



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

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

EL SALVADOR

Supplement

The following communication, dated 28 October 2016, is being circulated at the request of the delegation of El Salvador.

Pursuant to Article 18.5 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, Article 32.6 of the Agreement on Subsidies and Countervailing Measures and Article 12.6 of the Agreement on Safeguards, please find attached the text of the Special Law on Trade Defence, published in the Official Gazette No. 6, Vol. 410, on 11 January 2016.

SPECIAL LAW ON TRADE DEFENCE

TITLE I

SOLE CHAPTER

Purpose, Scope and Competence

Purpose

Article 1. The purpose of the present Law is to establish mechanisms and procedures of protection and defence against unfair trade practices, and also to introduce safeguard measures to counteract imports of goods in such quantities or under such conditions as to cause or threaten to cause serious or material injury to domestic producers of like or directly competitive products.

Scope

Article 2. The provisions of the present Law shall apply to all imports of goods originating in and/or consigned from countries Members of the World Trade Organization or non-member countries by public or private natural or legal persons, when such imports may cause injury or the threat of injury to a domestic industry or delay the creation of such industry.

Investigating Authority

Article 3. The Ministry of the Economy, through the Directorate responsible for the implementation of international trade agreements, currently designated the Directorate for the Management of Trade Agreements and hereinafter referred to as the Investigating Authority, shall be the entity responsible for processing applications for investigations concerning the application of trade

defence measures, for conducting investigations and, where appropriate, for proposing to the Minister of the Economy the imposition of anti-dumping duties, countervailing duties, safeguard measures or other applicable measures within the Minister's jurisdiction.

At the same time, the Investigating Authority shall be responsible for monitoring compliance with the trade defence measures established in the trade agreements signed by El Salvador.

The Investigating Authority shall participate in the legal defence of resolutions issued pursuant to the triggering of the dispute settlement mechanisms established in the trade agreements to which El Salvador is a party, or in the World Trade Organization.

It shall also provide assistance to domestic exporters involved in investigations relating to unfair trade practices and safeguard measures conducted by foreign countries.

TITLE II

SOLE CHAPTER

Definitions

Definitions applicable to investigations into unfair trade practices

Article 4. For the purposes of the present Law, the following definitions shall apply:

(a) Total amount of the subsidy: the absolute monetary value, expressed in United States dollars, of the benefit enjoyed by the recipient of a subsidy or subsidy programme;

(b) Injury: material injury or threat of material injury to a domestic industry or significant delay in the establishment of this domestic industry;

(c) Anti-dumping duty: an additional *ad valorem* duty of a temporary nature, other than a customs duty on imports, which is applied on imports at dumping prices, causing injury or threat of injury to the domestic industry;

(d) Countervailing duty: an additional *ad valorem* duty of a temporary nature, other than a customs duty on imports, which is applied on subsidized imports, causing injury or threat of injury to the domestic industry;

(e) Dumping: sale of a product on the market of an importing country at a price below the normal value at which it is sold on the domestic market of the exporting country, regardless whether this is the country of origin or the country of consignment;

(f) Interested parties:

1. Exporters or foreign producers of the product under investigation;
2. Importers of the product under investigation;
3. Trade union or business associations the majority of whose members are producers, exporters or importers of the product under investigation;
4. Governments of exporting countries;
5. Producers of like domestic products;
6. Trade union or business associations the majority of whose members produce like domestic products;
7. Other entities that may be admitted at the discretion of the Investigating Authority.

- (g) Unfair trade practices: dumping and subsidies;
- (h) Product under investigation: imported product subject to an investigation into measures constituting unfair trade practices;
- (i) Like domestic product: product produced by the domestic industry which is identical or, where no such product exists, another product having characteristics very similar to the dumped or subsidized imported product;
- (j) Domestic industry: all domestic producers of the like domestic product, or those among them whose combined production of that product constitutes a major proportion of the total domestic production of the product.

Where, however, some producers are linked to exporters or importers, or are themselves importers of the product under investigation for alleged dumping or subsidization, the term "domestic industry" shall refer to all the other producers.

For the purposes of this definition, producers shall be deemed to be related to exporters or importers in the following cases:

1. If one of them directly or indirectly controls the other;
2. If both are directly or indirectly controlled by a third person; or
3. If together they directly or indirectly control a third person.

The foregoing shall apply on condition that there are reasons to believe that the effect of the relationship is such as to cause the producer under consideration to behave differently from non-related producers. One person shall be deemed to control another person when the former is legally or operationally in a position to exercise restraint or direction over the latter.

(k) Domestic producer: any natural or legal person, Salvadoran or foreign, who produces goods or offers services and is domiciled in El Salvador;

(l) Subsidy: a sum of money from public funds, or tax concessions granted to an enterprise or industry or a group of enterprises or industries, to help them to keep the price of a product low.

Definitions applicable to safeguard investigations

Article 5. For the purposes of the present Law, the following definitions shall apply:

- (a) Threat of serious injury: serious injury that is clearly imminent;
- (b) Serious injury: a significant general impairment of the situation of a domestic industry;
- (c) Safeguard measure: an additional *ad valorem* duty of a temporary nature, other than a customs duty on imports, which is applied to prevent or remedy serious injury or threat of serious injury to a domestic industry caused by an increase in imports, with a view to assisting the industry to adjust. It may also take the form of a quantitative restriction expressed in the form of an import quota;
- (d) Interested parties:
 1. Exporters and foreign producers of the product under investigation;
 2. Importers of the product under investigation;
 3. Trade union or business associations the majority of whose members are producers, exporters or importers of the product under investigation;

4. Governments of the exporting countries;
 5. Producers of a like domestic product or directly competitive domestic products;
 6. Trade union or business associations the majority of whose members are producers of a like domestic product or directly competitive domestic products.
- (e) Adjustment plan: conversion plan submitted by the domestic industry to surmount the circumstances alleged as the cause of serious injury or threat of serious injury;
- (f) Product under investigation: imported product, subject to an investigation relating to safeguard measures;
- (g) Like product: product produced by the domestic industry which is identical or has characteristics very similar to the imported product under investigation;
- (h) Directly competitive product: product that, while not similar to the product with which it is compared, performs the same functions as that product, meets the same needs and is commercially substitutable;
- (i) Domestic industry: all producers of like or directly competitive products operating within the domestic market; or those whose combined production of like or directly competitive products constitutes at least 25% of the total domestic production of such products.

TITLE III

Substantive Rules on Unfair Trade Practices

CHAPTER I Dumping

Section I

Determination of normal value based on prices in the exporter country

Article 6. Normal value is the comparable price of a like product when it is destined for consumption in the country of origin in the ordinary course of trade.

If a good is exported to El Salvador from an intermediary country and not directly from the country of origin, its normal value shall be the comparable price of identical or similar goods in the country of origin.

If, however, the good in question only crosses the country of export, is not produced in that country or, among other circumstances, there is no comparable price in the country of export, its normal value shall be determined on the basis of the price in the market of the country of origin.

Normal value based on constructed value or export price to an appropriate third country

Article 7. When the like product is not sold in the ordinary course of trade in the domestic market of the country of origin, or when, because of a particular market situation or the low volume of sales in the domestic market of the country of origin, such sales do not permit a proper comparison, the Investigating Authority shall determine the normal value of the product under investigation on the basis of either:

- (a) The cost of production in the country of origin, plus a reasonable amount for administrative, sales and general expenses, and also for profits; or
- (b) A comparable price of the like product, when it is exported to an appropriate third country, provided that this price is representative.

Sales of the like product intended for consumption on the domestic market of the country of origin, or sales to an appropriate third country shall be considered a sufficient quantity for the determination of normal value if such sales represent 5% or more of the sales to El Salvador of the product under investigation.

Notwithstanding the provisions of the preceding paragraph, a lower percentage may be accepted when there is evidence that sales in the domestic market, even though they constitute a lower percentage, are of sufficient magnitude to enable an adequate comparison.

Sales made in the ordinary course of trade

Article 8. Sales made in the ordinary course of trade shall be defined as those effected under market conditions in the country of origin, and which have been made habitually, or within a period of one year, between independent buyers and sellers.

Sales at below-cost prices

Article 9. Sales of the like product in the domestic market of the country of origin, or sales to an appropriate third country, at prices below the per unit fixed and variable costs of production, plus administrative, sales and other general costs, shall, for reasons of those prices, not be considered to have been made in the ordinary course of trade and shall not be taken into account in the calculation of normal value if it is determined that such sales were made:

- (a) Over a period of between six months and one year;
- (b) In substantial quantities;
- (c) At prices that do not make it possible to recover all the costs within a reasonable period.

