

i. Dumping margin. The amount by which the price of the export product is lower than the normal value. The margin shall be calculated for each unit of the product imported into national territory at dumping prices.

The margin of dumping shall normally be considered to be *de minimis* if this margin is less than 2%, expressed as a percentage of the export price.

j. 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, in accordance with Article 6.8 and Annex II of the WTO Anti-Dumping Agreement.

k. Month: Month means an ordinary calendar month.

l. Ordinary course of trade. Trade reflecting market conditions in the country of origin carried out habitually or within a representative period between independent buyers and sellers.

m. 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 sufficient level to permit the examination of the other two types of injury;

n. Related parties. One shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter, in the following situations:

1. one of them directly or indirectly controls the other;
 2. both of them are directly or indirectly controlled by a third person, or,
 3. both of them directly or indirectly control a third person, provided that there are grounds for believing that the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers.
- For the purposes of this definition, "control" shall mean the subjection of the decision-making power of a company to the will of one or more other persons, by having, *inter alia*:
- (a) over 50% of its capital either directly or together with its subsidiaries, or with the subsidiaries of those subsidiaries;
 - (b) minimum decision-making majority at the partners' meeting or assembly;
 - (c) power under the enterprise's articles of association or an agreement;
 - (d) when the parent company, directly or through or together with its subsidiaries, by reason of an act or business with the controlled company or its partners, exercises a dominant influence over the decisions of the company's management bodies;
 - (e) power to appoint or remove the majority of members of the board of directors or equivalent governing body; or
 - (f) power to cast the majority of votes at meetings of the board of directors or equivalent governing body.

o. Interested parties. "Interested parties" shall mean:

1. the applicant;
2. an exporter, foreign producer or importer of the product under consideration, or a trade or business association a majority of whose members are producers, exporters or importers of the product;
3. the government of the country of origin of the product under investigation;
4. domestic producers of the product like to that under investigation or trade or business associations a majority of whose members produce the said product in the national territory; and
5. Colombian or foreign persons other than those indicated above, as determined by the investigating authority.

p. Export price. The price actually paid or payable for the product under consideration sold for export to Colombia.

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

r. Like product. A product which is identical, i.e. alike in all respects to the product under consideration or, in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration. For the purposes of proving that the products are alike, the physical and chemical characteristics, details of the raw materials used, manufacturing or production process, channels of distribution, tariff classification, among others, may be taken into consideration

s. Normal value. In general, and in the ordinary course of trade, the comparable price actually paid or payable for a product like to that exported to Colombia when sold for consumption in the country of origin or export.

In the absence of such a price, the normal value shall be established by considering the price for export to a third country, the price for export from a third country to another country, or the constructed value.

In the case of a country in which there is significant state intervention, the normal value shall correspond to the domestic or export price in a third country with a market economy.

ARTICLE 2.2.3.7.1.2. Scope of application. This Decree establishes the provisions applicable to investigations into imports of products originating in Member countries of the World Trade Organization (WTO) that are dumped, when they cause or threaten to cause material injury to a domestic industry or material retardation of the establishment or the expansion of this domestic industry.

This legal framework shall also apply to imports from non-Members of the WTO with which Colombia has existing international trade agreements or treaties and to imports of products from countries with which Colombia has no international commitments regarding the application of anti-dumping duties.

ARTICLE 2.2.3.7.1.3. Grounds for the decisions. Anti-dumping duties shall only be applied following investigations initiated and conducted in accordance with the provisions laid down herein. This Decree shall be applied and interpreted in accordance with the provisions of the WTO Anti-Dumping Agreement.

The decisions referred to in this Decree shall take into account international trade agreements where applicable. Panel and Appellate Body reports adopted by the WTO Dispute Settlement Body may be considered when conducting investigations.

ARTICLE 2.2.3.7.1.4. General interest. The investigation and the imposition of anti-dumping 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.

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

SECTION II

DETERMINATION OF THE EXISTENCE OF DUMPING, CALCULATION OF DUMPING

ARTICLE 2.2.3.7.2.1. Dumping. A product is considered as being dumped, i.e. imported into the Colombian market at a price that is less than its normal value, if the export price of the product exported to Colombia is less than the comparable price, in the ordinary course of trade, of a like product destined for consumption in the country of origin. For the purposes of determining dumping in an investigation, the Articles in this Section shall be taken into consideration.

ARTICLE 2.2.3.7.2.2. Normal value in the ordinary course of trade. The amount actually paid or payable for a product like to that imported into Colombia when sold for consumption in the

domestic market of the country of origin, in the ordinary course of trade, by independent customers.

PARAGRAPH: Sales of the like product destined for consumption in the domestic market of the exporting country shall normally be considered a sufficient quantity for the determination of the normal value if such sales constitute 5% or more of the sales of the product under consideration to Colombia.

The foregoing shall be without prejudice to a demonstration that sales in the domestic market of the exporting country at a lower ratio are nonetheless of sufficient magnitude to provide for a proper comparison.

ARTICLE 2.2.3.7.2.3. Determination of the normal value in other transactions. Pursuant to Article 2.2 of the WTO Anti-Dumping Agreement, where 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 where, because of the low volume of sales, or because of any other particular situation in the domestic market of the said country, such sales do not permit a proper comparison, the normal value may be determined by considering the export price for the like product exported from the country of origin or export to an appropriate third country, provided that it is representative, or with the constructed value of a like product. For this purpose, the investigating authority shall determine the methodology to be applied on a case-by-case basis.

In the case of a constructed value, the price shall be based on the cost of production in the country of origin, plus a reasonable amount for administrative and selling costs, as well as for profits, taking into account the data for the producer of the product subject to investigation or the data provided by other producers of the good like that investigated, or any other reliable method determined by the investigating authority shall be used in order to obtain the data. Profits shall not exceed those normally earned from the sale of products of the same category on the domestic market of the country of origin.

PARAGRAPH: To determine a low volume of sales, as referred to in this Article, the criterion of sufficiency established in the paragraph of the aforementioned Article shall be applied.

ARTICLE 2.2.3.7.2.4. Exclusion of sales for the determination of the normal value. Without prejudice to the provisions in the preceding Article, in determining normal value all those sales on the domestic market of the exporting country or sales to a third country that do not constitute sales in the ordinary course of trade, more specifically those that reflect sustained losses, may be disregarded.

Among other factors, the ordinary course of trade shall be considered not to include sales made at a loss within the terms of this Decree, or sales between related or associated parties which do not reflect prices and costs comparable with those in transactions between independent parties.

Sales that reflect sustained losses shall mean those over a period of time of six months to one year in which the weighted average is below the weighted average per unit cost. They may be taken into account by the investigating authority if they represent a significant volume. If 80% of total sales exceed the cost, the investigating authority may take into account all the sales in order to determine the normal value.

ARTICLE 2.2.3.7.2.5. Export price. Initially the price actually paid or payable for the product under consideration shall be taken into account. 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 sold to an independent buyer, or are not sold in the condition as imported, the price shall be calculated on such reasonable basis as the authority may determine. In calculating this 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, profits and any commission usually paid or agreed.

ARTICLE 2.2.3.7.2.6. Comparison between the normal value and the export price. The export price and the normal value shall be examined on a fair and comparable basis, taking into account the agreed conditions and terms for the delivery of the goods, preferably at the ex-factory level and in respect of transactions made at as nearly as possible the same time. Likewise, the investigating authority, depending on the specific circumstances, may apply adjustments to allow for differences which affect price comparison.

ARTICLE 2.2.3.7.2.7. Adjustments. In order to make a fair comparison between the normal value and the export price, adjustments may be made to allow, *inter alia*, for differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are also demonstrated to affect the price comparison.

The amount 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 financial year available.

The investigating authority shall ensure that there is no duplication of adjustments already made.

When a participant in the investigation requests that some adjustment be taken into account, they shall furnish evidence that the request is justified, failing which their request shall not be taken into account in the investigation.

For this purpose, the following aspects shall be taken into account:

1. When the comparison of the normal value, the export price and the necessary adjustments requires a conversion of currencies, such conversion shall be made using the rate of exchange on the date of sale, provided that when a sale of foreign currency on forward markets is directly linked to the export sale involved, the rate of exchange in the forward sales shall be used.

Fluctuations in exchange rates shall be ignored and, during the course of an investigation, the authorities shall allow exporters at least 60 calendar days to adjust their export prices to reflect sustained movements in exchange rates during the period of investigation.

2. If the export price has been constructed and for this reason price comparison has been affected, 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 take into consideration the adjustment elements provided in this Decree for this purpose.

ARTICLE 2.2.3.7.2.8. 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 and terms 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 Colombia.

(c) the costs of commission paid in connection with the sales under consideration. Wages paid to full-time sales personnel shall also be deducted.

