COUNTERVAILING DUTY LAWS AND REGULATIONS

Provisions by Observers

Addendum

The following communication, dated 14 February 1994, has been received from the Permanent Mission of Peru.

The Permanent Mission of Peru to the United Nations Office and other International Organizations at Geneva sends its greetings to the Secretariat of the General Agreement on Tariffs and Trade (GATT). In the context of the notifications which have to be made by Observer governments of the Subsidies Code and the Committee on Subsidies and Countervailing Measures, we have the honour to transmit copies of the relevant provisions which are in force in Peru respecting countervailing duties.

Please find the following attached:

- Supreme Decree No. 133-91-EF;
- Legislative Decree No. 668, Articles 10 and 15;
- Supreme Decree No. 277-91-EF;
- Supreme Decree No. 051-92-EF;
- Decree Law No. 25868;
- Supreme Decree No. 009-93-ITINCI;
- Supreme Decree No. 025-93-ITINCI.

Furthermore, the authorities of the INDECOPI have informed us that so far the Commission to Investigate Dumping and Subsidies has not adopted any decision imposing countervailing duties on subsidized imports.
NATIONAL LAWS AND REGULATIONS ON DUMPING

STATE GUARANTEES TO PREVENT AND REMEDY DISTORTIONS CAUSED BY UNFAIR COMPETITION

LEGISLATIVE DECREES NO. 668
(Relevant Articles)

Article 10 - The customs practices of valuation, reference prices or minimum valuation levels shall have the objective of ensuring that the taxable base for the application of customs duties corresponds to the actual value of the imported goods. The above practices may not be used to raise or distort the level of tariff protection.

Article 15 - The State shall ensure the adoption of measures to prevent and remedy distortions caused by unfair competitive practices in international trade, such as dumping and subsidies.

The procedure for the application of anti-dumping and countervailing duties under the terms of the previous paragraph shall be approved by Supreme Decree signed by the Minister of the Economy and Finance and shall be exempted from the requirements set out in Article 10 of this Legislative Decree.

PROVISIONS TO CLARIFY THE CURRENT PROCEDURE FOR THE APPLICATION OF ANTI-DUMPING AND COUNTERVAILING DUTIES

SUPREME DECREES NO. 277-91-EF

CONSIDERING:

That Supreme Decree No. 133-19-EF of 12 June 1991 established rules to prevent and remedy distortions in competition in the market caused by dumping and subsidies;

That the above Supreme Decree establishes in Articles 11 et seq. the procedure for determining imports at dumped or subsidized prices and for applying the corresponding anti-dumping or countervailing duties;

That Legislative Decree No. 668 establishes measures to guarantee free foreign and domestic trade as a fundamental condition for the economic development of the country and lays down in Article 15 that the State shall ensure the adoption of measures to prevent and remedy distortions caused by unfair competitive practices in international trade, such as dumping and subsidies;

That the above provision lays down that the procedure for the application of anti-dumping and countervailing duties shall be approved by Supreme Decree signed by the Minister of the Economy and Finance;
In accordance with the provisions of Article 15 of Legislative Decree No. 668;

DECREES:

Article 1 - The procedure for determining imports at dumped or subsidized prices shall be governed by the provisions of Supreme Decree No. 133-91-EF.

Article 2 - This Supreme Decree shall be signed by the Minister of the Economy and Finance.

25 November 1991

TO ESTABLISH ANTI-DUMPING AND COUNTERVAILING DUTIES

SUPREME DECREE NO. 133-91-EF

CONSIDERING:

That it is the responsibility of the State to establish basic rules governing the activities of economic agents with a view to guaranteeing effective freedom of competition in the market;

That the Political Constitution of Peru lays down that monopolies, oligopolies, the exclusive control of market sectors, and restrictive practices and agreements in industry and commerce shall be prohibited, and guarantees that the rules established by the State shall ensure the normal operation of the market, with a view to preventing the threat of injury to domestic enterprises and the distortions that may be caused by such practices, through the imposition of appropriate sanctions;

That dumping and subsidies are considered to be acts which distort market competition, as guaranteed within the social market economy provided for in the Political Constitution of Peru;

The Article 117 of the Political Constitution of Peru lays down that foreign trade shall be free, within the limits which are established on social grounds and in the interests of national development, and that Article 131 of the Political Constitution of the State recognizes freedom of trade and industry, provided that it is exercised in accordance with the law;

In accordance with the powers conferred by Article 211 (20 and 26) of the Political Constitution of Peru;

Approved by vote of the Council of Ministers; and

Subject to the duty to report to Congress;

DECREES:

Article 1 - The objective of this Supreme Decree is to establish rules to prevent and remedy distortions in competition in the market caused by dumping and subsidies.
CHAPTER I - IMPORTS AT DUMPED PRICES

Article 2 - A product shall be considered to be imported at a dumped price when the export price of the product in the country of origin or of exportation is lower than the normal value of the same or similar product when destined for consumption or use in that country in the ordinary course of trade.

For the purposes of this Supreme Decree, the term "similar product" shall mean a product which has characteristics which resemble those of the imported product, taking into account its nature, quality, use and function.

Article 3 - For the purposes of this Supreme Decree, the export price shall be considered to be the real price which is actually paid or payable for the product sold for export to Peru.

When it appears to the Commission to Investigate Dumping and Subsidies, referred to in Article 11 of this Supreme Decree, that this price is unreliable because of the existence of an association, relation or compensatory 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 or similar products are first resold to an independent buyer in Peru. If the imported products are not resold to an independent buyer, or are not resold in the condition as imported, the export price may be constructed on such reasonable basis as the Commission may determine.

In constructing the export price, allowance shall be made for all costs incurred prior to the first resale, such as duties and taxes, and a reasonable margin of profit. In these costs, allowance shall be made, inter alia, for the cost of insurance, transport, maintenance and unloading; import duties and other levies arising since exportation form the country of origin; a reasonable margin of general, administrative and selling costs and a reasonable margin of profit and any usual commission.

Article 4 - For the purposes of this Supreme Decree, "normal value" means the amount actually paid or payable for a product identical or similar to that imported, destined for consumption or use in the domestic market of the country of origin or of exportation, in the ordinary course of trade.