For the purposes of the present article, sales shall be deemed to have been made at prices below the per unit costs in substantial quantities when the Investigating Authority establishes:

1. That the weighted average of the sales prices of the transactions considered for the determination of the normal value is lower than the weighted average of the per unit costs; or
2. That the volume of sales made at prices below the per unit costs constitutes 20% or more of the volume sold in the transactions considered for the calculation of the normal value.

If, at the time of sale, the prices below the per unit costs are higher than the weighted average per unit costs for the period under investigation, the Investigating Authority shall consider that such prices make it possible to recover the costs within a reasonable period.

Cost calculation

Article 10. The Investigating Authority shall calculate the costs on the basis of the records kept by the exporter or producer under investigation, provided that such records are in conformity with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the like product.

The Investigating Authority shall take into consideration all available evidence that the allocation of costs has been appropriate, including evidence submitted by the exporter or producer in the course of the investigation, provided that those allocated costs have been used by the exporter or producer in connection with the establishment of appropriate amortization and depreciation periods and allowances for capital expenditure and other development costs.

The Investigating Authority shall duly adjust the costs to take account of non-recurrent items of expenditure that benefit future and/or current production or the circumstances in which the costs for the period under investigation have been affected by start-up operations. The adjustment made for start-up operations shall reflect the costs at the end of the start-up period or, if this is to be extended beyond the period of investigation, the most recent costs that the Investigating Authority may reasonably take into account during the investigation.

Amounts relating to administrative, sales and general costs, and also those relating to profits, shall be based on actual data relating to the production and sales of the like product in the ordinary course of trade by the exporter or the producer under investigation. When it is not possible to determine such amounts on that basis, they may be determined on the basis of:

- (a) The actual amounts disbursed and obtained by the exporter or producer under investigation in relation to the production and sales on the domestic market of the country of origin of the same general category of products;
- (b) The weighted average of the actual amounts disbursed and obtained by other exporters or producers under investigation, in relation to the production and sales of the like product on the domestic market of the country of origin; or
- (c) Any other reasonable method, provided that the amount thus established to represent profits does not exceed the profit normally obtained by other exporters or producers in the sales of products of the same general category on the domestic market of the country of origin of the like product.

Countries other than market economies

Article 11. When the exporting country of the product under investigation is not a market economy, the Investigating Authority may determine the normal value on the basis of:

- (a) A comparable price in the ordinary course of trade for the like product intended for consumption in a market economy country;
- (b) A comparable price in the ordinary course of trade for the like product when exported from a market economy country to other countries; or
- (c) The price actually paid or payable in El Salvador for the like domestic product, duly adjusted.

Section II

Determination of the Export Price

Export price

Article 12. The export price shall be the price of the product under investigation when sold for export from the country of origin or consignment to El Salvador.

When there is no export price or when, in the opinion of the Investigating Authority, the export price is unreliable because of an association or countervailing arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported products are first resold to an independent buyer or, if the products were not resold to an independent buyer or were not in the same condition as that in which they were imported, on a reasonable basis as determined by the Authority.

Section III

Comparison between Normal Value and Export Price

Adjustments

Article 13. For the calculation of the dumping margin, the Investigating Authority shall make a fair comparison between the export price and the normal value. This comparison shall be made at the same level of trade, normally the ex-factory level, and in respect of sales made, as nearly as possible, at the same time. In each case, differences that affect price comparability shall be taken into account: these include differences in terms of sale, in taxation, in the levels of trade, in

quantities and in physical characteristics, and any other differences which influence price comparability. These adjustments may include the following:

- (a) Packaging costs;
- (b) Transport costs, including freight and insurance, movements outside the factory, port charges and customs duties;
- (c) Credit costs;
- (d) Commissions;
- (e) Payments for after-sales services, such as technical assistance, maintenance and repairs.

In cases where the export price is constructed on the basis of the price at which the imported products are first resold to an independent buyer, as stipulated in the second paragraph of the preceding article, allowances shall also be made for costs, including the duties and taxes incurred between importation and resale, and for a reasonable amount for profits. If, in these cases, price comparability has been affected, the Investigating Authority shall establish the normal value at a level of trade equivalent to the level of trade at the constructed export price or shall make due allowance for the factors identified in the present article. The Investigating Authority shall indicate to the interested parties the information that is needed to ensure a fair comparison and shall not impose upon them an unreasonable burden of proof.

Comparison methods

Article 14. Notwithstanding the provisions of the previous article, the existence of dumping margins shall be established on the basis of a comparison between a weighted average normal value and a weighted average of the prices of all comparable export transactions, or a comparison between normal value and transaction-by-transaction export prices.

A normal value established on a weighted average basis may be compared with the prices of individual export transactions if the Investigating Authority finds a pattern of export prices that differ significantly depending on the individual buyers, regions or periods. In these circumstances, the Investigating Authority shall explain why such differences cannot be adequately taken into account by a weighted-average or transaction-to-transaction comparison.

When the product under investigation comprises goods which are not physically the same, the margin of price discrimination shall be estimated by type of goods in such a way that the normal value and the export price involved in each calculation relate to goods with very similar characteristics.

When the price discrimination margin is calculated by type of goods, the margin for the product under investigation shall be determined as the weighted average of all the individual margins estimated.

When in the opinion of the Investigating Authority the number of types of goods or the number of transactions to be investigated is exceptionally large, the price discrimination margin may be determined on the basis of a statistically representative sample.

Currency conversion

Article 15. When, in order to be equitable, the price comparison requires a currency conversion, the Investigating Authority shall carry out that conversion using the exchange rate on the date of sale.

The date of sale shall be that of the instrument that sets out the essential conditions of the sale, whether this be a contract, a purchase order, an order confirmation or an invoice.

Notwithstanding the provisions of the preceding paragraphs, when a sale of foreign currencies on forward markets is directly related to an export sale, the Investigating Authority shall use the forward rate of exchange for all related transactions.

The Investigating Authority may disregard fluctuations in exchange rates and shall allow exporters a period of 60 days to adjust their export prices so as to reflect sustained movements in exchange rates during the period under investigation.

CHAPTER II

Subsidies

Elements constituting a subsidy

Article 16. For the purposes of the present Law, it shall be considered that a subsidy has been granted when benefits are conferred in any of the following cases:

(a) When a financial contribution has been made by a government or any public entity in the territory of that government, in other words:

1. When the practice of a government involves a direct transfer of funds, such as grants, loans and equity infusions or potential direct transfers of funds or liabilities, such as loan guarantees;
2. When government revenues that are otherwise due, including, for example, fiscal incentives such as tax rebates, are forgone or not collected;
3. When a government provides goods or services other than general infrastructure or when it purchases goods;
4. When a government makes payments to a funding mechanism, or entrusts to a private entity one or more of the functions described in paragraphs 1-3 above that would normally be the responsibility of the government, or instructs it to perform such functions, and that practice does not differ in any substantive way from the practices normally followed by governments.

(b) When there is some form of income or price support within the meaning of Article XVI of the General Agreement on Tariffs and Trade (GATT) 1994.

Specificity

Article 17. A subsidy may only be subject to countervailing measures when it is specific.

A subsidy shall be deemed to be specific to an enterprise or industry or to a group of enterprises or industries under the following circumstances:

(a) When the State or authority granting the subsidy, or the legislation under which that State or authority acts, explicitly limits access to the subsidy to certain enterprises;

(b) When, despite the existence of objective criteria or conditions established in a law which govern the entitlement to the subsidy and its amount, the right to receive the subsidy is not automatic, or it can be determined that the granting authority does not respect such objective criteria or conditions. Objective criteria or conditions shall be defined as those which are impartial, which do not favour certain enterprises over others and which are economic in nature and horizontal in application, such as the number of employees or the size of the enterprise;

(c) When the subsidies are limited to certain enterprises located in a designated geographical region under the jurisdiction of the State or granting authority;

(d) When a subsidy, although it may appear not to be categorized as specific under subparagraphs (a) and (b) above, is determined by the Investigating Authority to be specific, taking into account the following factors:

1. The exclusive use of the subsidy by a limited number of enterprises or by a particular industry;
2. The predominant use of the subsidy by particular enterprises or industries;
3. The granting of disproportionately large subsidies to certain enterprises;
4. The fact that the manner in which the granting authority has exercised discretion demonstrates that the grant is not universally available.

In applying this clause, due account shall be taken of the extent to which the economic activities within the jurisdiction of the State or the granting authority are diversified, and also the period during which the subsidy programme has been implemented.

- (e) When the subsidy is a prohibited subsidy within the meaning of the following article.