(d) in cases where the export price is constructed, pursuant to Article 2.2.3.7.2.5 of this Decree, costs, including duties and taxes incurred between import and resale, as well as the corresponding profits, shall be taken into account.

When a participant in the investigation requests that some adjustment be taken into account, they shall furnish evidence that the request is justified, failing which their request shall not be taken into account in the investigation.

The investigating authority shall evaluate the adjustments based on the evidence provided to demonstrate that they influence the fair comparison of prices, in order to accept or reject them.

ARTICLE 2.2.3.7.2.9. Adjustments to the normal value. The investigating authority may, among other adjustments, make those related to the following factors:

1. The amount corresponding to a reasonable estimate of the value of the difference in the characteristics of the product in question.
2. The amount of customs duties and indirect taxes actually payable for a like product.
3. The following selling costs:
 - (a) 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;
 - (b) 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;
 - (c) costs of commission paid in connection with the sales in question;
 - (d) wages paid to personnel wholly engaged in direct selling activities shall also be deducted;
 - (e) direct costs of providing guarantees, technical assistance and other after-sales services.

When a participant in the investigation requests that some adjustment be taken into account, they shall furnish evidence that the request is justified, failing which the request shall not be taken into account in the investigation.

The investigating authority shall evaluate the adjustments based on the evidence provided to demonstrate that they influence the fair comparison of prices, in order to accept or reject them.

ARTICLE 2.2.3.7.2.10. Margin of dumping. The amount by which the export price is less than the normal value. The dumping margin shall be established on the basis of a comparison of the weighted average normal value and a weighted average of prices of all comparable export transactions or by a comparison of normal value and export prices on a transaction-to-transaction basis.

The margin of dumping may be calculated by comparing the normal value established on a weighted average basis to individual export prices if the investigating authority finds a pattern of export prices which differs significantly among different purchasers, regions or time periods, and if an explanation is provided as to why such differences cannot be duly taken into account by a weighted average or transaction-to-transaction comparison.

PARAGRAPH: In cases where products are not imported directly from the country of origin but are exported to Colombia from a third country, the price at which the products are sold from the country of export to Colombia 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, for example, 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.

SECTION III

DETERMINATION OF THE EXISTENCE OF DUMPING IN COUNTRIES WITH SIGNIFICANT STATE INTERVENTION

ARTICLE 2.2.3.7.3.1. Significant state intervention and normal value. Significant state intervention regarding the product under investigation may be deemed to exist when, *inter alia*, the prices or costs of the product, including the costs of the raw materials, are not the result of free market forces because they are affected by state intervention.

For this purpose, in determining the existence of state intervention, the potential impact of the following circumstances, *inter alia*, may be taken into consideration:

- the market in question being served to a significant extent by enterprises which operate under the ownership, control or policy supervision or guidance of the authorities of the exporting country;
- the state presence in enterprises allowing the state to interfere with respect to prices or costs;
- public policies or measures in favour of domestic suppliers or otherwise influencing free market forces; and
- access to finance granted by institutions which implement public policy objectives.

In the case of imports originating in countries with significant state intervention, the normal value shall be determined:

- on the basis of the price at which a like product is sold for domestic consumption in a third country with an ordinary market economy or, failing that, for export, or on the basis of any other method deemed appropriate by the investigating authority to determine the normal value;
- when selecting a third country, any reasonably available evidence used justify the selection of that country in accordance with the legislation in force must be submitted, and the following aspects, *inter alia*, shall be taken into account: the production processes in the selected third country and in the country of origin or export of the product under investigation, the scale of production and the quality of products.

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 Colombia.

In any case, the price comparison must be conducted at the same level of marketing, for which the investigating authority shall deduct any costs preventing an accurate price comparison.

SECTION IV

DETERMINATION OF THE EXISTENCE OF MATERIAL INJURY, THREAT OF MATERIAL INJURY, RETARDATION OF THE ESTABLISHMENT OF A DOMESTIC INDUSTRY AND THE CAUSAL LINK

ARTICLE 2.2.3.7.4.1. Existence of material injury. A determination of injury shall be based on positive evidence and shall involve an objective examination of the effect of the dumped imports on the domestic industry producing like goods. This shall be conducted through the examination of the following elements:

1. Behaviour of all economic factors and indices having a bearing on the state of the domestic industry, including actual or potential decline in sales, profits, output, market share, productivity, return on investment or utilization of capacity, factors affecting domestic prices, the magnitude of the margin of dumping, actual or potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments.

The foregoing list is not exhaustive nor can one or several of these factors necessarily give decisive guidance.

2. Volume of dumped imports. It shall be determined whether there has been a significant increase, either in absolute terms or relative to total production or consumption in the country, *inter alia*. The volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from a particular country accounts for less than 3% of the imports of the like products into Colombia, unless countries which individually account for less than 3% of imports of the like products in

Colombia collectively account for more than 7% of such imports.

3. The effect of the dumped imports on prices. The investigating authority shall take into account, *inter alia*, whether there has been significant price undercutting by the product under consideration as compared with the price of the like product made in Colombia, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases which otherwise would have occurred on the part of the domestic industry.

4. The demonstration of the causal link between the dumped imports and the injury to the domestic industry shall be based on an examination of all relevant evidence available to the investigating authority at each stage of the investigation and shall include, among other things, an evaluation of all the relevant economic factors and indices mentioned in subparagraphs 1, 2 and 3 of this Article.

5. The investigating authority shall examine any known factors other than the dumped imports 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 imports. Factors which may be relevant in this respect include examining the volume and the prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade-restrictive practices of foreign and Colombian producers and competition between them, developments in technology, and the export performance and productivity of the domestic industry.

FIRST PARAGRAPH: The effect of the dumped 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 the production process, producers' sales and profits. If such separate identification is not possible, the effects of the dumped imports shall be assessed by examining the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided.

SECOND PARAGRAPH: The absence of negative trends or the presence of positive trends, in one or more of the factors considered in this Article, shall not constitute a decisive criterion of the existence of material injury and a causal link between the dumped imports and that material injury.

ARTICLE 2.2.3.7.4.2. Threat of material injury. When an applicant considers that the request for application of an anti-dumping 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 imports shall also take into account the imminent occurrence of the factors described in Article 2.2.3.7.4.1 of this Decree, including the existence of such factors as:

1. a significant rate of increase of dumped imports into the Colombian market indicating the likelihood of substantially increased imports. The likelihood of substantially increased importation may also be determined on the basis, *inter alia*, of the following facts: 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.

2. sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter, indicating the likelihood of a substantial increase in dumped exports to the Colombian market, also taking into account the availability of other export markets to absorb any additional exports.

3. 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; and

4. inventories of the product under consideration in the country of export.

FIRST PARAGRAPH: No one of these factors by itself can necessarily give decisive guidance, but all or some of the factors considered must lead to the conclusion that further exports at dumping prices are imminent and that, unless remedial action is taken, material injury would occur.

SECOND PARAGRAPH: The causal link between imports at dumping prices and the threat of material injury shall be assessed taking into account the likely effects on the economic factors and indices and in conformity with the provisions of subparagraph 4 of the preceding Article.

ARTICLE 2.2.3.7.4.3. Material retardation of the establishment of a domestic industry. In determining material retardation of the establishment or the expansion of an industry in Colombia, the investigating authority shall examine, *inter alia*, the following factors:

1. feasibility studies, loans negotiated and contracts for procurement of machinery and immovable property relating to new investment projects or the expansion of existing plants or proof of the cancellation or retardation of a planned project;
2. the existence of dumped imports;
3. the appropriate and sufficient supply of the market, taking into account the volume of dumped imports, the volume of other imports and the actual and potential output of the project;
4. the share of domestic production compared to the size of the domestic market; and
5. any other relevant factor.

FIRST PARAGRAPH: No one of these factors by itself can necessarily give decisive guidance. Specific facts shall be put forward in order to sustain claims of retardation, determining the following :

- a. when the production plans were first agreed and confirmed;
- b. when the goods affected were first imported;
- c. when dumping of the product under consideration commenced; and
- d. when the production plans were formally cancelled or postponed.

SECOND PARAGRAPH: The proof of the causal link between the dumped 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 and shall include, among other elements, an evaluation of all the relevant economic factors and indices in the subparagraphs of this Article.

ARTICLE 2.2.3.7.4.4. Cumulative assessment of the 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 investigation, the investigating authority may cumulatively assess the effects of such imports if it determines that:

- (a) the margin of dumping established in relation to imports of the product under consideration from each supplier country is more than *de minimis* and the volume of imports of each product under consideration from each country is not negligible;
- (b) 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 2.2.3.7.4.5. Period for examination of injury. Unless the investigating authority determines otherwise, the factors mentioned in Article 2.2.3.7.4.1 of this Decree shall be examined with reference to a period comprising the three years preceding the submission of the application.