Transactions between associated or related parties or parties who are bound by a compensatory arrangement shall be considered to be in the ordinary course of trade, provided that the prices and costs are identical or similar to those in trade between independent parties.

Article 5 - Where there are no sales of the product or a similar product in the ordinary course of trade in the domestic market of the country of origin or of exportation, or when such sales do not permit the valid determination of the normal value, this shall be determined:

(a) By considering the highest export price in the country of origin of an identical or similar product exported to a third country, provided that such a price is representative;

(b) failing the above, by considering the constructed price of an identical or similar product. This price shall be based on the cost of production in the ordinary course of trade in the country of origin, plus a reasonable amount for administrative and selling costs and for profits. As a general rule, the addition for profit shall not exceed the profit normally realized on sales of a product of the same category in the domestic market of the country of origin;

(c) where there is no export price to a third country which is representative, or where it is not possible to construct the price of an identical or similar product, the normal
value shall be constructed on such reasonable basis as may be determined by the Commission referred to in Article 11 of this Supreme Decree;

(d) in the case of imports coming from and originating in counties with centrally-planned economies, the normal value shall be determined on the basis of the comparable price in the ordinary course of trade at which an identical or similar product is sold for domestic use or consumption to a third country with a level of development similar to that of Peru. Where such comparable price does not exist, the normal value may be constructed on such reasonable basis as may be determined by the Ministry of the Economy and Finance.

Article 6 - The margin of dumping means the difference between the export price and the normal value. This margin shall be calculated per unit of product imported at the dumped price.

The export price and the normal value must be compared taking into account the following criteria:

1. Differences in the physical characteristics of the products;
2. differences in quantities, allowing for quantity discounts freely agreed in the ordinary course of trade during a representative period, and production costs for different volumes;
3. differences in conditions of sale, which may include differences in indirect taxes and duties, credit conditions, guarantees, technical assistance arrangements, after-sales service, commissions, packaging, transport, insurance, maintenance, loading and related or other costs;
4. other criteria which may affect the difference between the above prices.

This comparison shall be made taking into account the condition of the product at the time of the transaction ex-factory and on the basis of transactions undertaken as nearly as possible at the same time. Both the exporter and the domestic importer, and any other person with a legitimate interest, may present evidence to disprove the margin of dumping.

CHAPTER II - SUBSIDIZED IMPORTS

Article 7 - An import is considered to have been subsidized when the production, manufacture, transport or export of the imported good or its raw materials or inputs has received, directly or indirectly, any bounty, aid, rebate, premium, subsidy or similar measure in the country of origin or of exportation.

Article 8 - The amount of the subsidy shall be calculated in monetary units or ad valorem per unit of subsidized product imported into the national territory. The above amount shall be established by deducting, inter alia:

1. Any expenditure that had to be incurred in order to be entitled to the subsidy or to benefit from it;
2. Export taxes, duties and other levies to which the export of the product to Peru has been subjected and which are specifically intended to offset or reduce the subsidy.
CHAPTER III - ANTI-DUMPING AND COUNTERVAILING DUTIES

Article 9 - Anti-dumping duties may be imposed on the importation of any product at a dumped price if it causes or threatens to cause injury to an industry in Peru.

Likewise, countervailing duties may be imposed in order to offset any subsidy granted, directly or indirectly, in the country of origin or of exportation on the manufacture, production, export or transport of any product whose importation causes or threatens injury to an existing industry in Peru.

The anti-dumping duties and countervailing duties referred to in this article constitute compensatory measures to prevent injury to the national economy and in no way constitute taxes.

For the purposes of this article, injury shall be characterized by imports made in accordance with the conditions of Articles 2 and 7 of this Decree. Threat of injury occurs where imports materially retard the establishment or development of an industry in Peru.

Article 10 - An anti-dumping or countervailing duty may only be imposed when the injury or threat of injury to an existing industry in Peru has been demonstrated.

CHAPTER IV - PROCEDURES FOR THE DETERMINATION OF IMPORTS AT DUMPED OR SUBSIDIZED PRICES

Article 11 - There shall be established a "Commission to Investigate Dumping and Subsidies", which for the purposes of this Decree shall also be termed "the Commission". The Commission shall have the function of ensuring the observance of the provisions of this Decree. (The Commission shall be composed of five members appointed by Supreme Resolution, signed by the Minister of the Economy and Finance. The Commission shall have a Technical Secretariat.

Article 12 - Domestic producers who consider that they are injured or threatened by imports entered during the previous six (6) months at dumped or subsidized prices of products identical or similar to the products they produce, and who are representative of the domestic production of the products in question, may apply to the Commission referred to in the previous paragraph for the necessary investigation and the imposition of the appropriate anti-dumping or countervailing duties.

A complaint may also be submitted by representatives of the sectoral associations or bodies of the producers concerned. The domestic producers or sectoral associations or bodies must together represent a major proportion of the total domestic production of the products covered by the application for investigation.

Exceptionally, on grounds of national interest, the Commission may initiate the investigation of its own accord when it has reason to presume that Peruvian industry has been injured by imports at dumped or subsidized prices.

Article 13 - Threat of injury shall be determined to exist when imminent. For this purpose, the Commission shall consider inter alia the possibility of a substantial increase in imports, provided that the latter are effected at dumped or subsidized prices.

"Decree Law No. 25629 of 21 July 1992, which came into force on 22 July 1992, provided that the Commission shall rule, as the final administrative instance, on procedures for the determination of imports at dumped and subsidized prices."
Article 14 - It shall be the responsibility of the parties applying for the investigation, referred to in Article 12 above, to prove the injury or threat of injury caused by imports under the terms of this Decree.

A determination of injury or threat of injury shall be based on reliable evidence and shall involve an objective examination of the following factors:

(a) The volume of dumped or subsidized imports, both in absolute terms and relative to the existing domestic production;

(b) the resulting effects on the economic sector concerned, as they may be deduced from the actual or potential trends of the relevant economic factors, such as:

output;
utilization of existing capacity;
productivity;
inventories;
sales;
market share;
domestic prices;
growth;
profits;
return on investments;
cash flow;
ability to raise capital and investments;
employment;
wages;

(c) any other element from which the imported product benefits in its country of origin or of exportation and which serves to characterize the price as a case of dumping or of subsidy.