Prohibited subsidies

Article 18. The following subsidies shall be considered prohibited:

- (a) Subsidies that are contingent, in law or in fact, whether solely or as one of a number of conditions, upon export performance. They shall be deemed to be contingent in fact upon export performance when the facts show that the granting of a subsidy, even without having been made legally contingent upon export performance, is in fact tied to actual or anticipated exports or export earnings;
- (b) Subsidies contingent, in law or in fact, whether solely or as one of a number of conditions, upon the use of domestic rather than imported goods.

The mere fact of the granting of a subsidy to exporting enterprises shall not constitute sufficient reason for the export subsidy to be considered an export subsidy within the meaning of this provision.

Recipient of the subsidy

Article 19. The amount of the subsidy granted to the recipient that may be subject to countervailing measures shall be calculated on the basis of the benefit conferred on such recipient.

Methodology for the calculation of the level of subsidy

Article 20. Calculation of the level of the subsidy shall be determined by a methodology established for that purpose. This methodology shall be outlined in the corresponding regulation.

CHAPTER III

Determination of the Existence of Injury or Threat of Injury and Causal Relationship in an Investigation of Unfair Trade Practices

Determination of the existence of injury

Article 21. Determination of the existence of injury shall be based on positive evidence, and shall include an objective examination of the following factors:

- (a) Volume of dumped or subsidized imports;
- (b) Impact of dumped or subsidized imports on the prices of like products on the domestic market;
- (c) Consequent impact of such imports on domestic producers of such products.

Consideration of the volume of dumped or subsidized imports

Article 22. The Investigating Authority shall take into account whether there has been a significant increase in the volume of dumped or subsidized imports, in absolute terms or in relation to domestic production or consumption.

With regard to the impact of dumped or subsidized imports on prices on the domestic market, the Investigating Authority shall take into account:

- (a) If the imported good is being sold on the domestic market at a significantly lower price than that of the like domestic product; or
- (b) If the effect of such imports is to lower prices significantly or significantly to impede the rise in prices which would otherwise have occurred.

Accumulation

Article 23. When imports of a like product coming from more than one country are simultaneously subject to anti-dumping or countervailing duty investigations, the Investigating Authority may only cumulatively assess the effects of those imports on the domestic industry if it determines that:

- (a) The dumping margin or subsidy level for imports of the product under investigation from each country is more than the *de minimis* level and the quantity of imports of the product under investigation from each country is not insignificant, as specified in Articles 51 and 52 of the present Law;
- (b) The cumulative assessment of the effects of imports is carried out in the light of the competition between imports and between imported products and the like domestic product.

Consideration of the impact of dumped or subsidized imports on the industry

Article 24. Consideration of the impact of dumped or subsidized imports on the relevant domestic industry shall include an evaluation by the Investigating Authority of all relevant economic factors and indices having a bearing on the state of that industry, including the following:

- (a) Actual and potential decline in sales, profits, production volumes, market share, productivity, return on investments or use of installed capacity;
- (b) Factors affecting domestic prices;
- (c) Actual or potential negative effects on cash flow, inventories, jobs, wages, growth, ability to raise capital or investment;
- (d) In the specific case of dumping, the magnitude of the dumping margin must also be taken into account;
- (e) In the specific case of agricultural subsidies, the question whether there has been an increase in the costs of government aid programmes may also be taken into account.

This list is not exhaustive, and none of these factors, whether considered on their own or together with others, will necessarily suffice to provide decisive guidance.

The Investigating Authority shall require the necessary evidentiary documents to verify the conditions set out in the preceding clauses, including the balance sheet and financial statements of the domestic industry.

The Investigating Authority shall evaluate the impact of dumped or subsidized imports on production of the like domestic product where the available data make possible the separate identification of such production, with the application of such criteria as the production process, producer sales, and their profits. If such identification is not possible, the Investigating Authority

shall evaluate the impact of the dumped or subsidized imports by examining the production of the most restricted group of products which includes the like domestic product and for which information is available.

Threat of material injury

Article 25. The Investigating Authority shall base its determination of the existence of a threat of material injury on verifiable facts and not simply on allegations, conjecture or remote possibilities. In this regard, there must be sufficient evidence to infer that there will be a substantial increase in the immediate future of imports of the product at dumped or subsidized prices.

In making a determination regarding the existence of a threat of material injury, the Investigating Authority shall consider, among others, the following factors:

- (a) A significant rate of increase in dumped or subsidized imports into the domestic market, suggesting that the volume of such imports is likely to increase substantially;
- (b) A sufficient freely available capacity of the exporter or an imminent and substantial increase in such capacity, indicating the likelihood of a substantial increase in dumped or subsidized exports to the Salvadoran market, taking due account of the existence of other export markets which might absorb the possible increase of such exports;
- (c) The fact that imports are being made at prices that will have the effect of significantly depressing prices on the Salvadoran market or suppressing any price increase, and that are likely to increase demand for further imports;
- (d) Stocks of the product under investigation;
- (e) For the specific case of subsidies, their nature and likely effects on trade. In assessing the nature of subsidies, account may be taken of such aspects as their term of validity, their level or the group of exporters that they cover.

None of these factors on their own will necessarily suffice to provide decisive guidance, but taken as a whole they must all lead to the conclusion that the existence of new exports at dumped or subsidized prices will cause material injury, unless protective action is taken.

Causality

Article 26. The Investigating Authority must demonstrate that the dumped or subsidized imports cause injury as defined by the provisions of the present Law. The demonstration of a causal link between the dumped or subsidized imports and the injury to domestic industry shall be based on a review of all relevant evidence available to the Investigating Authority.

The Investigating Authority must consider other known factors, besides the dumped or subsidized imports, which could also be injurious to the domestic industry; injury caused by those other factors shall not, however, be attributed to the dumped or subsidized imports. Possibly relevant factors include the following:

- (a) Volume and prices of imports not sold at dumped prices or not subsidized;
- (b) Shrinking demand or changes in consumption patterns;
- (c) Restrictive trade practices of foreign producers and domestic producers, and competition between them;
- (d) Evolution of technology;
- (e) Results of the export activity and the productivity of the domestic industry.

TITLE IV

Substantive Rules on the Application of Safeguard Measures

SOLE CHAPTER

Determination of the Existence of Serious Injury or the Threat of Serious Injury and Causal Relationship in a Safeguard Investigation

Serious injury

Article 27. The determination of whether the increase in imports has caused or threatens to cause serious injury to a domestic industry shall be based on an assessment of all relevant factors of an objective and quantifiable nature that are related to the situation of that industry, in particular:

- (a) The rate of increase and amount of increased imports of the product under investigation in absolute terms and relative to the domestic production of like or directly competitive products;
- (b) The share of the domestic market occupied by the increasing imports of the product under investigation;
- (c) Prices of the product under investigation, in particular for the purpose of determining whether lower prices have been recorded than those of the like domestic product or directly competitive domestic products;
- (d) The impact of the increased imports of the product under investigation on the domestic industry, as evidenced by relevant indicators, including: production; capacity utilization; stocks; sales; market share; prices, in other words, the decline in domestic prices or the fact that these prices are not rising as they would have in the absence of increased imports; productivity; gains and losses; return on investment; cash flow and employment;
- (e) Factors other than the increased imports of the product under investigation which likewise cause or threaten to cause serious injury to the domestic industry.

This list is not exhaustive and none of these factors either on their own or together with others will necessarily be sufficient to provide decisive guidance.

The Investigating Authority may only determine that the increased imports of the product under investigation have caused or threaten to cause serious injury to the domestic industry if there is a cause-and-effect relationship between the increase in imports and the injury or threat of serious injury.

When there are factors other than the increased imports of the product under investigation which likewise cause or threaten to cause injury to the domestic industry, the injury shall not be attributed to the increase in imports.

Threat of serious injury

Article 28. Determination of the existence of a threat of serious injury caused by an increase in imports shall be based on verifiable facts and not merely on allegations, conjecture or remote possibilities. In this regard, there must be sufficient evidence of a substantial increase in imports of the product under investigation.

In examining whether the increase in imports threatens to cause serious injury, the Investigating Authority shall evaluate, in addition to the factors mentioned in the first paragraph of the preceding article, the following:

- (a) Actual and potential export capacity of the country or countries of production or origin;
- (b) Stock inventories of domestic production and in exporting countries;

- (c) Likelihood of exports of the product under investigation entering the domestic market in increasing quantities;
- (d) Any other factor that the Investigating Authority deems appropriate.

TITLE V

SOLE CHAPTER

Common Procedural Rules on Unfair Trade Practices and Safeguard Measures

Prior written request

Article 29. The process of investigation for the purpose of verifying whether or not to apply anti-dumping duties, countervailing duties or safeguard measures shall be initiated by an application submitted to the Investigating Authority by or on behalf of a domestic industry which considers itself to have been injured.