With regard to threat of injury, the examination period shall be that indicated in the preceding paragraph, unless the investigating authority, either *ex officio* or upon application of a party, specifies another period.

SECTION V

DOMESTIC INDUSTRY

ARTICLE 2.2.3.7.5.1. Concept. For the purposes of this Decree, the term "domestic industry" shall be interpreted as referring to domestic producers as a whole of like products or to those whose collective output of the products constitutes a major proportion of the total domestic production of those products.

For the purposes of initiating an investigation, an application shall be considered to have been made by or on behalf of the domestic industry if it is supported by domestic producers or associations of producers of the like product whose collective output constitutes more than 50% of the total production of the like product produced by the portion of the domestic industry expressing either support for or opposition to the application.

In the course of the investigation, if some producers are related, in conformity with the concept of relationship indicated in this Decree, to the exporters or importers of the allegedly dumped product in the country or countries where the application is made and the subsequent investigation conducted or are themselves importers of the product under consideration, this term may be interpreted as referring to the remaining producers.

In the case of fragmented industries involving an exceptionally large number of producers, the investigating authority may determine a percentage of support and opposition other than that mentioned by using statistically valid sampling techniques.

PARAGRAPH: In exceptional circumstances, the national territory may, for the production in question, be divided into two or more competing markets and the producers within each market may be regarded as a separate industry if the producers within such market sell all or almost all of their production of the product in question in that market, and the demand in that market is not to any substantial degree supplied by producers of the product in question located elsewhere in the territory.

If the national territory has been divided into two or more competing markets and producers are considered to be a separate industry because demand in that market is not supplied to any substantial degree, injury may be found to exist, even where a major portion of the total domestic industry has not suffered injury, provided there is a concentration of dumped imports into such an isolated market and provided further that the dumped imports are causing injury to the producers of all or almost all of the production within such market.

SECTION VI

INVESTIGATION PROCEDURE

ARTICLE 2.2.3.7.6.1. Initiation of the investigation. The investigation may be undertaken upon a written application by or on behalf of the domestic industry. The investigating authority may initiate the procedure upon a written application by or on behalf of the domestic industry if it considers it has suffered injury from imports of like products at dumping prices.

In special circumstances, the investigating authority may undertake an investigation *ex officio* if there is sufficient evidence that enables the existence of injury, threat of injury or material retardation caused by the imports at dumping prices to be determined.

FIRST PARAGRAPH: The period of analysis for ascertaining the existence of dumping shall normally be 12 months preceding the date on which the application is filed and shall never be less than six months.

SECOND PARAGRAPH: The investigating authority shall conduct a process to continuously monitor trends in trade flows to Colombia, in accordance with the regulations issued by the Foreign Trade Directorate, taking into account the import and export prices of products of interest on the Colombian market. Should elements relevant to the initiation of an investigation be found, the authority shall proceed in accordance with the rules laid down in this Decree, by first conducting an investigation

of the domestic industry and then importers and exporters to Colombia. In such cases, the investigating authority may, at any time, make use of the information provided by importers and exporters during the export process to Colombia, notwithstanding the fact that it may also take into account the information provided by interested parties in an investigation.

ARTICLE 2.2.3.7.6.2. Application by or on behalf of the domestic industry. It shall be considered that an application has been made by or on behalf of the domestic industry on the basis of the degree of support among domestic producers of the like product allegedly imported at dumping prices.

ARTICLE 2.2.3.7.6.3. Requirements and submission of the application. The application mentioned shall include evidence of the dumping, injury and a causal link between the dumped imports and the alleged injury that is reasonably available to the applicant.

The applicant shall indicate whether the injury is material injury, threat of material injury or material retardation of this domestic industry. Simple assertion, unsubstantiated by relevant evidence, shall not be considered an application for the purposes of this Decree.

Likewise, the application shall be drawn up in accordance with the requirements laid down in the manual provided by the Trade Practices Sub-Directorate, using the forms and attaching the information and evidence required therein.

This documentation shall be submitted to and filed through the web application of the Ministry of Trade, Industry and Tourism or a similar mechanism, failing which the documentation shall be disregarded.

The application shall also contain such information as is reasonably available to the applicant on the following:

1. The identity of the applicant. The name or trade name and proof that it represents the domestic industry. For this purpose, the applicant shall provide the certificate from the National Producers' Register issued by the group in charge of the Register of Producers of Domestic Goods at the Ministry of Trade, Industry and Tourism or its representatives, or any other type of document that reliably proves such status and the applicant's percentage of the volume of total production.

Where an application is made on behalf of the domestic industry or by any form of domestic producer association, it shall identify the domestic industry on behalf of which it is made by means of a list of all known domestic producers or associations of producers of the like product and shall provide a description of the volume and value of domestic production of the like product accounted for by such producers.

2. A description of the like domestic product in respect of the allegedly dumped product under consideration.

3. A description of the allegedly dumped product under consideration, indicating its commonly used tariff heading.

4. The country or countries of origin and export. The names and legal addresses of the importers, exporters and foreign producers, if known.

5. Information on prices at which the product under consideration is sold when destined for consumption in the domestic markets of the country or countries of origin or export or, where appropriate, information on the prices at which the product is sold from the country or countries of origin or export to a third country or to third countries or on the constructed value of the product. This information may be taken, *inter alia*, from price lists, quotations, invoices, market surveys, specialized reviews or import statistics.

6. Information on export prices or, where appropriate, on the prices at which the product is first resold to an independent buyer in Colombia.

This information may be taken, *inter alia*, from price lists, quotations, invoices, market surveys, specialized reviews or import statistics.

7. Information on the trend in the volume of imports of the allegedly dumped product under consideration, their effect on prices of the like product in the domestic market and the consequent impact of the imports on the domestic industry, as demonstrated by relevant factors and indices having a bearing on the state of the domestic industry, in accordance with the provisions laid down in Section IV of this Decree.

In order to assess the injury, the information shall be submitted in detail, preferably broken down into half-yearly periods.

8. An offer to submit the corresponding documents to the authorities for verification of the information supplied, and to authorize visits for verification purposes.

9. The evidence it is intended to adduce.

10. Identification of the confidential documentation, justification of its confidentiality and a non-confidential summary or version thereof, together with a justification where it cannot be summarized.

11. Power of attorney when acting through an agent.

12. Evidence of the existence and representation of legal persons appearing among the applicants.

FIRST PARAGRAPH: The application shall be accompanied by two copies, one to be placed in the public electronic file and the other in the confidential file. Likewise, all information shall be submitted in Spanish or, failing that, the respective official translation shall be attached

SECOND PARAGRAPH: The application referred to in this Article, as well as the completed forms and the evidence and information required therein, shall be submitted through the web application or a similar mechanism, in accordance with the guidelines drawn up by the investigating authority for this purpose, failing which the application shall be disregarded.

ARTICLE 2.2.3.7.6.4. Evaluation of the grounds for the application in order to decide whether to initiate an investigation. The investigating authority shall have a period of 15 days as from the day following the date of submission of the application to evaluate, as far as possible, the accuracy and adequacy of the evidence provided to determine whether there is sufficient evidence to justify the initiation of an investigation. If the investigating authority finds it necessary to request missing information for the purpose of the evaluation, it shall ask the applicant to provide it.

This request shall interrupt the period established in the first paragraph, which shall start anew when the applicant supplies the information requested. If, after 20 days following the request for missing information, such information has not been supplied in full, the applicant shall be considered to have withdrawn the application and the information supplied shall be returned to the applicant.

Determination of the grounds for initiating a dumping investigation shall be subject to compliance with the following:

1. Confirmation, by verifying the degree of support for, or opposition to, the application, that it has been made by or on behalf of the domestic industry, in accordance with Article 2.2.3.7.5.1 of this Decree. For this purpose, the investigating authority may send notifications to the known domestic producers or associations, which, within five days from the day following the date of dispatch of the notification, shall express in writing their support for, or opposition to, the application. Where the petitioning domestic industry represents over 50%, this requirement shall be deemed to be fulfilled.

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.

2. The existence of evidence that constitutes sufficient proof of dumping, the existence of injury or threat of injury or retardation and a causal link between these elements.

PARAGRAPH: For the purposes of establishing the accuracy and adequacy of the evidence supplied by the applicant in order to determine whether there is sufficient evidence to justify the initiation of an investigation, the investigating authority may, either *ex officio* or at the request of a party, extend the period specified in the first paragraph of this Article, once only, for up to five additional days.

ARTICLE 2.2.3.7.6.5. Confidentiality of the application for an investigation. The investigating authority shall avoid any publicizing of the submission of an application for an investigation before a decision to initiate an investigation has been made. However, in the period prior to the initiation of an investigation, it shall notify the government of the exporting country or countries concerned that an application has been submitted.