The list of economic factors given above is illustrative rather than exhaustive and, as a consequence, other factors may be considered which in the opinion of the investigating body are relevant for the determination of injury. No one of the above factors is by itself sufficient to permit a definitive determination.

Article 15 - When investigating the injury, the Peruvian authorities responsible for the investigation may cumulatively assess the volume and effect on the domestic industry of imports coming from or originating in two or more countries, provided that one of the following requirements is met:

(a) That the countries from which the imports come have been the subject of investigation for dumping practices or subsidies during the previous 12 months;

(b) that the imported products compete with a similar product produced in Peru.

Where the assessment of each import which it is intended to treat cumulatively, shows that its impact on the domestic industry is of little significance, it shall not be accumulated for the purposes of determining injury.

The authorities must consider all the relevant economic factors, including the following:
(a) Whether the volume and market share of the imports is insignificant;
(b) whether the importation of the product is isolated and sporadic;
(c) whether the price on the Peruvian market is particularly sensitive due to the nature of the product, so that a small quantity of imports could lead to depressed prices.

Article 16 - The complaints referred to in Article 12 of this Decree must be submitted in writing and contain at least the following particulars:

1. Description of the goods imported at dumped or subsidized prices;
2. country or countries of origin or of exportation;
3. name and domicile of the importers and exporters, if known;
4. import prices and normal value in the country of origin or of exportation;
5. particulars of the injury or threat to domestic production caused by the dumped or subsidized imports;
6. offer to submit to the authorities the corresponding documents for verification of the information;
7. an indication of the evidence it is wished to adduce and provision of the evidence in the possession of the complainants.

Article 17 - Once the detailed complaint described in the above article has been submitted, a file shall be opened in which shall be placed the letters, communications, data or copies of instruments or account books and other private documents which the complainant has obtained or may obtain in the exercise of his legal powers. Such documents shall be treated as confidential and as such shall only be used for the procedures set out in this Supreme Decree. Parties which submit documents may waive their confidentiality in the communication by which they offer them as evidence.

The confidential nature of the account books of the complainant and of third parties involved in the investigation cannot be adduced as grounds for refusing to provide them to the authorities requesting them in the proper exercise of their fiscal functions as set out in this Decree, in accordance with Article 2(8) of the Political Constitution of Peru. The authorities are responsible for ensuring the confidentiality of such documents as they may receive in the course of the proceedings referred to in this Decree.

Likewise, the Commission must, in so far as possible, gather the opinions of the purchasers and/or users of the product for which an investigation is sought.

Article 18 - Any person with a legitimate interest may request and obtain access to information on the steps taken in accordance with this Decree and to the documents produced in evidence, provided that they are not confidential, and shall have the right to receive copies as provided for by the law.

Article 19 - If the Commission to Investigate Dumping and Subsidies is satisfied from its examination of the documents submitted that the requirements set out in Article 16 have been met and that there are grounds for initiating an investigation, it shall open the corresponding procedure. This decision shall be taken within one month of the submission of the complaint by the complainant. This
period may be extended by one further month if the Commission so decides. The decision to open an investigation of the complaint, and the preliminary and definitive determinations, shall be published twice consecutively in the Diario Oficial.

If the Commission does not consider that there are grounds for initiating an investigation, this decision shall be communicated promptly to the complainant who may, within 15 days, submit new evidence as grounds for initiating the procedure. If, after examining the new evidence, the Commission still does not find grounds for initiating an investigation, it shall make known its definitive decision not to proceed with the case.

**Article 20** - When an investigation dumped or subsidized prices has been initiated, or before such an investigation, the Commission shall request the authorities of the countries whose products are under investigation for their opinion on the facts of the case and the possibility of proposing a solution agreed between the Peruvian authorities and the authorities of the country concerned. This possibility shall be kept open throughout the period of the investigation.

Any investigation which is initiated must conclude with the publication of a final report and the opinion of the Commission.

**Article 21** - The Commission to Investigate Dumping and Subsidies shall have a maximum period of nine (9) months to carry out the investigation. This period shall be calculated from the date of the final publication in "El Peruano" of the Commission's decision to initiate the investigation. Where, in the opinion of the Commission, grounds exist for so doing, this period may be extended once only for a further three months.

Within the above period, the Technical Secretariat of the Commission, which shall carry out the procedure in its capacity as investigating body, may ask *ex officio*, or at the request of the parties, for the production or submission of additional evidence or information.

At the conclusion of the period referred to in this article, the Vice-Minister of the Economy, on the basis of the report and opinion submitted by the Commission, shall adopt a final decision in a reasoned resolution, which shall be published and communicated in accordance with the law. The resolution shall establish the conditions governing the period for which the duties are imposed, where appropriate.

**Article 22** - If at any time during the investigation, the Commission makes a preliminary finding of the existence of dumped or subsidized prices and of consequent injury or threat of injury, it shall recommend the Vice-Minister of the Economy to issue a preliminary resolution ordering the payment of provisional anti-dumping or countervailing duties or the furnishing of security and/or cash deposits equal to the above duties. These duties shall be applied for as long as the situation giving rise to them persists and for up to the provisionally estimated amount of the margin of dumping or subsidy on all imports of the product under investigation.

The resolution which imposes provisional anti-dumping or countervailing duties shall be notified to the parties.

**Article 23** - Where the final duties are higher than the provisional duties paid, the surplus shall not be charged, except in the circumstances envisaged in Article 26 of this Decree. In the opposite case, the difference shall be refunded.

Where final duties are not imposed, the entire amount paid by way of provisional duty shall be refunded, or the security returned or released.
Article 24 - During the investigation procedure, the complainant, the importers and exporters of the goods and in general any parties which have shown that they have a legitimate interest in the investigation, may request the holding of hearings with a view to defending their positions.

Article 25 - The Commission shall evaluate cases in which the competent authorities of the country of origin or exportation offer to eliminate or limit the subsidy or to take measures concerning its injurious effects. It shall also evaluate cases in which the producer or exporter undertakes to forgo the subsidy or to cease exports to Peru, thereby eliminating the margin of dumping or the amount of the subsidy and the consequent injury. Where such an offer is approved, the Vice-Minister of the Economy shall issue the corresponding resolution.

This resolution shall stipulate that, in the event of non-compliance with the undertaking or where the producer or exporter fails to provide periodic information relating to the fulfilment of the commitment, the Commission will reopen the investigation and immediately impose provisional duties on the basis of the information available.