Exceptionally, *ex officio* investigations shall be initiated when the Investigating Authority has sufficient evidence of the existence of an unfair trade practice, of injury and of a causal connection.

The process of investigation for the purpose of verifying whether or not to apply safeguard measures may, in exceptional cases, be initiated *ex officio* by the Investigating Authority, in accordance with the provisions of the present Law.

Resolution on the admissibility of the application

Article 30. The Investigating Authority shall review the requirements set out in Articles 47 and 69 of the present Law within 30 days of the submission of the application, with a view to determining whether all the required information has been included for the application to be admitted.

If it is determined that the application is incomplete, the Investigating Authority shall warn the applicant, within the following ten days, so that the applicant can revise it. The applicant shall have a period of 30 days from the date of such notification to comply with the aforementioned warning, which may be extended for an equal period at the request of the interested party.

If the applicant does not challenge the warning within the deadlines stipulated above, the application shall be declared inadmissible and shall be shelved.

The Investigating Authority shall have the power to issue a second warning, in the event that it considers the information submitted to be insufficient, in which case it shall grant the applicant an unextendable period of 30 days from the date of the respective notification.

If there is information to which the applicant does not have reasonable access, the applicant must provide evidence of this to the Investigating Authority, which shall carry out the relevant verification, in order to determine if the information already provided is sufficient for the request to be admitted.

Once these requirements have been met, the Investigating Authority shall proceed to admit the request within the following 15 days.

Initiating an investigation

Article 31. Upon admission of the application, the Investigating Authority shall examine the accuracy and relevance of the evidence presented with the application to determine if there is sufficient evidence to warrant the initiation of an investigation.

The Investigating Authority shall decide whether or not to initiate an investigation into unfair trade practices or with a view to the application of safeguard measures, by means of the respective resolution, which shall be issued within a period of 15 days from the date of admission of the application.

In the event that the Investigating Authority decides not to initiate an investigation, the resolution on its rejection must be notified to the applicant within ten days of its issuance.

The period of the investigation shall count from the day following the date of issuance of the resolution on its initiation. Thereafter, the Investigating Authority must notify known interested parties so that they can present the arguments that they deem appropriate.

Publicity about the application

Article 32. Unless a resolution has been issued on the initiation of an investigation, the Investigating Authority shall avoid any publicity about an application to initiate an investigation.

Notification of an application

Article 33. When an application for an investigation of unfair trade practices or a safeguard investigation complies with the requirements stipulated in Articles 47 and 69 of the present Law, respectively, and before proceeding to initiate the investigation, the Investigating Authority shall directly notify the government of each exporting country concerned.

Notification of resolutions

Article 34. Initiating, preliminary and final resolutions adopted in investigations relating to unfair trade practices and safeguard measures shall be notified to known exporters, foreign producers and governments of the exporting countries, and also to the importers and the domestic producers that constitute the domestic industry.

The resolution to initiate an investigation shall be notified directly to the exporter or through the diplomatic representative of the exporting country accredited to El Salvador; in addition, the full text of the non-confidential version of the application must be attached to the resolution, together with the questionnaires that are to be completed by each interested party.

Other resolutions shall be notified to the interested parties. Such notifications may be made by electronic means or by any other means that the parties may elect for such purposes, provided that the dispatch and receipt of the said notification are duly recorded.

The Investigating Authority shall notify these resolutions to the relevant committees of the World Trade Organization and to the Council of Ministers for Central American Economic Integration, as regulated by the applicable international instruments.

Public announcements

Article 35. The Investigating Authority shall place on its website a public notice setting out a brief summary of the initiating, preliminary and final resolutions issued in connection with investigations relating to unfair trade practices or safeguard measures.

In addition, the Investigating Authority shall publish in the Official Gazette the full text of the initiating, preliminary and final resolutions.

Submission of arguments and evidence

Article 36. In investigations relating to unfair trade practices or safeguard measures, the Investigating Authority shall establish the maximum period for the receipt of arguments or evidence from interested parties, respecting the investigation period stipulated in the following article.

Arguments in writing may be submitted by electronic means or by any other means that the parties elect for such purposes, provided that a record is kept of their dispatch and receipt.

The evidence must be submitted to the Investigating Authority within the time-limit that it has established, in accordance with the relevant formalities established by common law.

Investigation time-frame

Article 37. Investigations into unfair trade practices must be concluded within a maximum period of 12 months, except in exceptional circumstances, when they may continue for 18 months. In the case of safeguard measures, they must be concluded within a maximum period of six months, except in exceptional circumstances, when they may continue for 12 months. Both terms shall count from the day following the date of issue of the initiating resolution.

Confidential information

Article 38. During and after the investigation, the Investigating Authority and any other competent authority shall treat as confidential the information submitted to it or provided for that purpose. No access shall be accorded to information considered confidential, except for the party that provided it and for the respective competent authority.

Any information that, by its nature, is confidential, for example, because its disclosure would entail a significant advantage for a competitor, or would have a significantly unfavourable effect for the interested party providing the information or for the third party from which it obtained the information, or which the parties to an investigation provide on a confidential basis, shall be treated as such by the Investigating Authority, subject to sufficient justification in that regard.

In view of their nature, the following forms of information, among others, shall be considered as confidential:

- (a) Commercial or industrial secrets relating to the nature of a product, production processes, operations, production equipment or machinery;
- (b) Information relating to the financial situation of an enterprise which is not in the public domain;
- (c) Information regarding costs, identity of clients, sales, stocks, shipments, quantity or source of revenue, profits, losses or expenses related to the manufacture and sale of a product.

If the Investigating Authority concludes that a request to declare information confidential is not justified and the interested party does not wish to make it public, or to authorize its disclosure in general or summarized terms, the Investigating Authority may decide to disregard such information unless it has been convincingly demonstrated, from an appropriate source, that the information is correct.

An interested party submitting confidential information must attach a non-confidential summary of such information or provide sufficient reasons why such information cannot be summarized.

Non-confidential summaries of information deemed to be confidential must be sufficiently explicit for other interested parties to have a clear understanding of the information provided, including, for example, graphs showing data set out as percentages, a generic explanation of the data provided, and others.

Files and access

Article 39. All information provided by the interested parties, and also the information collected *ex officio* by the Investigating Authority, shall be chronologically filed in separate files, one of which shall contain public information, another restricted information and a third confidential information.

Interested parties, their representatives and their duly accredited lawyers shall be entitled at any stage of the procedure to peruse, read and copy any document or piece of evidence from the restricted file, and also to request certification of such document or evidence, except confidential information, to which only the Investigating Authority and the party that has supplied it shall have access. This information may not be disclosed during the investigation process.

The costs of preparing the certification or simple copies of the file requested from the Investigating Authority shall be borne by the applicant.

The Investigating Authority shall include in the non-confidential file:

- (a) All public notices related to the investigation or review;
- (b) All documentation, such as questionnaires, responses to questionnaires and written communications to the Investigating Authority;
- (c) All other information derived or obtained by the Investigating Authority, including the verification report or reports;
- (d) Other documents considered appropriate by the Investigating Authority for inclusion in the non-confidential file.

Information gathering

Article 40. Upon initiation of the investigation, the Investigating Authority shall send questionnaires or requests for information to the known domestic producers, importers, exporters and foreign producers or to any other economic agents that it considers pertinent.

The Investigating Authority shall give the interested parties to which it sends the questionnaires a period of 30 days to submit responses, from the day following their notification.

When the questionnaires are sent to foreign exporters or producers through their respective government, the period indicated above shall count from one week following the date on which they were delivered or transmitted to the diplomatic representative of the exporting country accredited to El Salvador.

The deadline for completing the questionnaires may be extended for another 30 days, upon request of the interested party, submitted before the expiration of the original deadline.

The Investigating Authority shall not take into account responses to the questionnaires submitted after the original deadline or its extension.

The Investigating Authority may, in the course of the investigation, request further information from interested parties, in the form of supplementary questionnaires or written requests for clarification or additional information.

It may also request information from other government entities, which may include the transmission of technical criteria, in which case these entities shall be obliged to supply the information. Likewise, the Investigating Authority may request information from third parties not party to the process, such as domestic distributors or dealers in the product or merchandise in question, and also customs officials, agents, attorneys or consignees of the importers.

In all cases where additional information is required, the interested party shall be granted a period of 30 days from the day following the respective notification for the submission of such information.

If the requirements set out in the preceding paragraphs are not satisfied, the Investigating Authority shall make its decision on the basis of the best available information, including the information contained in the application for the initiation of an investigation.

Verification of information

Article 41. At any point during the course of the investigation, the Investigating Authority may carry out such verification visits as it considers pertinent.