ARTICLE 2.2.3.7.6.6. Initiation of the investigation. If, in evaluating the application, the Foreign Trade Directorate finds that there are grounds for initiating an investigation, it shall adopt a reasoned resolution to that effect to be published in the **Official Journal**. Likewise, if the Directorate finds no grounds for initiating an investigation, it shall adopt a reasoned resolution to that effect within the same time-limits.

ARTICLE 2.2.3.7.6.7. Dispatch and receipt of questionnaires. Within the five days following the publication of the resolution ordering the initiation of the investigation, the investigating authority shall inform known importers, exporters or foreign producers, and the diplomatic or consular representatives of the country of origin and of export, of the initiation of the investigation and indicate where the questionnaires designed for the purpose of requiring information on the case may be consulted. Furthermore, all interested parties shall be convened within the same period by a notice published in the Official Journal so that they may express their duly substantiated position and present or request the evidence they consider relevant, within the time-frame for replying to questionnaires.

The aforementioned interested parties shall return the questionnaires, duly completed, accompanied by supporting documents and evidence, and a list of the evidence they wish to have examined in the investigation within 30 days following the date of the notification provided for in the preceding paragraph. This period may be extended by up to five additional days in the event of a duly justified request by the interested parties.

This extension applies to all those that have responded to the notification.

Replies sent by interested parties shall be submitted, in full, 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 electronic file and the other in the confidential file. These requirements shall apply to all the documents intended to demonstrate the claims made by each party interested by the investigation, failing which, the documents shall not be taken into account. Submissions, documents or evidence received in a language other than Spanish, with no official translation provided, shall be disregarded.

ARTICLE 2.2.3.7.6.8. Notice of the application to foreign producers, exporters and authorities in the exporting country. Within five days following the date of publication of the resolution initiating the investigation, the investigating authority shall provide the text of the application to the foreign producers, exporters, authorities of the exporting country, and the other interested parties which so request, subject to the requirement to protect confidential information.

ARTICLE 2.2.3.7.6.9. Preliminary determination. Within a period of two months of the day following the date of publication of the resolution initiating the investigation, the Foreign Trade Directorate shall, in a reasoned resolution, announce the preliminary results of the investigation and, where appropriate, shall order the imposition of provisional duties. The resolution in question shall be published in the Official Journal.

Within five days following the publication of the resolution, a copy will be forwarded to the Member country or countries whose products are the subject of the determination or undertaking in question,

as well as to other interested parties that have expressed an interest in the investigation and have supplied their address.

Where justified by special circumstances, the Foreign Trade Directorate may, *ex officio* or at the request of an interested party, extend the period indicated for the preliminary determination by up to 10 days.

PARAGRAPH: Documentation and information received within 15 days preceding the expiry of the time-limit for the adoption of the preliminary determination, including any extension, may not be considered at this stage, but will in any event be taken into account for the conclusion of the investigation.

ARTICLE 2.2.3.7.6.10. Examination of evidence. The investigating authority shall, *ex officio* or at the request of an interested party, examine the evidence it considers useful, necessary and effective for the purpose of verifying the facts investigated. Oral and documentary evidence shall be accepted, together with the other evidence provided for in this Decree in conformity with the provisions laid down in the WTO Anti-Dumping Agreement.

The period for the examination of evidence, at the request of a party, shall expire one month after the date of publication of the resolution containing the preliminary determination. Without prejudice to the foregoing, the investigating authority may *ex officio* order evidence as of the initiation of the investigation until the preparation of the final recommendation by the Trade Practices Committee.

The investigating authority may order the examination of evidence or information and may request them in the country or countries of origin of the product under investigation. The foregoing shall be without prejudice to the provisions on verification visits in the territory of the country of origin of the product under investigation.

ARTICLE 2.2.3.7.6.11. Visits for verification purposes. For the purpose of verifying information received or obtaining more elements needed for the review or corresponding examination, the investigating authority may make any verification visits it considers relevant at any time during the conduct of the investigation or prior to the commencement of the period for submitting arguments.

The decision and intention to make a verification visit, as well as the agreed dates and places, shall be notified to the enterprises concerned at least eight days in advance of the visit so that they may inform the investigating authority of any objections. If no reply is received within this period, the investigating authority may assume that there is no objection.

Prior to the visit, the enterprises involved shall be informed of the general nature of the information to be verified, as well as any other information which, in the view of the investigating authority, should be provided.

The foregoing shall not prevent the investigating authority from seeking clarification of the information obtained or further details in the course of the verification visit.

The investigating authority shall assess the need to conduct verification visits based on the evidence on file, and shall take into account any circumstances that may hinder the conduct of such visits, in which case it may also base its decisions on the facts available.

ARTICLE 2.2.3.7.6.12. Verification visits in the country of origin. The investigating authority may make verification visits in the territory of the country of origin of the product under investigation, subject to appropriate notification to the government of the country in question and provided that there is no objection to the visit.

The results of the verification visits shall be made known to all interested parties by the investigating authority, except for any relevant confidential information.

The verification team may include government officials or non-governmental experts, who may be subject to penalties if they fail to comply with the provisions on the confidential nature of the information. The inclusion of such officials or experts shall be notified to the enterprises and national bodies in the country where the enterprises to be visited have their legal domicile.

The investigating authority shall assess the need to conduct verification visits in the territory of the country of origin based on the evidence on file, and shall take into account any circumstances that may hinder the conduct of such visits, in which case it may also base its decisions on the facts available.

ARTICLE 2.2.3.7.6.13. Public hearings of interested parties. Within five days following publication of the resolution adopting the preliminary determination, parties interested in the investigation and in general any persons who have demonstrated a legitimate interest in the investigation may request the holding of a hearing of interested parties representing different interests so that opposing views may be presented and rebuttal arguments put forward concerning the elements evaluated during the investigation up to the preliminary stage.

In holding such hearings, the parties may attend in person or by videoconference, teleconference or any other technical means, provided that it is authorized by the investigating authority for good cause. Account shall also be taken of the need to protect the confidentiality of the information provided.

Notwithstanding the above, the hearing shall not be suspended in the event of non-attendance of the interested parties either in person or by videoconference, teleconference or any other authorized technical means.

The convening and holding of such a hearing shall not place any interested party under an obligation to attend, and failure to do so shall not be prejudicial to that party's case.

The investigating authority shall have five days from the day following the application in which to convene a hearing, and shall invite the members of the Trade Practices Committee, or any delegates they designate, to attend.

Hearings may be held up to three days before the period for the examination of evidence expires, at the request of a party.

The investigating authority may convene *ex officio* a hearing within the period for the examination of evidence, at the request of a party.

The investigating authority shall only take into account the arguments put forward in the course of the hearing if they are reproduced in writing and made available to other interested parties within three days following the holding of the hearing.

PARAGRAPH: The Foreign Trade Directorate shall establish, by means of a circular, the guidelines for conducting hearings.

ARTICLE 2.2.3.7.6.14. Arguments. Within 10 days following the expiry of the period for the examination of evidence, interested parties in the investigation, at the request of a party, shall be given an opportunity to submit their arguments and views concerning the investigation in writing and to rebut the evidence adduced and examined therein.

ARTICLE 2.2.3.7.6.15. Best information available. In cases in which any interested party refuses access to, or otherwise fails to fully provide, necessary information within a reasonable period or significantly impedes the investigation by misusing legal instruments, preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available, including through the use of information available to the Colombian Government by means of databases used for customs purposes.

In the event of any inconsistency concerning the evidence or information presented, the investigating authority may request explanations from the interested party that is providing the information or evidence. If the authority considers that the explanations of the interested party are not satisfactory, it shall state the reasons for which it has partially or wholly rejected the evidence or information presented in the determinations published.

ARTICLE 2.2.3.7.6.16. Communication of essential facts and submission of final report. Within a period of two months following publication of the resolution adopting the preliminary

determination, the investigating authority shall send the interested parties participating in the investigation a document containing the essential facts which form the basis for the decision whether to apply definitive measures so as to enable them, within a period of 10 days, to provide their comments in writing. The two-month period may be extended by the Foreign Trade Directorate for up to 10 days if it considers that special circumstances justify such an extension.

The investigating authority shall send a copy of this action to the Trade Practices Committee within the same period.

These comments may only refer to facts or circumstances put forward before the expiry of the period specified in Article 2.2.3.7.6.14 of this Decree.

Comments shall be sent to the investigating authority, failing which they will be disregarded. The investigating authority, in turn, shall convene, within a period of 10 days, the Trade Practices Committee to present the final results of its investigation, together with the comments submitted by the interested parties regarding the essential facts and their corresponding technical comments, so that the Committee may consider them and make a final recommendation to the Foreign Trade Directorate.

If the Trade Practices Committee requests more information on the results of the investigation from the investigating authority, the meeting may be suspended for a period of 10 days.