Article 26 - As an exceptional measure, the Commission may recommend the imposition of definitive anti-dumping or countervailing duties under the terms of this Decree, including in respect of goods which have been entered or released for consumption, applicable for not more than ninety (90) days prior to the establishment of provisional duties.

The above definitive duties may be imposed when an injury which is difficult to repair is caused by massive imports at dumped or subsidized prices over a short period. In cases of dumping, it shall also be necessary to determine that there is a history of dumping and that the importer was or should have been aware that the exporter was engaging in this practice.

The resolution made by the Vice-Minister under the terms of this Article may be the subject of appeals as established by law.

Article 27 - Once an anti-dumping or countervailing duty has been imposed in respect of a product, it shall be collected in the appropriate amount irrespective of the identity of the subsequent importer.

Article 28 - Anti-dumping or countervailing duties shall not exceed the amount necessary to remedy the injury or threat of injury which has been determined and in no case shall be in excess of the margin of dumping or the amount of the subsidy found to exist.

The anti-dumping or countervailing duty shall remain in force for as long as the causes of the injury or threat of injury which gave rise to it persist.

The Commission may \textit{ex officio}, or at the request of a party after a reasonable period has elapsed, examine the need to maintain the definitive duties which have been imposed and shall submit a report and a recommendation to the Vice-Minister of the Economy in this respect.

No imported product shall be subject to both an anti-dumping and a countervailing duty.

Article 29 - The Commission may determine the administrative and procedural costs and other expenses which must be borne by the complainant in respect of the importers in cases in which the complaints submitted under the terms of this Decree are rejected.
Article 30 - The definitive or provisional duties referred to in this Decree shall be collected in accordance with the rules set out in the General Customs Act for the payment of other import duties. The lodging of security in the case of provisional duties shall be governed by the rules set out in the above Act.

Investigations carried out shall not in any case hinder the entry of the goods for consumption.

SUPPLEMENTARY PROVISIONS

FIRST - This Supreme Decree shall be applied without prejudice to the relevant provisions of the international agreements to which Peru is a party, which may be used during the investigation as supplementary rules.

SECOND - The Ministry of the Economy and Finance shall establish by ministerial resolution the internal procedures and supplementary rules for the application of this Supreme Decree. Without prejudice to the above, the provisions of Supreme Decree No. 006-67-SC shall supplement those of this Decree and the supplementary rules which may be issued under the terms of this Article, in so far as they do not contradict them.

THIRD - Without prejudice to the provisions of this Decree, in accordance with the principle of reciprocity, Peru may apply to products exported from and/or originating in other countries the same treatment as those countries have applied in respect of dumping or subsidies to products exported from and/or originating in Peru.

FINAL PROVISION

This Supreme Decree shall be signed by the Minister of the Economy and Finance and by the Minister of Industry, Domestic Trade, Tourism and Integration.

12 June 1991

CREATION OF INDECOPI AS A NEW BODY FOR CONTROLLING COMPETITION, INCLUDING DUMPING, AND A SPECIAL TRIBUNAL FOR THE SETTLEMENT OF DISPUTES

DECREE LAW NO. 25868 (Relevant Articles)

Article 1 - There shall be created the National Institute for the Defence of Competition and the Protection of Intellectual Property (INDECOPI) as an agency responsible to the Ministry of Industry, Tourism, Integration and International Trade Negotiations. It shall have legal personality in public law and shall enjoy technical, economic, budgetary and administrative autonomy. Its functions shall be governed by the provisions of this Decree Law.

TITLE I
OBJECTIVES AND DOMICILE

Article 2 - INDECOPI is the agency responsible for the application of legal provisions intended to protect:
The market from monopolistic practices which control and restrict competition in the production and marketing of goods and in the provision of services, as well as from practices which create unfair competition and which affect economic agents and consumers;

(b) intellectual property rights in all their forms, in accordance with Article 30 of this Decree Law;

(c) the quality of products; and

(d) other matters that may be assigned to it.

Article 3 - INDECOPI shall have its headquarters in the city of Lima and may establish offices in the territory of the Republic.

TITLE II
THE BOARD OF DIRECTORS

Article 4 - The Board of Directors is the highest body of INDECOPI. It shall be composed of three members, two representing the Ministry of Industry, Tourism, Integration and International Trade Negotiations, and one representing the Ministry of the Economy and Finance. They shall be appointed by supreme resolutions, signed by the Minister of Industry, Tourism, Integration and International Trade Negotiations.

The functions of the Board of Directors are to:

(a) Approve the administrative policies of INDECOPI;

(b) appoint the General Manager of INDECOPI;

(c) appoint the members and alternate members of the Commissions and the Heads of the Offices referred to in Chapters II and III of Title V of this Decree Law, taking into consideration the short lists of candidates proposed by the Advisory Council; and

(d) other functions that may be assigned to it.

Article 5 - The President of the Board of Directors of INDECOPI shall be appointed by the Minister of Industry, Tourism, Integration and International Trade Negotiations, from one of the representatives of the above Ministry, for a period of five years. The President may only be removed from his functions on the grounds referred to in Article 15 of this Decree Law. If the President is absent or temporarily prevented from performing his duties, he shall be replaced by one of the Directors in accordance with the provisions of the Regulations.

The functions of the President are to:

(a) Convene and preside over the meetings of the Board of Directors and represent INDECOPI in its public and private acts;

(b) propose to the appropriate authorities of the Government the adoption of legal measures or regulations which he deems necessary to ensure the protection of the rights referred to in Article 2 of this Decree Law;
(c) represent INDECOPI in its relations with international technical cooperation agencies, and coordinate the activities undertaken in this respect with the Executive Secretary for International Technical Cooperation of the Office of the President;

(d) supervise the operations of the institution; and

(e) other functions that may be assigned to him.

TITLE III
ADVISORY COUNCIL

Article 6 - The Advisory Council is the advisory body of INDECOPI. It shall be composed of professionals and specialists of recognized ability and experience, from both the State and representative bodies of the private sector.