The Investigating Authority shall collect any information that it considers necessary and, when it deems it appropriate, examine and verify the information provided by the interested parties to confirm its authenticity.

If necessary, the Investigating Authority may conduct verification visits in other countries, subject to the prior consent of the enterprises involved and provided that there is no objection from the government of the country concerned. Once the consent of the enterprises has been obtained, the Investigating Authority shall notify the authorities of the exporting country of the names and addresses of the enterprises to be visited and the proposed dates.

In exceptional circumstances, when non-governmental experts are to be included in the investigation team, the enterprises and authorities of the exporting country should be informed accordingly. These non-governmental experts shall incur penalties if they fail to comply with the requirements established in the present Law related to the confidential nature of the information.

Evidence

Article 42. Any document written in any language other than Spanish must be accompanied by a translation. The translations shall be made by a translator, whose charges shall be borne by the interested party submitting the document and in accordance with the formalities established by common law in this regard.

It shall not be necessary for all documents to be legalized, but the Investigating Authority, acting *ex officio* or at the request of an interested party, may require that a document be legalized.

Public or private documents, testimony of witnesses or experts, and means of reproduction of sound, voice or image and storage of information shall, in accordance with the provisions of the previous article, be admitted as evidence.

All evidence shall be assessed in accordance with the rules of fair comment.

Technical report on the evidence

Article 43. The Investigating Authority shall prepare a preliminary technical report and a final technical report evaluating the evidence submitted and examined in the investigation. These reports shall include, as appropriate, financial, economic, accounting and other calculations that may be necessary to analyse the information collected on the facts being investigated.

These technical reports shall be presented with a view to enabling the preliminary and the final determinations. The preliminary report shall be prepared on the basis of the information set forth in the application and shall take into account the responses to the questionnaires sent out by the Investigating Authority.

The final technical report shall be prepared once all the required evidence has been examined, and shall be added to the respective file.

Hearings

Article 44. Before issuing a final resolution, the Investigating Authority may schedule a hearing, at which all interested parties may present information and arguments. Upon conclusion of the hearing, the parties shall have a period of 15 days to present written arguments related to the matters discussed at the hearing.

No interested party shall be obliged to attend a hearing, and its absence shall not prevent the hearing from going ahead.

Interested parties attending a hearing shall notify the Investigating Authority of the names of their representatives, not less than five days before the date of the hearing. The Investigating Authority shall determine the order in which the interested parties speak and shall determine the time of their statements and the duration of the hearing.

Withdrawal of the application

Article 45. Applicants may withdraw their application in writing before the start of the investigation, and the application shall be considered as not submitted.

Likewise, once the investigation has been initiated, the applicant may withdraw from it at any time. If a request for withdrawal is submitted after the initiation of the investigation, the Investigating Authority shall notify the interested parties, and thereby terminate the investigation.

Powers of the Minister of the Economy

Article 46. A resolution imposing an anti-dumping duty, a countervailing duty or a safeguard measure, whether provisional or definitive, shall be adopted by the Minister of the Economy, and it shall take into account both, on the one hand, the technical report and the recommendations of the Investigating Authority and, on the other, the public interest.

The final resolution shall also confirm or revoke any provisional measures that have been adopted.

TITLE VI

SOLE CHAPTER

Special Procedural Rules on Unfair Trade Practices

Evidence and information to be included in investigations of unfair trade practices

Article 47. The application shall include relevant evidence on the existence of dumping or a subsidy, and also on injury and causal links. In the case of a subsidy, the amount of the subsidy may also be included, if possible.

The application must contain the following information:

- (a) Applicant's name, address, telephone number, tax identification number and, in the case of legal representation, the documentation attesting thereto;
- (b) Address to which notifications are to be sent;
- (c) Name of the domestic industry filing the application or on whose behalf it is filed, including the names, addresses, telephone numbers and emails of all other known producers in that industry;
- (d) Information concerning the extent of support for the application by the domestic industry, including the following details:
 - 1. Record of support for the application from the rest of the domestic industry;
 - 2. Total quantity and value of the domestic production of the like product;
 - 3. Quantity and value of the like product produced by the applicant and by each of the domestic producers.
- (e) Full description of the allegedly dumped or subsidized product, including the technical characteristics and uses of the product, and its tariff code with the maximum number of digits employed in the Harmonized System;

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- (f) Full description of the like domestic product, including its technical characteristics and uses, and its tariff code with the maximum number of digits employed in the Harmonized System;
- (g) Country of origin of the allegedly dumped or subsidized product and, if imported from a country other than that of production, the country from which the imported product has come;
- (h) Name and address of all natural or legal persons, whether exporters or importers, known by the applicant to be selling the allegedly dumped or subsidized product in El Salvador;
- (i) Information on the evolution of allegedly dumped or subsidized imports; the impact of these imports on domestic market prices of the like product and the consequent repercussions of these imports for the domestic industry in accordance with the relevant factors and indices which affect the status of the domestic industry and which are set out in the present Law as the means of demonstrating the injury and the existence of a causal connection;
- (j) In the particular case of dumping:
1. Information on the prices at which the product in question is sold when it is destined for consumption in the domestic market of the country of export or origin. Where appropriate, the following data shall be attached on the prices at which the product is sold from the country of export or origin to a third country or on the computed value of the product allegedly being dumped;
 2. Information on export prices or the prices at which the allegedly dumped product is first resold to an independent buyer in El Salvador and on the possible adjustments provided for in Article 13 of the present Law.
- (k) In the particular case of subsidies, evidence of the existence and nature of the subsidy concerned;
- (l) The dumping margin and anti-dumping duties applied for or the amount of the subsidy and countervailing duties applied for, as appropriate.

The original application and documentation submitted must be accompanied by a number of copies equal to the number of interested parties identified in the application, except in the case of the information deemed to be confidential.

Consultations in the event of a subsidy investigation

Article 48. Once an application relating to a subsidy has been admitted and, in any event, before a resolution to initiate an investigation has been issued, the Investigating Authority shall invite representatives of the governments of the countries whose products are the subject of the investigation to hold consultations with a view to reaching a mutually agreed solution.

Throughout the period of the investigation, the above-mentioned countries shall be given the opportunity to pursue such consultations. If requested by governments, the Investigating Authority shall allow access to non-confidential evidence.

Submission of an application by or on behalf of the domestic industry

Article 49. For investigations of dumping or subsidies, an application shall be considered to have been made by or on behalf of the domestic industry when:

- (a) It is supported by domestic producers whose joint production accounts for more than 50% of the total production of the like domestic product produced by that portion of the domestic industry which manifests its support for or opposition to the application;
- (b) Domestic producers expressly supporting the application represent at least 25% of the total production of the like domestic product produced by the domestic industry.

Resolution initiating an investigation of unfair trade practices

Article 50. When the Investigating Authority decides to initiate an investigation of unfair trade practices, it must issue a duly substantiated resolution, which must at a minimum include the following:

- (a) Name of the Investigating Authority, and the place and date of issuance of the resolution;
- (b) Name or business name and domicile of the domestic producer or producers of like products, and also the address to which notifications are to be submitted;
- (c) Name or business name and domicile of the importers and exporters, and the address to which notifications are to be submitted;
- (d) Country or countries of origin or consignment of the products alleged to be subject to unfair trade practices;
- (e) Detailed description of the product that has been imported or is being imported under alleged unfair trade practices;
- (f) Description of the like domestic product similar to the product being imported under alleged unfair trade practices;
- (g) Indication of the information-gathering periods;
- (h) Motivation and substantiation of the resolution, listing the pieces of evidence presented;
- (i) Period granted to those accused of such practices and, if applicable, to the foreign government or governments indicated, to provide any evidence that they deem appropriate, and also the address to which they may submit their arguments;
- (j) Determination of the information that will be required of the interested parties, through the questionnaires or forms;
- (k) Date of initiation of the investigation.

***De minimis* margin**

Article 51. In investigations of unfair trade practices, a margin shall be considered *de minimis* in the following cases:

- (a) In dumping investigations, when the margin is less than 2%, expressed as a percentage of the export price;
- (b) In subsidy investigations, the amount of the subsidy shall be considered *de minimis* when it is less than 1% *ad valorem*. When the exporting country is a developing country, the overall level of subsidies granted for the product concerned shall be deemed to be *de minimis* if it does not exceed 2% of the product's value, calculated on a per unit basis.

The foregoing calculations may be made on a consolidated basis by country, and individually by exporter; in the event that the total margins are lower than the levels determined, the investigation should be terminated in accordance with the provisions of the preceding article. If individual *de minimis* margins are established for certain exporters, the investigation shall be terminated for them and continued for those with higher margins.