ARTICLE 2.2.3.7.6.17. Conclusion of the investigation. Within five days following the formulation of the recommendation by the Committee referred to in the preceding Article, the Foreign Trade Directorate shall adopt the appropriate decision in a reasoned resolution.

This resolution shall be published in the Official Journal. Within five days following its publication, a copy of the resolution shall be sent to the Member country or countries whose products form the subject of the determination or undertaking in question, as well as to the other interested parties that have expressed an interest in the investigation and supplied their mailing or email address.

ARTICLE 2.2.3.7.6.18. Early termination. An investigation may be deemed concluded at any time, *inter alia*, if the margin of dumping is *de minimis* or the volume of imports is negligible according to the terms defined in subparagraph (h) of Article 2.2.3.7.1.1 and paragraph 2 of Article 2.2.3.7.4.1 of this Decree.

If the requesting party withdraws its application for the imposition of provisional or definitive measures before the Foreign Trade Directorate has taken any decision, the investigation may immediately be deemed to have been concluded.

If the aforementioned withdrawal occurs after the Foreign Trade Directorate has decided to impose provisional measures, these shall be annulled *ex officio*.

ARTICLE 2.2.3.7.6.19. Access to the electronic record. In the course of the investigation, any person may have access to the non-confidential documents referred to in this Decree.

ARTICLE 2.2.3.7.6.20. Confidentiality of documents. When initiating the investigation, the investigating authority shall open a separate file in which shall be placed the documents which the authorities, the applicant or the interested parties provide on a confidential basis. Such documents shall be treated as confidential in accordance with the provisions of the Political Constitution and other relevant regulations and may only be inspected by the competent authorities.

Persons who provide confidential documents shall furnish non-confidential summaries thereof, together with appropriate justification for the request for confidentiality. These summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted and shall be in the form of an indication of the figures and information provided in the confidential version or parts of the text shall be crossed out.

In exceptional circumstances, duly substantiated, such parties may indicate that such information is not susceptible of summary. If the investigating authority considers that the documents provided as

confidential are not confidential in nature, it shall request the person providing them to waive such confidentiality or to state the reasons why they are unwilling to do so.

The confidential nature of a document shall not prevent the authorities from requesting it for the proper exercise of their functions. The authorities shall be responsible for ensuring the confidentiality of such documents as they receive in the course of the proceedings mentioned in this Decree.

Information provided as confidential shall not be disclosed without the specific permission of the party submitting it.

Confidential documents submitted shall be clearly marked as confidential. The authority shall not be responsible for the dissemination of information in documents that are not expressly and distinctly marked as being confidential.

Confidential documents and the non-confidential summaries thereof shall be subject to the guidance issued for this purpose by the investigating authority.

FIRST PARAGRAPH: The treatment established in this Article shall be accorded to any classified public information provided for in Article 18 of Law No. 1712 of 2014 or the legislation replacing, amending or repealing it.

SECOND PARAGRAPH: When, pursuant to this Article, documents are provided as confidential and non-confidential summaries are not supplied, or the confidentiality is not waived without any justification, these documents shall be disregarded in the investigation.

SECTION VII

IMPOSITION AND COLLECTION OF ANTI-DUMPING DUTIES

ARTICLE 2.2.3.7.7.1. Anti-dumping duties. The Foreign Trade Directorate may determine and order the collection of anti-dumping duties on any dumped import found to be causing or threatening to cause material injury to the domestic industry or materially retarding the establishment of such an industry.

The amount of duties may normally be expressed in one of the following forms or as a combination thereof, as an *ad valorem* percentage, specific duty or in accordance with a base price.

ARTICLE 2.2.3.7.7.2. Calculation of duties. Whenever the information so permits and the characteristics of the investigation so allow, duties may be calculated at the full margin of dumping or less in order to eliminate the material injury, threat of material injury or material retardation of a domestic industry.

For this purpose, the following may be taken into account:

- (a) the price of the imported product in the domestic market as compared with the price of the domestic product;
- (b) the prices at which the product is sold in the domestic market;
- (c) the impact of the measures on the domestic market.

The application of anti-dumping duties shall not be imposed in an amount greater than the margin of dumping.

ARTICLE 2.2.3.7.7.3. Provisional duties. To prevent injury being caused during the investigation period, the Foreign Trade Directorate of the Ministry of Trade, Industry and Tourism may, by a reasoned resolution subject only to direct revocation, impose provisional duties where, after affording the party being investigated reasonable opportunity to participate in the investigation by replying to the questionnaires issued for the purpose, it makes a preliminary finding of the existence of dumping of the imports subject to investigation that are causing injury to the domestic industry

and deems that such measures are necessary to prevent injury being caused during the investigation.

Provisional duties shall be applied for a period not exceeding four months, unless they are specifically requested by a representative proportion of the exporters, in which case they shall be applied for a period not exceeding six months pursuant to Article 7.4 of the WTO Anti-Dumping Agreement.

When the authorities, in the course of an investigation, examine whether a duty lower than the margin of dumping would be sufficient to remove injury, provisional duties may be applied for a period of six or for a period of nine months at the request of exporters representing a significant percentage of the trade in question.

The amount of the provisional anti-dumping duties shall be stated in the resolution establishing them and shall be paid by all importers on imports of the product which has been found to be imported at dumping prices and to be causing injury to an industry in Colombia.

The aforementioned resolution shall be published in the Official Journal, and communicated in the manner and within the time-limits laid down in Article 2.2.3.7.6.8. of this Decree. A copy of this resolution shall be sent to the National Revenue and Customs Directorate (DIAN), for action within its competence.

ARTICLE 2.2.3.7.7.4. Provision of security. Where provisional anti-dumping duties are adopted, in lodging their import declaration importers may opt to pay the respective duties or provide the National Revenue and Customs Directorate (DIAN) with security for payment. The security shall be provided for the term indicated in the resolution adopting the duty and in accordance with the relevant customs regulations.

ARTICLE 2.2.3.7.7.5. Definitive duties. When a definitive anti-dumping duty is imposed, it shall be collected in the amounts indicated in the relevant resolution on imports of the product found to be dumped and causing injury to an industry in Colombia.

The Foreign Trade Directorate, on the recommendation of the Trade Practices Committee, shall adopt the decision most appropriate to the interests of the country and may decide that the anti-dumping duty should be equal to or less than the margin of dumping, in order to remove the injury.

ARTICLE 2.2.3.7.7.6. Imposition of duties on massive imports or for non-compliance. Without prejudice to the provisions in the preceding Article, the Foreign Trade Directorate may order the imposition of definitive duties on imports already made, in the following circumstances:

1. If injury is caused by massive dumped imports, on imports made up to 90 days prior to the date of imposition of the provisional duties, but under no circumstances prior to the date of publication of the resolution to initiate the investigation.
2. If there is non-compliance with the price undertakings accepted in conformity with Article 2.2.3.7.9.2 of this Decree, on imports declared within the 90 days preceding the date of imposition of the provisional duties, but under no circumstances on imports declared prior to such non-compliance.

PARAGRAPH: The massive imports referred to in this Article shall be so characterized in the light of their behaviour between the date of initiation of the investigation and the date of imposition of provisional measures, relative to the trend in imports over a period of three years preceding the date of initiation of the investigation.

The size of the market for the product investigated shall also be taken into consideration in each specific case.

ARTICLE 2.2.3.7.7.7. Retroactivity. Notwithstanding the provisions in the preceding Articles, when a definitive determination of injury or threat of injury is made, if the effect of the dumped imports would, in the absence of provisional measures, have led to a determination of injury, anti-dumping duties may be levied retroactively for the period for which provisional measures have been applied.

The aforementioned retroactivity shall also apply to products that were entered for consumption not more than 90 calendar days prior to the date of application of provisional measures when it is determined, in relation to the dumped product under consideration, that there is a history of dumping causing injury or that the importer was, or should have been, aware of the dumping practice and that such dumping would cause injury and was attributable to massive imports of a dumped product within a relatively short time which are likely to seriously undermine the remedial effect of the definitive anti-dumping duty to be applied, provided that interested importers have been given an opportunity to put forward the comments they deem relevant.

ARTICLE 2.2.3.7.7.8. Application and duration of definitive anti-dumping duties. An anti-dumping duty shall expire in five years, or in a shorter period where this proves sufficient to eliminate the injury. In any event, an anti-dumping duty may be extended when the causes which gave rise to it persist.

The National Revenue and Customs Directorate (DIAN) shall apply the anti-dumping duties in accordance with the legal provisions and the resolution imposing the duties, as well as the rules concerning collection, provision of security, procedures and other matters relating to tariff charges.

Under no circumstances shall investigations in progress hinder the introduction of the goods into the national territory.