Article 7 - The functions of the Advisory Council are to:

(a) Issue its opinion on the matters submitted for its consideration by the President of INDECOPI;

(b) recommend that the President of INDECOPI take action vis à vis the competent State agencies for the adoption of measures intended to protect the rights referred to in Article 2;

(c) advise the President of INDECOPI in his activities relating to international technical cooperation agencies, and coordinate the activities undertaken with the Executive Secretary for International Technical Cooperation of the Office of the President;

(d) propose the adoption of policies designed to achieve the objectives of INDECOPI;

(e) propose, for the appointment of members and alternate members of the Tribunal for the Defence of Competition and Intellectual Property, a number of candidates equal to twice the number of members envisaged in Article 11 of this Decree Law;

(f) submit to the Board of Directors of INDECOPI short lists for the appointment of the Presidents and other members and alternate members of the Commissions and of the Heads of the Offices referred to in Chapters II and III of Title V of this Decree Law; and

(g) other functions that may be assigned to it.

Article 8 - The Advisory Council shall be presided over by the President of the Board of Directors of INDECOPI and shall be composed of representatives of the following institutions:

- One from the Ministry of Industry, Tourism, Integration and International Trade Negotiations;
- One from the Ministry of the Economy and Finance;
- One from the Ministry of Education;
- One from the Ministry of Justice;
- Two from the National Confederation of Private Employers’ Institutions (CONFIEP);
- One from the National Assembly of Eminent Persons;
One from consumers’ associations; and
- One from associations of authors and inventors. The members of the Advisory Council shall be appointed by supreme resolution at the proposal of the bodies which they represent.

Article 9 - The Advisory Council shall elect a Vice-President from among its members.

TITLE IV
INTERNAL SUPERVISORY BODY

Article 10 - INDECOPI shall have an internal supervisory body, which shall carry out its functions in accordance with the provisions of the Regulations issued under this Decree Law.

TITLE V
OPERATIONAL STRUCTURE

CHAPTER I - TRIBUNAL

Article 11 - The Tribunal for the Defence of Competition and Intellectual Property shall be composed of five members appointed by supreme resolution, signed by the Minister of Industry, Tourism, Integration and International Trade Negotiations, taking into account the candidates proposed by the Advisory Council of INDECOPI. The members shall elect from among themselves a President for a period of three years. The function of President shall be rotated.

Three alternate members shall be appointed according to the same procedures required for the appointment of titular members.

Article 12 - Members of the Tribunal for the Defence of Competition and Intellectual Property must be qualified professionals with not less than ten years’ experience in any of the matters which fall within the competence of the Tribunal, and of good repute.

Article 13 - The Tribunal for the Defence of Competition and Intellectual Property shall have the following functions:

(a) Rule, as a second and final administrative instance, on procedures related to the defence of competition and consumers’ rights, as well as intellectual property rights, in accordance with Article 2 of this Decree Law;

(b) rule, as a second and final administrative instance, on the adoption of corrective measures and the imposition of sanctions for the violation of the provisions referred in the previous subparagraph;

(c) recommend to the President of INDECOPI action to be vis à vis the appropriate authorities of the Government for the adoption of the legal measures or regulations which it deems necessary to guarantee the protection of the rights referred to in Article 2 of this Decree Law;

(d) propose the imposition of anti-dumping or countervailing duties, where appropriate, to the Vice-Minister of the Economy; and

(e) where necessary, have recourse to the assistance of the forces of law and order for the implementation of its decisions.
**Article 14** - The presence of a minimum of four of its members shall be required for the Tribunal to sit. Its decisions shall be approved by three affirmative votes. In the event of a tied vote the President of the Tribunal shall have the deciding vote.

The sessions of the Tribunal shall be held in public, except where it deems that the case should be heard confidentially on the grounds that the industrial or trade secrets of any of the parties involved in the procedure may be divulged.

**Article 15** - The members of the Tribunal for the Defence of Competition and Intellectual Property may only be removed from their functions on the grounds of negligence, incompetence or immorality.

**Article 16** - In respect of the matters which fall within the competence of any of the operational bodies of INDECOPI, no appeal may be made to the judicial authorities until administrative channels have been exhausted.

For the purposes of the provisions of this Decree Law, administrative channels shall be considered to have been exhausted only when the corresponding decision is issued by the Tribunal for the Defence of Competition and Intellectual Property.

**Article 17** - Appeals may be lodged through judicial channels against the decisions of the Tribunal for the Defence of Competition and Intellectual Property before the Civil Chamber of the High Court of Justice of Lima, as referred to in Article 40 of the Constitutional Law on the Judiciary.

Appeals may be lodged against the decisions of the above court before the Chamber of Constitutional and Social Law of the Supreme Court of Justice of the Republic.

**CHAPTER II - COMMISSIONS**

**Article 18** - INDECOPI shall have six Commissions for the protection of competition and consumers’ rights, namely:

(a) The Multi-Sectoral Free Competition Commission;

(b) the Commission to Investigate Dumping and Subsidies;

(c) the Consumer Protection Commission;

(d) the National Commission for the Supervision of Publicity;

(e) the Commission for the Repression of Unfair Competition; and

(f) the Commission for the Supervision of Technical Standards, Measurements, Quality Control and Para-Tariff Restrictions.

**Article 19** - The Commissions referred to in the previous Article shall have the following characteristics:

(a) They shall enjoy technical and operational autonomy and shall be governed by their establishing legislation and its amending provisions, where these do not contradict the provisions of this Decree Law;
(b) they shall rule, as a first administrative instance, on the procedures which fall within their competence and shall decide upon the adoption of corrective measures and the imposition of appropriate sanctions;

(c) they shall be composed of four members, one of whom shall preside over them;

(d) they shall elect their President from among their members;

(e) they shall have two alternate members, elected in accordance with the same procedures as the titular members;

(f) the presence of three of their members is required for their sittings to be valid;

(g) they shall approve their decisions by majority vote, with the President holding the deciding vote; and

(h) they shall have a Technical Secretariat, which shall act as their liaison with the administrative structure of INDECOPI.

Article 20 - The members of the Commissions referred to in this Chapter shall be governed by the following provisions:

(a) They shall be appointed by the Board of Directors of INDECOPI, taking into consideration the short lists of candidates proposed by the Advisory Council;

(b) they shall hold office for an unlimited period;

(c) the President shall hold office for five years, after which the function shall be rotated; and

(d) they must be qualified professionals with recognized experience in their respective specialization, as well as meeting the requirements set out in the laws governing the corresponding fields.