Negligible imports

Article 52. Imports shall be considered negligible in the following cases:

- (a) In dumping investigations, when the quantity of allegedly dumped imports from a given country represents less than 3% of imports of the like product into the domestic market, except where the countries which individually account for less than 3% of imports of the like product into the domestic market collectively account for more than 7% of such imports;
- (b) In subsidy investigations, when the subsidized imports come from developing countries and the quantity of such imports represents less than 4% of the total imports of the like product into the domestic market, except where imports coming from developed countries and individually accounting for less than 4% collectively account for more than 9% of the total imports of the like product into the domestic market.

When exports under investigation come from more than one country, the investigation may also cover those countries whose exports are individually negligible.

Information-gathering period

Article 53. The period set for the gathering of information to determine whether or not there has been dumping or a subsidy shall be one year prior to the date of initiation of the investigation to which the available data relate.

For the purposes of determining whether or not there has been injury, the period set for the gathering of information shall be three years prior to the date of initiation of the investigation. The Investigating Authority may, however, opt for a shorter period, if it deems it appropriate, in the light of available information relating to the domestic industry and to the product under investigation.

Preliminary determination and resolution in investigations of unfair trade practices

Article 54. The Investigating Authority may recommend to the Minister of the Economy the imposition of a provisional measure when there has been a preliminary affirmative determination of the existence of a subsidy and it has been determined that such measures are necessary to prevent the infliction of injury during the investigation. Provisional measures may not, however, be applied until a period of 60 days has elapsed from the date on which the investigation is initiated.

The preliminary resolution shall lay out the findings and conclusions which have been reached on all matters of fact and of law which are deemed important and it shall include, at a minimum, the following:

- (a) Names of the known exporters, foreign producers and importers of the product under investigation;
- (b) Names of the known domestic producers of the like product;
- (c) Description of the product under investigation, and also of the like domestic product, including the tariff code with the maximum number of digits employed in the Harmonized System;
- (d) Dumping margin or level of the subsidy, as appropriate, whose existence has been determined;
- (e) Factors that led to the determination of injury and the causal link, including information on factors unrelated to the dumped or subsidized imports which have been taken into consideration;
- (f) Extent and period of application of the provisional measures which have had to be applied and the reasons for which such measures are necessary to prevent the infliction of injury during the investigation;
- (g) Instruction to the Directorate General of Customs to impose the measure.

Form of payment and duration of provisional measures

Article 55. Payment for provisional measures may be made by means of a cash deposit or security lodged with the competent authority and may not exceed the dumping margin or amount of the *ad valorem* subsidy, as indicated in the preliminary resolution.

Provisional measures shall be applied for a period not exceeding four months in the case of subsidies and six months in the case of dumping.

Price undertakings

Article 56. In dumping investigations, the proceedings may be suspended or terminated without the imposition of provisional measures or anti-dumping duties if the exporter gives satisfactory voluntary undertakings to revise its prices or to terminate exports at dumped prices.

In subsidy investigations, the investigation shall also be terminated if the government of the exporting country agrees to eliminate or limit the subsidy or the exporter agrees to revise its prices to a point where the Investigating Authority is satisfied that the injurious effect of the subsidy has been eliminated.

The price increases stipulated in these undertakings shall not exceed the dumping margin or the level necessary to offset the amount of the subsidy determined by the Investigating Authority.

Conditions for acceptance

Article 57. When the Investigating Authority accepts a price commitment, it shall publish a notice to this effect in the Official Gazette and in a newspaper with nationwide circulation, the costs of such publication to be borne by the applicant.

If the Investigating Authority decides to continue the investigation, it shall publish a notice indicating the date set for the final determination. In this case, the final determination shall be made within a period of 180 days of the date of publication of the said notice.

Continuation of the investigation

Article 58. Notwithstanding the provisions of Article 56 of the present Law, even if one or more undertakings are accepted, the Investigating Authority may continue the investigation until its conclusion, should it so decide. In such a case, if the Investigating Authority makes a negative determination of the existence of dumping, subsidization or injury, the undertaking or undertakings shall lapse, except where such determination is actually based on the fact that an undertaking has been given.

In the event that an affirmative determination of dumping or subsidization and of injury is made, the undertaking shall be maintained consistent with its terms and the provisions of the present Law.

Breach of undertaking

Article 59. If an undertaking is not honoured, the Investigating Authority may adopt provisions consisting in the immediate application of provisional measures, based on the best available information.

Early conclusion of the investigation

Article 60. The investigation shall be terminated when the Investigating Authority determines that:

- (a) There is insufficient evidence of dumping or a subsidy and no evidence of injury justifying continuation of the proceedings;
- (b) The dumping margin or the amount of the subsidy is minimal;

- (c) The quantity of actual or potential dumped or subsidized imports is insignificant.

Final resolution in investigations of unfair trade practices

Article 61. The final determination that determines the existence of dumping or a subsidy, injury and causal connection must include at least the following:

- (a) Names of exporters, foreign producers and importers of the product under investigation;
- (b) Names of the domestic producers of the like product that make up the domestic industry;
- (c) Description of the product under investigation, and also of the like domestic product;
- (d) Conclusions or determinations reached by the Investigating Authority in relation to the product under investigation, the like domestic product or directly competitive products;
- (e) Where applicable, the existing dumping margin and the basis for such determination, including a description of the methodology used to determine normal value, export price and any adjustments that may have been made in comparing these values and prices;
- (f) Where applicable, the amount established for the subsidy and the grounds on which the existence of the subsidy has been determined;
- (g) Factors on which injury and causation determinations have been based, including information on factors unrelated to dumped or subsidized imports that have been taken into account;
- (h) Amount of anti-dumping or countervailing duties to be imposed and their duration.

Individual dumping margins

Article 62. The Investigating Authority shall determine the dumping margin applicable to each known exporter.

If the number of exporters is so high that it is impossible to determine the dumping margin for each, the Investigating Authority may limit its consideration to a reasonable number of interested parties, using samples that are statistically valid on the basis of the information available at the time of selection, or of the highest percentage of the volume of exports of the country concerned that can reasonably be investigated.

Public interest and lesser duties

Article 63. The amount of the anti-dumping duty shall not exceed the dumping margin or, where applicable, the amount of the countervailing duty shall not exceed the rate of subsidization.

When the Investigating Authority has determined that all requirements for the imposition of anti-dumping measures or countervailing duties have been met, it shall consider whether the imposition of such measures would be injurious to the public interest. The consideration of public interest shall be conducted on the basis of information provided by interested parties or collected by the Investigating Authority in this regard during the investigation; it shall also consider the interests of the relevant domestic industry, the domestic competitiveness of the product under investigation and the needs of end-users.

The Investigating Authority shall consider whether the establishment of a duty less than the total dumping margin or, where applicable, a duty less than the total amount of the subsidy would be sufficient to eliminate the injury to the domestic industry.

Establishment and collection of antidumping or countervailing duties

Article 64. The corresponding resolution shall establish the anti-dumping duty that corresponds to each exporter of the dumped product or, where applicable, the countervailing duty for the subsidized product. These duties shall be applicable to the product originating from the country or countries under investigation, regardless of the countries from which they were consigned, and shall be collected by the Ministry of Finance, through the Directorate General of Customs.

Residual measures shall also be imposed on imports originating in or consigned from the country or countries under investigation, with a view to avoiding circumvention of the measures. The residual measure should be set at a level between the most and least burdensome measures applied to the exporters investigated.

When imports of a particular product are the subject of both anti-dumping and countervailing duty investigations, such duties shall not be imposed to compensate for the same situation of dumping or export subsidization.

Reimbursement of duties paid in excess of the dumping margin or countervailing duties

Article 65. The Ministry of Finance, through the Directorate General of Customs, shall reimburse the excess paid, in accordance with the provisions of the final resolution, in the following cases:

- (a) Where the definitive anti-dumping duty is lower than the provisional duty collected;
- (b) Where the actual level of subsidy in a given period, on the basis of which the duties were paid, has been eliminated or reduced to a level below that of the duty in force.

Termination of measures

Article 66. Any definitive anti-dumping duty or definitive countervailing duty shall be terminated, at the latest, within a period of five years from the date of its imposition or the date of the last review carried out, in accordance with the following article.

The Investigating Authority shall publish a notice in the Official Gazette indicating such termination, at least 90 days before the date of expiry of the definitive anti-dumping duty or definitive countervailing duty. The said notice shall be communicated to the domestic industry and to the exporter.