No imported product from the same country may be subject to both anti-dumping and countervailing duties to compensate for the same situation of dumping or subsidization.

ARTICLE 2.2.3.7.7.9. Anti-circumvention measures. Circumvention shall be defined as a change in the pattern of trade between the country on which the anti-dumping duty has been imposed or third countries and Colombia, stemming from a practice, process or work for which there is insufficient cause or economic justification other than the imposition of the anti-dumping 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.

In cases of circumvention measures in force, the anti-dumping duties imposed pursuant to this Decree 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 Colombia or in a third country shall be considered to circumvent the measures in force if the following conditions are met:

1. 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.
2. 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.
3. The product assembled or finished with such parts or components in Colombia is the like product to that subject to definitive duties.
4. There is evidence of dumping of the product produced with such parts, on the basis of a comparison of the price of the product assembled or finished in Colombia or in a third country and the normal value previously established for the like product when subjected to the definitive anti-dumping duty.
5. The operation began or increased substantially from the moment of initiation of the anti-dumping investigation or just before its initiation.
6. 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 requirement in the respective free-trade agreement signed by Colombia.

PARAGRAPH: The facts described above may be evaluated in an investigation to be initiated by the Foreign Trade Directorate *ex officio* at the request of a party and subject to a reasoned resolution, 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 carried out by the Trade Practices Sub-Directorate, which may request an opinion from the customs authorities prior to or in the course of initiating the investigation and send the relevant information for review by the subsequent control process within its competence.

The investigation shall be concluded within a maximum of four months. If the facts justify the extension of the measures, that shall be decided by the Foreign Trade Directorate, which, on the recommendation of the Trade Practices Committee, may impose definitive anti-dumping duties. For this purpose, where applicable, the procedural provisions in Section VI of this Decree on initiating and undertaking investigations shall be applicable.

SECTION VIII

REFUND OF EXCESS DUTIES PAID

ARTICLE 2.2.3.7.8.1. Provisional duties. There shall be a refund of provisional duties paid or the security provided for this purpose shall be cancelled or collected in a reduced amount, as appropriate, when the definitive duties are lower than the provisional duties paid or covered by security in an amount equivalent to the difference between them.

Where definitive duties are not established, the cancellation and return of the security shall be ordered or the entire amount paid by way of provisional duties refunded.

The National Revenue and Customs Directorate (DIAN) shall refund excess amounts in accordance with Title 19 of Decree No. 1165 of 2019 or any provisions that may replace, amend or repeal it.

ARTICLE 2.2.3.7.8.2. Definitive duties. When the Foreign Trade Directorate, following an investigation conducted by the Trade Practices Sub-Directorate in conformity with the following Article, determines that the anti-dumping duties paid by the importer are greater than the actual margin of dumping, it shall arrange for the corresponding excess amount to be refunded, following the procedure indicated for reviews for changes in circumstances, as applicable.

The refund in question shall be made by the National Revenue and Customs Directorate (DIAN).

ARTICLE 2.2.3.7.8.3. Application for investigation. The importer of a product subject to definitive anti-dumping duties may request an investigation with a view to obtaining a refund of the duties paid in excess of the actual margin of dumping in the immediately preceding year. The application shall be submitted to the investigating authority within two months following the end of that period.

The application shall contain information on the amount of the refund of anti-dumping duties claimed in respect of the period in question and shall be accompanied by the import declaration and other relevant supporting documents proving the amount and payment of the duty.

The application for investigation referred to in this Article shall include evidence of the normal value and export prices to Colombia, in respect of the exporter or producer on which the duty has been imposed. If the importer is not related to the producer or exporter and does not have this information directly available, or if the producer or exporter is unwilling to provide it to the importer, the application shall be accompanied by a declaration by the producer or exporter to the effect that the margin of dumping has been reduced or eliminated and the relevant evidence shall be furnished directly to the investigating authority.

If this evidence has not been received within two months of the submission of the application, the request shall be deemed to have been withdrawn and the case shall be filed.

ARTICLE 2.2.3.7.8.4. Determinations. In determinations adopted in the course of the investigation, the relevant provisions of this Decree shall apply, in particular, when the export price is constructed on the basis of the price at which the imported products are first resold to an independent buyer, because there is no export price or because the export price is considered unreliable.

In the latter case, in determining whether and to what extent the refund should be made, the investigating authority shall take account of any changes in the normal value or in the costs incurred between the import and resale, and any movement in the resale price which is duly reflected in subsequent selling prices, and shall calculate the export price with no deduction for the amount of anti-dumping duties paid when conclusive evidence of the above is provided.

ARTICLE 2.2.3.7.8.5. Time-limit for refunds. Refunds or definitive duties paid in excess shall be authorized by the Foreign Trade Directorate by means of a reasoned resolution within a maximum period of 90 days from the date of submission of the application by the importer.

All refunds shall be made by the National Revenue and Customs Directorate (DIAN) following the corresponding authorization.

PARAGRAPH: The time-limits mentioned above shall not apply if the determination to impose definitive anti-dumping duties forming the object of the investigation is subject to judicial review proceedings.

SECTION IX

PRICE UNDERTAKINGS

ARTICLE 2.2.3.7.9.1. Price undertakings. The Trade Practices Committee shall evaluate those cases in which the producers or exporters of the product investigated offer, through the investigating authority, at its suggestion or at the initiative of the parties, to revise the export prices or to cease dumped exports to Colombia, as appropriate, in such a way as to eliminate the consequent injury.

The investigating authority shall only accept price undertakings during the month following the date of publication of the resolution containing the preliminary determination.

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

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.

The Foreign Trade Directorate, on the recommendation of the Trade Practices Committee, subject to evaluation by the Trade Practices Sub-Directorate, may suggest price undertakings but no exporter shall be forced to accept them. The fact that an exporter does not offer to make such an undertaking or does not accept an invitation to do so shall in no way prejudice the consideration of the case.

ARTICLE 2.2.3.7.9.2. Procedure. If price undertakings are submitted, the investigating authority shall, in a reasoned resolution issued by the Foreign Trade Directorate, communicate them within ten days following their submission to parties interested in the investigation, granting them a period of five days to submit the comments they deem relevant concerning the content of the price undertakings.

Within 15 days following publication of the aforementioned resolution, the Foreign Trade Directorate shall convene the Trade Practices Committee to inform it of the respective terms and comments and to make its recommendations in this respect.

The Trade Practices Committee shall submit a recommendation to the Foreign Trade Directorate on the price undertakings so that the latter, in a reasoned resolution, may adopt the decision that best suits the national interest. This resolution shall be published in the Official Journal.

Within five days of its publication, the resolution shall be communicated to the Member or Members whose products form the subject of the determination or undertaking, as well as to other interested parties that have expressed an interest in the investigation and have supplied their mailing or email address.

In the resolution, the Foreign Trade Directorate shall also stipulate that, if the producer or exporter which made the undertaking fails or refuses to provide periodic information relating to the fulfilment of the undertaking, it may order the immediate application of provisional duties, on the basis of the best information available, without prejudice to continuing the investigation or reinitiating it at the preliminary determination phase, in the event of it having ended.

ARTICLE 2.2.3.7.9.3. Suspension of the investigation. If a price undertaking is accepted by the Foreign Trade Directorate, the resolution accepting it may order the suspension of the investigation into dumping, injury and the causal link, unless the party making the undertaking requests otherwise within the month following its publication or, at the request of the Trade Practices Committee, it is decided to terminate the investigation. In such cases, the Foreign Trade Directorate may order the continuation of the investigation until it is completed.

If the investigation is continued and leads to a negative determination of dumping or injury, the undertaking shall immediately lapse, except in cases where such determination is due in large part to the existence of price undertakings. In such cases, the Foreign Trade Directorate may require that the undertaking be maintained for a reasonable period.

In the event that an affirmative determination is made, the resolution shall order the maintenance of price undertakings consistent with their terms and the provisions of this Decree.

SECTION X

REVIEW AND EXAMINATION OF ANTI-DUMPING DUTIES AND PRICE UNDERTAKINGS

ARTICLE 2.2.3.7.10.1. Administrative reviews. At any time, the investigating authority may, either *ex officio* or at the request of an interested party provided that at least one year has elapsed since the imposition of the definitive anti-dumping duties, the acceptance of the price undertakings or sunset review, initiate a review process for the purpose of establishing whether there has been a change in the circumstances that gave grounds for their imposition or acceptance sufficient to justify varying such determination.

If a foreign producer or exporter subject to the imposition of a definitive duty reduces the export price so as to nullify the remedial effect of the duty, the procedure for which this Article provides shall be initiated.

In any event, the interested party requesting a review shall be required to prove that there has been a change in circumstances that justifies its request.