Article 21 - The Multi-Sectoral Free Competition Commission shall monitor compliance with the Act concerning practices which monopolize, control and restrict free competition, in accordance with the provisions of Legislative Decree No. 701.

Article 22 - The Commission to Investigate Dumping and Subsidies shall monitor the observance of the rules to prevent and remedy distortions of competition caused by dumping and subsidies, in accordance with the provisions of Supreme Decree No. 133-91-EF and its amending provisions.

Article 23 - The Consumer Protection Commission shall monitor compliance with the Consumer Protection Act approved by Legislative Decree No. 716. For this purpose, it shall perform the functions set out in Articles 38 and 42 of the above Decree.

Article 24 - The National Commission for the Supervision of Publicity shall monitor compliance with the rules governing publicity in defence of the consumer, adopted by Legislative Decree No. 691. For this purpose, it shall perform the functions which, in accordance with the above Legislative Decree, lie within the competence of the National Council for the Supervision of Publicity.
Article 25 - The Commission for the Repression of Unfair Competition shall monitor compliance with the rules sanctioning commercial practices which are not in good faith, in accordance with the pertinent legislation.

Article 26 - The Commission for the Supervision of Technical Standards, Measurements, Quality Control and Para-Tariff Restrictions shall adopt the appropriate technical standards for all sectors, as well as rules respecting statutory measurements, and it shall also qualify and authorize enterprises and institutions to exercise the functions of certifying the quality of products and their conformity with technical standards, and for this purpose shall exercise the functions of the Commission set up under Article 3 of Legislative Decree No. 658. The Commission shall also monitor compliance with rules relating to free trade and issue opinions on the application of provisions establishing para-tariff restrictions, as well as on those which contravene the provisions of Legislative Decree No. 668 and Article 4 of Decree Law No. 25629.

Article 27 - Appeals may be lodged against the decisions of the Commissions referred to in this Chapter before the Tribunal for the Defence of Competition and Intellectual Property.

Article 28 - The procedures covered by the Commissions referred to in this Chapter may be initiated by the Technical Secretariats ex officio, by interested or injured parties, or by representatives of the sectoral associations or bodies of those concerned.

Article 29 - In cases where there is a conflict of competence between two or more Commissions, it shall be resolved in accordance with the rules set out in the Regulations respecting the general rules of administrative procedures.

Where the substance of a case lies, not within the competence of the Commission before which it has been brought, but within that of another Commission referred to in this Chapter, the former Commission shall decline to deal with the matter and shall refer it without taking any further action to the appropriate Commission for decision.

CHAPTER III - OFFICES

Article 30 - INDECOPI shall have five Offices for the protection of intellectual property rights in all their forms:

(a) The Office of Distinctive Signs;

(b) the Inventions Office;

(c) the New Technologies Office;

(d) the Office for the Registration of Transfers of Foreign Technology; and

(e) the Copyright Office.

Article 31 - The Offices referred to in the previous Article have the following characteristics:

(a) They shall enjoy technical, operational and administrative autonomy in accordance with their establishing legislation;

(b) they shall rule, as the first administrative instance, on the cases which lie within their competence and on the imposition of the appropriate sanctions;
(c) they shall come under the authority of a Head; and

(d) they may establish departments to cover the various operational areas falling within their competence, in accordance with the provisions of the Regulations.

Article 32 - The Heads of the Offices referred to in this Chapter shall be governed by the following provisions:

(a) They shall be appointed by the Board of Directors of INDECOPI, taking into consideration the short lists of candidates proposed by the Advisory Council;

(b) they shall hold office for an unlimited period;

(c) they must be qualified professionals with recognized experience in their respective specialization, as well as meeting the requirements set out in the laws governing the corresponding field; and

(d) they shall act as a liaison with the administrative structure of INDECOPI.

Article 33 - The Office of Distinctive Signs shall keep a register of trademarks and trade names, emblems and appellations of origin or geographical provenance as well as protecting the rights deriving from such registration.

Article 34 - The Inventions Office shall keep a register of patents, industrial models and industrial designs or drawings, as well as protecting the rights deriving from such registration. It shall also disseminate technological advances.

Article 35 - The New Technologies Office shall keep a register of plant varieties, biotechnology and other new technologies.

Article 36 - The Office for the Registration of Transfers of Foreign Technology shall keep a register of licensing agreements for the use of technology, patents, trademarks and other industrial property rights of foreign origin, as well as of basic and detailed assistance, management and franchise agreements stipulating the payment of fees, in accordance with the provisions of Article 21 of Legislative Decree No. 662.

Article 37 - The Copyright Office shall defend, protect and register copyright and neighbouring rights on artistic works in all their forms and on software, as well as holding intangible statutory deposits. It shall also keep a register of authors' associations.

Article 38 - Appeals may be lodged against the decisions of the Offices referred to in this Chapter before the Tribunal for the Defence of Competition and Intellectual Property.

Article 39 - In cases where there is a conflict between the competence of two or more Offices, the matter shall be resolved in accordance with the provisions of the Regulations on the general rules of administrative procedures.

Where the substance of a case lies, not within the competence of the Office before which it has been brought, but within that of another of the Offices referred to in this Chapter, the former Office shall decline to deal with the matter and shall refer it without taking any further action to the appropriate Office for decision.
Article 40 - Where a particular right deriving from intellectual property in any of its forms has been registered with two or more of the Offices referred to in this Chapter, the order of priority of the rights shall be determined according to the time of registration.

TITLE VI
ADMINISTRATIVE STRUCTURE

CHAPTER I - GENERAL MANAGEMENT

Article 41 - The General Management is the executive and administrative body of INDECOPI, for the administration of which it is responsible to the Board of Directors.

Article 42 - The functions of the General Management of INDECOPI are to:

(a) Direct, coordinate, supervise and control the activities of the various administrative divisions;

(b) coordinate the activities of the various operational divisions and provide them with the necessary support;

(c) act as the legal representative of the institution;

(d) administer the financial assets and budget;

(e) appoint, promote, suspend and dismiss administrative staff; and

(f) other functions that may be assigned to it with the agreement of the Board of Directors.

Article 43 - The functions of the General Management shall be supported by the departments of INDECOPI.