Review of measures

Article 67. The Investigating Authority shall review the need to maintain the anti-dumping or countervailing duty at the request of the domestic industry that submitted the application. The said application shall be supported by pertinent evidence to justify the need for the review and shall be submitted one year before the expiry of the period established for the imposition of the above-mentioned duties. The Investigating Authority shall contact the domestic industry and the exporter 90 days prior to the start of the one-year period, with a view to requesting consideration of the measures.

Upon initiation of the review, the Investigating Authority shall publish a notice to that effect in the Official Gazette and in a newspaper with nationwide circulation, and the costs of such publication shall be borne by the interested party.

Review relating to new exporters

Article 68. If a product is subject to definitive anti-dumping or definitive countervailing duties, the Investigating Authority shall conduct a review to determine the individual dumping margins or specific type of countervailing duty applicable to exporters or producers of the exporting countries concerned which have not exported the product concerned to El Salvador during the period of investigation, provided that such exporters or producers can demonstrate that they are not connected with any of the exporters or producers in the exporting country which are subject to anti-dumping or countervailing duties.

The said review shall commence within a period of 30 days following the date of receipt of the application by the producer or exporter concerned. The review shall be completed within the following 12 months.

During the review, no anti-dumping or countervailing duties shall be levied on imports from such exporters or producers. The Investigating Authority shall, however, establish the securities to be lodged for the amount of the residual anti-dumping or countervailing duties determined in accordance with article 64, paragraph 2, of the present Law.

TITLE VII

SOLE CHAPTER

Special Procedural Rules on Safeguard Measures

Evidence and information to be included in applications for safeguard investigations

Article 69. The application must include the following information:

- (a) Full description of the product under investigation, including the technical characteristics and uses of the product and its tariff code with the maximum number of digits employed in the Harmonized System;
- (b) Full description of the like domestic product or directly competitive domestic products, including their technical characteristics and uses, and also their tariff code with the maximum number of digits employed in the Harmonized System;
- (c) Identity of the domestic industry submitting the application, or on whose behalf it is being submitted, including the names, addresses, telephone numbers and emails of all other known producers of the like or directly competitive domestic product;
- (d) Percentage of domestic production of like or directly competitive products represented by the domestic industry;
- (e) Information on the quantity and value of the imported product in each of the three years prior to the application, by country of origin;
- (f) Details of the increase in imports in absolute or relative terms in relation to domestic production;
- (g) Information relating to the existence of serious injury or threat of serious injury to the domestic industry in each of the three years prior to the request, including information on the factors listed in Articles 27 and 28 of the present Law;
- (h) Explanation why the application of a safeguard measure would be in the public interest;
- (i) If application is made for a provisional measure, information on the critical circumstances in which any delay in taking action would entail injury to the industry that would be difficult to remedy and a statement indicating the extent of the provisional measure.

The original application and documentation provided must be accompanied by a number of copies equal to the number of interested parties identified in the application, except for the information deemed confidential.

Resolution initiating safeguard investigations

Article 70. If the Investigating Authority decides to initiate an investigation relating to safeguard measures, it must issue a duly motivated resolution, which, at a minimum, must include the following:

- (a) Name of the Investigating Authority, and also the place and date of issue of the resolution;
- (b) Confirmation that the application and accompanying documents have been accepted;
- (c) Name or business name and domicile of the domestic producer or producers of like or directly competitive products, and the address to which notifications are to be submitted;
- (d) Name or business name and domicile of the importers and exporters, and the address to which notifications are to be submitted;
- (e) Country or countries of origin or consignment of the imports under investigation;
- (f) Detailed description of the products subject to safeguard investigation that have been imported or are being imported;
- (g) Description of the like or directly competitive domestic product similar to the product that has been or is being imported;
- (h) Indication of the information-gathering period;
- (i) Motivation and substantiation for the resolution, listing the pieces of evidence presented;
- (j) Time-limit granted to the defendants and, where appropriate, the foreign government or governments indicated, to submit whatever evidence that they see fit, and the place where they may present their submissions;
- (k) Determination of the information that will be required of the interested parties, through questionnaires or forms;
- (l) Date of initiation of the investigation.

Information-gathering period in safeguard investigations

Article 71. In determining whether there has been a substantial increase in imports and serious injury, the information-gathering period shall be three years prior to the date on which the investigation was initiated.

Application of a provisional safeguard measure

Article 72. The application of a provisional safeguard measure may only be recommended if the Investigating Authority determines:

- (a) That the prevailing circumstances are critical, in other words, that any delay will entail injury that is hard to remedy;
- (b) That there is clear evidence that, as a result of unforeseen eventualities and pursuant to the obligations entered into by El Salvador under the General Agreement on Trades and Tariffs (GATT) 1994, the product under investigation is being imported in quantities and under conditions such that it is causing or threatening to cause serious injury to the domestic industry which manufactures like or directly competitive products.

The provisional safeguard measure may only take the form of the imposition of an additional *ad valorem* duty.

Preliminary determination and resolution in safeguard investigations

Article 73. In critical circumstances, in which any delay would entail injury that is hard to remedy, the Investigating Authority may recommend to the Minister of Economy imposition of a provisional safeguard measure, on the basis of a preliminary determination of the existence of clear evidence that increased imports have caused or threaten to cause serious injury. Provisional measures may

not, however, be applied until a period of 60 days has elapsed since the date of initiation of the investigation.

The resolution imposing a provisional measure shall be based on all the information available to the Investigating Authority at that time.

The preliminary resolution shall set out the findings and conclusions reached on all matters of fact and law that are considered important, which should, at a minimum, include the following:

- (a) Names of the known exporters, foreign producers and importers of the product under investigation;
- (b) Names of the known domestic producers of the like or directly competitive product;
- (c) Description of the product under investigation and of the like or directly competitive domestic product, including the tariff code with the maximum number of digits employed in the Harmonized System;
- (d) If a preliminary determination has been reached that there is evidence demonstrating an increase in the volume of imports, serious injury or the threat of such injury, and the causal connection between them;
- (e) Critical circumstances in which any delay would entail injury to domestic production that would be hard to remedy;
- (f) Extent and period of application of the provisional measures to be applied and the reasons why these provisional measures are necessary to prevent injury being caused during the investigation.

Method of payment and duration of provisional safeguard measures

Article 74. The safeguard measures may be paid by means of a cash deposit or security lodged with the competent authority.

Any amount collected under a provisional safeguard measure shall be reimbursed if the subsequent investigation determines that the increase in imports has not caused or threatened to cause serious injury to the domestic industry.

The provisional safeguard measures shall be applied for a period not exceeding 200 days, and may be suspended before their date of expiration through the issuance of the final resolution.

The Ministry of Finance, through the Directorate General of Customs, shall be the authority responsible for the imposition and monitoring of provisional safeguard measures.

Non-application of safeguard measures

Article 75. No safeguard measures shall be applied to imports of the product under investigation that originate in a developing country when such imports constitute no more than 3% of the total imports of the product under investigation in the country.

When imports from developing countries which individually account for less than 3% of imports of the product under investigation constitute more than 9% of such imports in their totality, a safeguard measure may be applied to them.

Substance of the final resolution in safeguard investigations

Article 76. In cases deemed necessary by the Investigating Authority, the domestic industry shall submit an adjustment plan to deal with the competition generated by imports, 60 days prior to issuance of the resolution by the Investigating Authority in an investigation for safeguard measures.

Where necessary, the Investigating Authority should assist the interested parties with the preparation of the adjustment plan.

The aforementioned resolution must include at least the following:

- (a) Names of the exporters, foreign producers and importers of the product under investigation;
- (b) Names of the domestic producers of the like or directly competitive product that make up the domestic industry;
- (c) Description of the product under investigation, and of the like or directly competitive domestic product;
- (d) Conclusions or determinations reached by the Investigating Authority in relation to the product under investigation, the like domestic product or directly competitive products;
- (e) Quantity and value of the product imported during the investigation period, by country of origin;
- (f) Conclusions or determinations on unforeseen developments and obligations entered into by El Salvador under the General Agreement on Tariffs and Trade (GATT) 1994 which led to increased imports of the product under investigation;
- (g) Positive determination of injury and causation, including factors examined and their relevance, and findings and reasoned conclusions on the issues of fact and law examined;
- (h) Reasons for which the Investigating Authority has concluded that the application of a definitive safeguard measure is in the public interest;
- (i) Details of the adjustment plan for the domestic industry, in the event that such plan has been requested by the Investigating Authority;
- (j) Form, level and duration of the proposed definitive safeguard measure and its consistency with the readjustment plan for the domestic industry;
- (k) If a quantitative restriction has been proposed, distribution of the quota among the supplier countries and an explanation of the basis on which the distribution has been made;
- (l) Timetable for the progressive liberalization of the measure, if the proposed duration of the measure is more than one year;
- (m) Developing countries exempted from the measure.