ARTICLE 2.2.3.7.10.2. Purpose of the review. In the application for review, interested parties may request that the investigating authority examine the margins of dumping, 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 definitive anti-dumping duty or acceptance of the price undertaking is necessary to offset the adverse effects of dumping.

ARTICLE 2.2.3.7.10.3. Sunset review. Notwithstanding the foregoing provisions, any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition or from the date of the most recent review if that review has covered both dumping and injury, or of the most recent review under this Article, unless the authorities determine, pursuant to a review initiated

before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the removal of the anti-dumping duty imposed would be likely to lead to continuation or recurrence of the dumping and injury it was intended to correct.

The review may be initiated *ex officio* not later than two months before the fifth year calculated in accordance with the provisions of the preceding paragraph, or upon request by the domestic industry, at least four months before the end of the fifth year.

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

PARAGRAPH. The provisions of this Article shall also apply in cases where the period of validity of the definitive anti-dumping duties is less than five years.

ARTICLE 2.2.3.7.10.4. Review of the acceptance of price undertakings. The authorities may carry out reviews for the purpose of determining whether the resolution 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 commitment assumed in the price undertaking, the Foreign Trade Directorate shall issue a resolution ordering its termination, as well as that of the investigation, if the latter has been suspended.

ARTICLE 2.2.3.7.10.5. Review to determine anti-dumping duties for new exporters and producers. The investigating authority, at the request of an exporter or producer of the product subject to definitive anti-dumping duties, may initiate a review procedure to determine the appropriate individual margins of dumping.

For these purposes, the exporter or producer of the product subject to definitive anti-dumping 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 duties during the investigation period and is not related to any exporter or producer in the country exporting the product subject to anti-dumping duties to Colombia.

The investigating authority shall carry out a review for the purpose of establishing an individual weighted average margin of dumping for such exporter or producer.

The procedure applicable to these reviews shall be that established in Sections X and XI of this Decree, but the time allowed shall be reduced by one quarter.

While the review under this Article is being carried out, the Foreign Trade Directorate shall suspend the application of anti-dumping duties on the exports of these producers or exporters. However, imports made after the commencement of the procedure may be subject to security while deciding whether definitive anti-dumping duties should be imposed on the exports of the said producers or exporters and their individual margins of dumping. If the decision is affirmative, anti-dumping duties may also be imposed retroactively, from the date of initiation of the review procedure.

SECTION XI

PROCEDURE FOR THE REVIEW AND EXAMINATION OF ANTI-DUMPING DUTIES AND PRICE UNDERTAKINGS

ARTICLE 2.2.3.7.11.1. Content of applications. The applications for reviews and sunset reviews referred to in Sections X and XI of this Decree shall be submitted through the web application or a similar mechanism, failing which the applications shall be disregarded.

The application shall contain, at least, the following information and evidence:

1. The identity of the applicant.
2. The names and addresses of other interested parties, if available.

3. Evidence for the authority to review in accordance with the provisions in Sections X and XI of this Decree, i.e.:

- (a) the change in circumstances;
- (b) the need to maintain the duty in order to offset the dumping and/or prevent injury;
- (c) the modification or elimination of the duty imposed;
- (d) determination of the individual margin of dumping.

4. Evidence it is intended to adduce.

5. Accounts and financial information concerning production, sales, inventories, prices and profits and on the plant capacity and employment. This information shall be submitted in accordance with the legislation in force and shall be drawn up by a certified public accountant or the company's statutory auditor.

6. Description of the trend in demand and sales of the domestic product that is the like product in respect of the product subject to the anti-dumping practice from the time at which the practice to be reviewed commenced.

7. Identification and justification of confidential information and a non-confidential summary thereof. If it is claimed that such information cannot be summarized, an explanation of the reasons why it is not possible to provide a summary.

8. An offer to provide the authorities with any additional documents they may request and to facilitate the verification of the information supplied.

PARAGRAPH: In the case of reviews for the determination of anti-dumping duties for new exporters and producers, the information listed in subparagraphs 2 and 6 shall not be required by the authority. Nevertheless, information on normal value and export prices shall be furnished.

ARTICLE 2.2.3.7.11.2. Evaluation of the grounds for the application and initiation of the review and examination. For the purposes of the evaluation of the application and the initiation of the review or examination, the procedure followed shall be that laid down in Section VI of this Decree.

ARTICLE 2.2.3.7.11.3. Invitation to participate in the review or examination. Other parties interested in taking part in the review or examination shall be convened by the investigating authority in accordance with the provisions in Section VI of this Decree.

ARTICLE 2.2.3.7.11.4. Dispatch and receipt of questionnaires and delivery of applications. Questionnaires and replies thereto, and the delivery of applications to exporters and authorities of the exporting country, and the examination of evidence, shall be governed by the provisions of Section VI if not covered in Sections X and XI of this Decree.

ARTICLE 2.2.3.7.11.5. Examination of evidence. The period for the examination of evidence at the request of a party shall expire one month after the expiration of the period allowed for receiving questionnaires.

ARTICLE 2.2.3.7.11.6. Hearings and arguments. Hearings may be held, once only, as from the deadline for replying to questionnaires and up to three days before the expiry of the period for the examination of evidence. For this purpose and with regard to the time-limit and submission of concluding arguments, the provisions in Section VI of this Decree shall be followed.

ARTICLE 2.2.3.7.11.7. Conclusions of the review or examination. After two months, the investigating authority, on the basis of the evidence and information provided or the best information available, shall draw up a technical report bringing to an end the review or examination for which Sections X and XI of this Decree provide. The report shall contain the findings and conclusions with respect to the relevant questions of fact and law.

The report concluding the review or examination shall recommend the maintenance, modification or removal of the definitive anti-dumping duty or the acceptance of the price undertaking, and the communication of essential facts shall be brought forward in accordance with Article 2.2.3.7.6.16 of this Decree.

Within the period specified in this Article, the Foreign Trade Directorate shall convene the Trade Practices Committee to present the final results of the review or examination and to form an opinion thereon. The aforementioned period may be extended by the Foreign Trade Directorate for up to 10 days if it considers that special circumstances justify such an extension.

ARTICLE 2.2.3.7.11.8. Final determination. For the purposes of the final determination the provisions of Section VI of this Decree shall be observed.

ARTICLE 2.2.3.7.11.9. Termination of the duty imposed. If, as a result of a review under Sections X and XI of this Decree, it is concluded that there is no justification for maintaining a definitive anti-dumping duty, the Foreign Trade Directorate shall terminate it immediately and inform the National Revenue and Customs Directorate (DIAN) accordingly.

ARTICLE 2.2.3.7.11.10. Refund of anti-dumping duties. The resolution ordering the removal or modification of the definitive anti-dumping duty shall establish whether it should be refunded by the National Revenue and Customs Directorate (DIAN), referring to the DIAN those matters that fall within its competence.

ARTICLE 2.2.3.7.11.11. Access to the record and protection of confidential information. For the purposes of access to the record and protection of confidential information in the aforementioned procedures, the provisions in Section VI of this Decree shall apply.

SECTION XII

SPECIAL RULES APPLICABLE TO REVIEWS FOR CHANGE OF CIRCUMSTANCES AND SUNSET REVIEWS

ARTICLE 2.2.3.7.12.1. Determination of the likelihood of continuation or recurrence of injury. In examinations and reviews carried out in accordance with the provisions of Sections X and XI of this Decree, the investigating authority shall determine whether there is a likelihood that the removal of a duty imposed or the termination of acceptance of a price undertaking would lead to the continuation or recurrence of material injury within a reasonably foreseeable period.

For this purpose, the investigating authority shall take into consideration, *inter alia*, the following factors:

1. The real or potential volume of imports;
2. the impact on prices and the possible effects of the imports subject to the definitive duty or the acceptance of the price undertaking on the domestic industry if they are removed or terminated;
3. improvements in the state of the domestic industry brought about by the duty imposed or the price undertaking;
4. whether the domestic industry is likely to suffer material injury if the duty imposed is removed or the price undertaking is terminated.

ARTICLE 2.2.3.7.12.2. Volume of imports. The investigating authority shall examine whether the likely volume of imports of the product subject to anti-dumping duties would be significant if the duty imposed were removed or the price undertaking terminated. For this purpose, it may take into account relevant economic factors such as the likely increase in production capacity in the exporting country, existing inventories of the product subject to anti-dumping duties or price undertakings, as well as their likely increases and any barriers to the import of the product subject to anti-dumping duties or price undertakings to countries other than Colombia.

ARTICLE 2.2.3.7.12.3. Impact on price. In evaluating the likely impact on the prices of imports of the products subject to the definitive anti-dumping duty or price undertaking, the investigating authority shall take into account the likelihood of such products entering Colombia at prices that would have a significant depressing or suppressing effect on the prices of domestic like products, if one or the other is revoked.