CHAPTER II - THE DEPARTMENTS

Article 44 - INDECOPI has four Departments, which report directly to the General Management:

(a) The Department of Administration, Finance and Support for Operational Bodies, which is administratively responsible for the Technical Secretariats of the Commissions and for the Heads of the Offices referred to in Chapters II and III of Title V of this Decree Law. Its functions shall consist of the actions necessary to ensure the normal functioning of INDECOPI;

(b) the Information Processing and Systems Department, which is intended to support the operational bodies of INDECOPI in all matters relating to computerized information processing.

(c) the International Relations Department, the functions of which consist in following the activities of international agencies relating to matters falling within the competence of INDECOPI and evaluating current international agreements with a view to recommending the accession of the country to those agreements;
(d) the Legal Department, the functions of which are to provide the necessary legal support to all the operational and administrative bodies of INDECOPI.

Article 45 - The specific functions of each of the Departments referred to in the previous Article shall be established in the Regulations issued under this Decree Law.

CHAPTER III - TECHNICAL SECRETARIATS

Article 46 - Each of the Commissions referred to in Chapter II of Title V of this Decree Law shall have a Technical Secretariat which shall serve as its liaison with the administrative structure of INDECOPI.

Each of the Technical Secretariats referred to in the previous paragraph operates under its corresponding Commission and is headed by a Technical Secretary appointed by the President of INDECOPI, taking into account the proposal of the respective Commission.

Article 47 - The functions of the Technical Secretariats are to:

(a) Provide the Commissions with the support they need for their normal activities and ensure for this purpose the necessary coordination with the other operational and administrative bodies of INDECOPI;

(b) initiate ex officio the procedures or cases which fall within the competence of the respective Commission when they deem that the circumstances so require, or when the Commission so decides;

(c) undertake the necessary investigations to provide the Commissions with the information needed to issue the appropriate decision, in accordance with their establishing legislation;

(d) other functions provided for in their establishing legislation; and

(e) other functions that may be assigned to them.

TITLE VII
FINANCIAL AND EMPLOYMENT CONDITIONS

Article 48 - The assets of INDECOPI shall consist of:

(a) Administrative fees for procedures brought before the Commissions and Offices, where appropriate;

(b) fees for the registration of intellectual property;

(c) amounts collected in respect of fines;

(d) resources derived from international technical cooperation;

(e) the legacies and donations which it receives; and

(f) the funds which are transferred to it in accordance with the law.
Article 49 - All the functions performed by persons who work in INDECOPI shall be remunerated, with the exception of the members of the Advisory Council. The alternate members of the Tribunal for the Defence of Competition and Intellectual Property and the alternate members of the Commissions, referred to in Chapter II of Title IV of this Decree Law, shall not be remunerated in so far as they do not exercise the corresponding functions.

The remuneration referred to in the previous paragraph shall be paid, provided that the persons concerned are not public servants or officials who perform other jobs or functions remunerated by the State. Such persons shall receive an expense allowance in accordance with the provisions of the Regulations issued under this Decree Law.

Article 50 - The employees of INDECOPI shall be governed by the employment regime of the private sector. They shall therefore be governed by the provisions of Act No. 4916 and its amending, amplifying, supplementing or related provisions.

SUPPLEMENTARY PROVISIONS

FIRST PROVISION - In accordance with the provisions of this Decree Law, the following instruments shall be amended: Legislative Decrees Nos. 71, 171, 570, 577, 658, 691, 701 and 716; Article 78 of Act No. 13714; Decree Law No. 25595; Supreme Decrees Nos. 61-62-ED, 095-85-EFC, 009-87-ED, 133-91-EF; Supreme Resolutions Nos. 090-81-ITI/IND and 175-88-ICTI/IND; Departmental Order No. 012-87-BNP and Directorial Order No. 001-89-DIG-DA/BNP.

SECOND PROVISION - INDECOPI shall be included in the scope of the provisions relating to legal security in administrative matters set out in Title IV of Legislative Decree No. 757 - Framework Act for the Growth of Private Investment, with the exception of Articles 24, 25, 26 and 32. Consequently, the Sole Text of the Administrative Procedures (TUP A) of INDECOPI shall be approved by Supreme Decree, signed by the Minister of Industry, Tourism, Integration and International Trade Negotiations.

THIRD PROVISION - Where the legislation establishing the Commissions and Offices referred to in Title V of this Decree Law does not envisage specific time-limits for the procedures and cases which fall within their competence, the provisions of the Regulations on the general rules of administrative procedures shall be applicable.

FOURTH PROVISION - By supreme resolution, signed by the Minister of Industry, Tourism, Integration and International Trade Negotiations, the financial assets, budgetary surpluses, property and archives of the Institute for Industrial and Technological Investigation and Technical Standards (ITINTEC) shall be transferred to INDECOPI, in accordance with Article 2 of Decree Law No. 25818, which abolishes and liquidates the above Institute.

FIFTH PROVISION - The Regulations issued under this Decree Law shall be approved by Supreme Decree, signed by the Minister of Industry, Tourism, Integration and International Trade Negotiations.

TRANSITIONAL PROVISION

SOLE PROVISION - The members of the Commissions referred to in Chapter II of Title V of this Decree Law who hold office as of the date of entry into force of this law shall continue in their functions until new appointments are made in accordance with the provisions of Article 5 (f).
FINAL PROVISIONS

FIRST PROVISION - Article 46 of Legislative Decree No. 716, Article 3 of Decree Law No. 25629 and any other legal provision which conflicts with the provisions of this Decree Law, are repealed.

SECOND PROVISION - This Decree Law shall enter into force on the day following its publication in the Diario Oficial "El Peruano".

THEREFORE:

For publication and implementation.

ALBERTO FUJIMORI FUJIMORI
OSCAR DE LA PUENTE RAYGADA
President of the Council of Ministers and Minister of Foreign Affairs.
JORGE CAMET DICKMANN
Minister of Industry, Domestic Trade, Tourism and Integration.