Duration of definitive safeguard measures

Article 77. Any definitive safeguard measure shall apply to all imports of the product under investigation, regardless of their source, which have entered the country on or after the date on which the measure takes effect.

A definitive safeguard measure shall be applied for a period not exceeding four years, including the period of application of any provisional measure, unless the period is extended in accordance with Article 81 of the present Law.

The total duration of a definitive safeguard measure, including its extension, shall not exceed ten years.

The Ministry of Finance, through the Directorate General of Customs, shall be the authority responsible for the imposition and monitoring of definitive safeguard measures.

Quotas applied as definitive safeguard measures

Article 78. When the definitive safeguard measure takes the form of a quota, it may not exceed 50% of the average imports of the product under investigation during the three years prior to the application of the measure.

If more than one country exports the product under investigation, the quota shall be distributed among the supplier countries, taking into account the percentage of imports from each country to the Salvadoran market during the three years prior to the application of the measure.

Progressive liberalization of safeguard measures

Article 79. A definitive safeguard measure which is to be applied over a period longer than one year shall be progressively liberalized at regular intervals during the period of application, in accordance with the timetable published in the notice announcing the application of a definitive safeguard measure.

Review of safeguard measures

Article 80. If the period of application of a definitive safeguard measure is greater than three years, the Investigating Authority shall review the situation when half that period has elapsed, by reviewing the impact of the measure on the domestic industry. In the light of the findings of such review, the Investigating Authority shall decide to maintain or revoke the definitive safeguard measure or to speed up the pace of its liberalization.

The relevant resolution shall be notified to the WTO Council for Trade in Goods, through the Committee on Safeguards.

Extension of a definitive safeguard measure

Article 81. A definitive safeguard measure may be extended once, on the application of the domestic industry, submitted six months before the end of the period of its imposition. The application must be accompanied by relevant evidence, which shall be analysed by the Authority to determine whether such extension is justified.

The extension shall only proceed if the Investigating Authority determines that the measure is still necessary to prevent or remedy serious injury and that there is evidence that the domestic industry is in the process of readjustment.

An extended definitive safeguard measure shall not be more restrictive than it was at the end of the initial period of its imposition. During the extension period, the measure shall be progressively liberalized in accordance with the timetable published in the notice announcing the extension of a definitive safeguard measure.

New application of a safeguard measure

Article 82. A new safeguard measure may not be applied to the same product during a period equal to half of the period during which the original measure was applied. At the same time, however, the minimum period of such non-application shall be two years.

TITLE VIII

SOLE CHAPTER

National Trade Remedy System

Creation of the system

Article 83. The National Trade Remedy System, hereinafter referred to as "the System", is hereby created, and shall function as a forum or observatory between the public and private sectors, intended to promote actions aimed at ensuring the application of trade remedies for the benefit of domestic production sectors.

System coordinator

Article 84. The Ministry of the Economy shall serve as coordinator of the System and shall ensure liaison with the different public and private entities that constitute the System.

System committee

Article 85. A System Committee, hereinafter referred to as "the Committee", shall be created, with the principal role of ensuring the functioning of the National Trade Remedy System.

The Committee shall comprise the following:

- (a) One regular member and that member's alternate, proposed by the Ministry of the Economy, who shall be chair of the Committee;
- (b) One regular member and that member's alternate, proposed by the Ministry of Finance;
- (c) One regular member and that member's alternate, proposed by the Ministry of Agriculture and Livestock;
- (d) One regular member and that member's alternate, proposed by the Central Reserve Bank of El Salvador;
- (e) One regular member and that member's alternate, proposed by the Exports and Investments Agency of El Salvador;
- (f) One regular member and that member's alternate, proposed by the industrial sector;
- (g) One regular member and that member's alternate, proposed by the export sector;
- (h) One regular member and that member's alternate, proposed by the trade sector;
- (i) One regular member and that member's alternate, proposed by the agricultural sector.

The members of the industrial, export, trade and agricultural sectors shall be appointed by the Minister of the Economy, from lists put forward by private entities dealing with industrial, export, commercial and agricultural matters, with the status of legal entities, selected in accordance with its rules of procedure; all of which shall be regulated by the provisions of the present Law.

Committee meetings

Article 86. At its first working session, the Committee shall determine the elements for the elaboration of its operational regulations.

For a session to be quorate, it must be attended by at least one more than half of all its members, including the chair or the chair's alternate.

Actions by the System

Article 87. The members of the System shall carry out all necessary actions to implement and promote trade remedies, including the following:

- (a) Promoting the approval of legal instruments to strengthen trade remedies;
- (b) Reporting any indication or evidence of which they are aware regarding the existence of an unfair trade practice in the market; assisting with the collection of information and recommending to the competent authority that it initiate an investigation;
- (c) Handling cases in which Salvadoran enterprises are being investigated for alleged unfair trade practices in the markets of other trading partners, and recommending appropriate legal actions to the competent authority;
- (d) Continuously monitoring trade flows in strategic products, with a view to determining the possible triangulations of products, and recommending to the competent authority that it initiate investigations relating to origin;
- (e) Recommending the development of early warning mechanisms about trade regulations imposed by the countries of destination of Salvadoran exports;
- (f) Checking the technical barriers reported by exporters and importers, documenting them and making proposals on how to eliminate them.

Adoption of countermeasures

Article 88. The System may recommend the adoption of countermeasures, in accordance with the principles of international law and as a response proportional to the measure adopted by another State.

The recommendation adopted by the System should be transmitted to the competent authority for implementation in accordance with the applicable legal procedures.

TITLE IX**SOLE CHAPTER****Final Provisions and Appeals****Budget**

Article 89. The necessary budgetary resources shall be allocated for the actions and functions to be performed by the Investigating Authority and for the effective implementation of the present Law, in accordance with the provisions of the Constitutional Law on State Financial Management.

The Investigating Authority, with the support of the authority responsible for managing international financing, may arrange technical or financial assistance to governments and international organizations which specialize in trade remedy actions.

Provision of information

Article 90. Public institutions dealing with statistics, data on imports or exports, or other relevant trade information, must supply such information when so requested by the Investigating Authority, to support the investigations under way.

The Investigating Authority shall guarantee compliance with the confidentiality rules in the handling of such information.

Technical assistance

Article 91. The Ministry of the Economy, through the Directorate for the Management of Trade Agreements, shall provide technical assistance to any enterprise that so requests, in particular to micro, small and medium-sized enterprises, with a view to explaining to them the use of the instruments regulated by the present Law.

The aforementioned Directorate shall prepare procedural manuals or guides that these enterprises must follow in preparing applications for the initiation of actions in defence of their interests as part of the investigations regulated by the present Law.

These procedural manuals or guides must be issued by executive agreement and published in the Official Gazette.

Setting of deadlines

Article 92. The deadlines established in the present Law must be worked out in calendar days. If the last day of the period is a non-working day, the period shall be extended to the next working day.

Appeals

Article 93. In investigations relating to unfair trade practices and safeguard measures, appeals may only be made for the reconsideration of final decisions. Any alleged procedural irregularities may also be challenged in the same appeal.

The appeal must be lodged in writing and duly substantiated, with the Minister of the Economy, within a period of 15 days, counting from the day following the respective notification. If, upon expiry of this period, no appeal has been lodged, the resolution mandating the act in question shall be final.

The Minister shall have a period of 30 days to rule on such appeals.

If the appeal is not lodged in a timely manner, it shall be declared inadmissible by duly substantiated resolution, against which there shall be no appeal.

Supplementary application

Article 94. Any matters not regulated by the present Law shall be governed by the provisions of the 1994 General Agreement on Tariffs and Trade, the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade (GATT) 1994, the Agreement on Subsidies and Countervailing Measures and the Agreement on Safeguards of the WTO, the Central American Regulations on Safeguard Measures, and the Central American Regulations on Unfair Trade Practices. As appropriate, the other commitments relating to this matter entered into by Member States within the framework of the WTO shall also apply.

When a trade agreement in force in El Salvador includes specific provisions on trade remedy measures, the measures established in the present Law shall be applied in accordance with the provisions of such agreement.

Similarly, matters not covered by the present Law and the aforementioned trade agreements shall be subject to the provisions of common law, provided that these are not contrary to the principles and provisions of the present Law.

Regulations

Article 95. The President of the Republic shall issue the regulations necessary for the application of the present Law, within a period of 90 days of its entry into force.

Special nature of the Law

Article 96. The provisions of the present Law shall, by virtue of their special nature, prevail over any other, of a general or special nature, that regulate the same matter.

Validity

Article 97. The present decree shall enter into force 30 days after its publication in the Official Gazette.