ARTICLE 2.2.3.7.12.4. Effects on the domestic industry. In evaluating the possible effects on the domestic industry of imports of the product subject to the definitive duty or the acceptance of a price undertaking if they were removed or terminated, the investigating authority shall take into account relevant economic factors likely to have a bearing on the state of the domestic industry in Colombia, such as: likely declines in output, sales, market share, profits, productivity, return on investment and utilization of capacity; negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital and investment; and negative effects on the development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product.

ARTICLE 2.2.3.7.12.5. Basis for the determination. The presence or the absence of any factor which the investigating authority is required to take into account for the purpose of deciding on the likelihood that the material injury will continue or recur within a reasonably foreseeable period of time, if the definitive duty is removed or the price undertaking terminated, do not oblige it to reach a positive determination on the existence of such a possibility.

PARAGRAPH: Margins of dumping that are *de minimis* shall not by themselves be sufficient to require the investigating authority to determine that the removal of a definitive duty or the termination of acceptance of a price undertaking would not be likely to lead to the continuation or recurrence of sales at less than normal value

ARTICLE 2.2.3.7.12.6. Cumulation. The investigating authority may cumulatively assess the volume and impact of imports of the product subject to the definitive duty or the price undertaking from all countries for which examinations or reviews have been initiated, provided that they are at the same procedural stage, if there is a likelihood of such imports competing with each other and with domestic like products in the Colombian market.

PARAGRAPH: The investigating authority may not make the cumulative assessment described in the preceding paragraph if it determines that such imports are likely to have no discernible adverse impact on the domestic industry.

SECTION XIII

COMMON PROVISIONS

ARTICLE 2.2.3.7.13.1. Representation and participation of interested parties. In the course of the anti-dumping investigation, only those who are authorized to intervene in the different procedural stages, make submissions and, in general, act on behalf of the interested parties, and who can prove the capacity in which they are acting, may do so. Any communication received by unauthorized persons or on behalf of third parties shall be disregarded.

Oral interventions that are made during public hearings attended by representatives shall be governed by the circular referred to in the paragraph of Article 2.2.3.7.6.13 of this Decree.

ARTICLE 2.2.3.7.13.2. Single channel for action by interested parties. The Foreign Trade Directorate shall issue a circular making it mandatory to establish a single channel for the filing of all proceedings by interested parties after the initial request, during the different stages, processes and procedures of the administrative investigations carried out on the basis of this Decree, failing which they shall not be taken into account. The above is pending the technical development of the web application or a similar mechanism.

ARTICLE 2.2.3.7.13.3. Effectiveness of procedures. The procedures set out are not intended to prevent the investigating authority from proceeding expeditiously with regard to initiating an investigation, reaching preliminary or final determinations, whether affirmative or negative, or from

applying provisional or final measures, in accordance with relevant provisions of the WTO Anti-Dumping Agreement.

ARTICLE 2.2.3.7.13.4. Technical reports. Following the adoption of decisions by the Foreign Trade Directorate or the submission of the findings of its evaluations to the Trade Practices Committee, the Trade Practices Sub-Directorate shall draw up a technical report containing the findings and conclusions reached with respect to all relevant points of fact and law.

ARTICLE 2.2.3.7.13.5. Content of resolutions, technical reports on initiation, preliminary and definitive determinations. The resolution ordering initiation of the investigation or a separate technical report shall contain the following information:

1. name(s) of the exporting country or countries and the product in question;
2. date of initiation of the investigation;
3. description of the dumping practice(s) to be investigated;
4. summary of the factors on which the allegations of injury, threat of injury or material retardation are based; and
5. time-limits given to the countries of origin of the product under investigation and interested parties to put forward their views.

Resolutions on the imposition of provisional or definitive measures or separate technical reports shall contain sufficiently detailed explanations concerning the preliminary and definitive determinations of dumping, injury and the causal link. Likewise, they shall mention the questions of fact and of law on which the acceptance or rejection of the arguments put forward are based.

In the aforementioned resolutions or reports, the following shall be indicated:

1. the names of the suppliers or the countries of origin of the product under investigation concerned;
2. a description of the product;
3. the amount of the anti-dumping duties determined and the basis on which the existence of dumping has been determined.

Considerations concerning the determination of injury, threat of injury or material retardation and the main grounds on which the determination is based.

PARAGRAPH: The report referred to in this Article may be produced electronically in accordance with the guidelines drawn up by the investigating authority for this purpose.

ARTICLE 2.2.3.7.13.6. Concurrent investigations. Investigations to establish the correct valuation of imports conducted by the National Revenue and Customs Directorate (DIAN), as well as those relating to incorrect tariff classification, under-invoicing and dumping by the Trade Practices Sub-Directorate of the Foreign Trade Directorate, may be carried out simultaneously.

ARTICLE 2.2.3.7.13.7. Inter-institutional cooperation. If, in the course of an administrative procedure, the Trade Practices Sub-Directorate has information that leads it to believe that customs under-valuation, under-invoicing, incorrect tariff classification or any other practice that may fall within the customs competence of the National Revenue and Customs Directorate (DIAN), National Customs Directorate, may exist, it shall *ex officio* forward a copy of all relevant documents, without prejudice to continuation of the procedure with regard to matters within its own competence. In this case, it shall maintain the confidentiality applicable to the investigating authority and shall take into account the provisions in this Decree regarding the protection of confidential information.

ARTICLE 2.2.3.7.13.8. Forwarding of resolutions. The Trade Practices Sub-Directorate shall forward to the National Revenue and Customs Directorate (DIAN) copies of resolutions determining

the application of provisional or definitive anti-dumping duties or modifying or suspending those already established.

ARTICLE 2.2.3.7.13.9. Responsibilities. For the purposes of this Decree, the Trade Practices Committee, the Foreign Trade Directorate and the Trade Practices Sub-Directorate of the Ministry of Trade, Industry and Tourism, shall have the following functions:

Trade Practices Committee: Make recommendations to the Foreign Trade Directorate on price undertakings, the results of the final study conducted by the Trade Practices Sub-Directorate in the course of the investigation, the imposition, removal, extension or modification of definitive anti-dumping duties and the termination of price undertakings.

It is also the Committee's responsibility to authorize extensions of the time-limits for conducting and concluding investigations, where justified. This latter responsibility shall include the possibility of authorizing an extension additional to that specified in this Decree for the periods for preliminary and final determinations.

The Committee shall be composed of the following:

- the Vice-Minister of Foreign Trade, who shall act as Chair;
- the Vice-Minister of the body most closely linked to the domestic industry affected in the opinion of the Committee's Chair;
- the Director of National Customs;
- the Deputy Sectoral Director of the National Planning Department;
- advisers to the Higher Council for Foreign Trade (2);
- the Superintendent of Industry and Trade or his/her deputy, depending on the issue to be addressed; and
- the Director for Foreign Trade, who shall take part in the discussions but without voting rights.

In addition to the functions mentioned above, the Trade Practices Committee shall draw up its own rules of procedure.

Foreign Trade Directorate: To adopt a reasoned resolution on the results of the opening or initiation of the aforementioned procedures, the preliminary and final evaluation, to impose the provisional and definitive duties applicable, to grant or adopt the extensions envisaged in the course of the investigation, to extend the necessary time-limits so that the procedure can achieve its purpose so as to ensure the effectiveness of the material right that is the subject of administrative action, and to decide on price undertakings submitted. The definitive duties shall be imposed by the Foreign Trade Directorate in accordance with the recommendation of the Trade Practices Committee.

Trade Practices Sub-Directorate: To conduct the investigations covered by this Decree, without prejudice to any other responsibilities.

The Trade Practices Sub-Directorate shall draw up a study that includes the final results of all procedures or investigations.

ARTICLE 2.2.3.7.13.10. Procedures and requirements. The Foreign Trade Directorate shall establish the internal procedures, the applications manual, the forms and other requirements necessary for implementation of this Decree. Likewise, it shall determine and implement the electronic mechanisms to be used in the course of the investigations provided for herein.

ARTICLE 2.2.3.7.13.11. Review. The decisions adopted following the investigations referred to in this Decree may be the subject of the proceedings provided for in the Code of Administrative Procedure and the Code of Administrative Litigation.

ARTICLE 2.2.3.7.13.12. Transitional period, entry into force and repeal. This Decree shall enter into force on the date of its publication in the Official Journal, and abrogates any provisions that conflict with it, in particular Decree No. 1750 of 2015.

Investigations under way with preliminary determinations at the time of entry into force of this Decree shall continue to be governed by the previous regulations until they are completed."

For publication and implementation.

Done at Bogotá, D.C. on 30 December 2020.

IVAN DUQUE MARQUEZ

The Minister of Finance and Public Credit,
Alberto Carrasquilla Barrera.

The Minister of Trade, Industry and Tourism,
José Manuel Restrepo Abondano.