§219 04.06.93. - Supreme Decree No. 009-93-ITINCI to approve the Sole Text of the Administrative Procedures of the National Institute for the Defence of Competition and the Protection of Intellectual Property (INDECOPI). (05.06.93)

CONSIDERING:

That Legislative Decree No. 757 - Framework Act for the Growth of Private Investment, established the obligation upon all public administrative bodies to approve and publish their corresponding Sole Text of Administrative Procedures (TUPA):

That Supreme Decree No. 094-92-PCM lays down the rules to be observed in order to comply with the obligation referred to in the previous paragraph;

That the Sole Text of the Administrative Procedures of the public administrative bodies which come under the central Government must be approved by Supreme Decree;

In accordance with the provisions of Article 22 of Legislative Decree No. 757;

DECREES:

Article 1 - The Sole Text of the Administrative Procedures (TUPA) of the National Institute for the Defence of Competition and the Protection of Intellectual Property (INDECOPI), contained in the Annex which forms an integral part of this Supreme Decree, is hereby approved.

Article 2 - In accordance with Article 34 of Legislative Decree No. 757, the sole office for INDECOPI's documentary procedures shall be the Documentary Processing Unit of the Department of Administration, Finance and Support for Operational Bodies.

Article 3 - Without prejudice to the procedures which the Offices, Commissions and Tribunal are responsible for initiating ex officio and the legal powers assigned to them, the administrative
procedures set out in the TUPA, which is approved by this Decree, shall be followed by INDECOPI, and other procedures which are not explicitly mentioned shall be abolished.

Article 4 - The administrative procedures followed by the various bodies of INDECOPI, shall be governed by the provisions of Title IV of Legislative Decree No. 757, by its Regulations approved by Supreme Decree No. 094-92-PCM, by this Supreme Decree and, additionally, by the Law on the General Rules of Administrative Procedures.

Article 5 - The fees chargeable for services other than the administrative procedures set out in this TUPA shall be approved and published regularly by the Board of Directors of INDECOPI.

JAMIE JOSHIYAMA TANAKA,
Chief of the Office of the President of the Republic,
ALFONSO BUSTAMANTE Y BUSTAMANTE,
Minister of Industry, Tourism, Integration and International Trade Negotiations.

MINISTRY OF INDUSTRY, TOURISM, INTEGRATION AND INTERNATIONAL TRADE NEGOTIATIONS (MITINCI)


ANNEX-S.D. No. 009-93-ITINCI

II. COMMISSION TO INVESTIGATE DUMPING AND SUBSIDIES.

(A) AUTOMATIC APPROVAL PROCEDURES

Not envisaged in the case of this Commission.

(B) PRIOR EVALUATION PROCEDURES COVERED BY AFFIRMATIVE ADMINISTRATIVE CONFIDENTIALITY

Not envisaged in the case of this Commission.

(C) PRIOR EVALUATION PROCEDURES COVERED BY NEGATIVE ADMINISTRATIVE CONFIDENTIALITY

Not envisaged in the case of this Commission.

(D) PROCEDURES NOT GOVERNED BY TIME-LIMITS OR ADMINISTRATIVE CONFIDENTIALITY

(1) PROCEDURES TO PREVENT AND REMEDY DISTORTIONS OF COMPETITION CAUSED BY DUMPING

(a) Requirements:

- A complaint, which must contain the following:

- General information:
The name or business name, domicile and telephone number of the complainant. Where the complaint is submitted by a legal person, general information must be supplied concerning its representative (name, identity documents and legal entitlement to represent).

Principal economic activity of the complainant(s).

Complainant’s production as a percentage share of total domestic production in the activity concerned.

Names of the principal domestic producers of the product.

Detailed description of the domestic product(s) affected by dumping, with indication of the trade and technical names, make or model, tariff heading and technical specifications.

Detailed description of the product imported at a dumped price, with indication of the trade and technical names, make or model and technical specifications, tariff heading, and duties and other import taxes on the product covered by the complaint.

Country of origin or provenance (or both where they are not the same) from which the product is imported.

Name and domicile of foreign producers or exporters.

Name or business name and domicile of the domestic enterprises which are importing the product covered by the complaint.

Value and volume of imports entered and expected to be entered (deeming a minimum period of six months prior to the date of the complaint).

In cases where the complainant covers products from Member States of the Cartagena Agreement, the complainant must submit a sworn statement in which he certifies that a similar complaint in respect of a like product has not been submitted to the Board of the Cartagena Agreement, and undertakes not to submit any such complaint without first notifying the Commission to Investigate Dumping and Subsidies so that it can terminate its investigation.

Export price of the product in the country of origin or of export, with a general indication of the conditions of sale.

Selling price on the market of the country of origin or of exportation of the product under investigation, with a general indication of the terms and conditions under which it is marketed.

The amount of the duties claimed and the method of collection.

Information concerning the domestic industry and producers:

Statistical data for at least the last three years (or the period for which the enterprise has been in operation, if shorter than the above) and monthly statistics for the past year concerning:
The production of the complainant enterprise.

The production capacity of the complainant enterprise and the extent to which it is utilized.

Sales of the product concerned on the domestic market and abroad, in terms of both quantity and value.

Selling prices and marketing conditions on the domestic market and the export market, where appropriate.

Cost structure for the manufacture of the product.

Information concerning the injury or the threat of injury:

Evaluation of the impact which dumped imports are having or may have on the domestic industry (sales, domestic prices, production, utilization of capacity, inventories, employment, investment, wages, etc.).

Documents which must be attached to the complaint:

Proof of corresponding payment.

Where appropriate, copies of the documents granting the power to represent the natural or legal person submitting the complaint.

Enough copies of the complaint for the parties complained against.

Where the complaint is submitted by a sector, association or grouping, the information must be consolidated.

At the request of the Commission or at its own initiative, the complainant enterprise shall submit any document with a close bearing on the complaint.

Where the parties, and especially the complainants, supply information which they consider to be confidential, the investigating authority may request them to make non-confidential summaries of that information so that it can be divulged in this form to the other parties concerned. Where the party providing the information declines to provide the requested summary, it must give reasons for its refusal. In cases where it is impossible for the information considered confidential to be divulged by the party supplying it, such information shall only be taken into account if the investigating authority has sufficient evidence to show that it is accurate.

No appeal may be lodged against the decision by which the Commission imposes provisional anti-dumping duties.

(b) This procedure shall be initiated following the submission of the documents and the complaint, which must be in accordance with the form set out in Annex No. 1, which forms part of this TUPA.
(c) The administrative fees for this procedure are:

- For receiving the complaint: 0.25 UIT. **
- For initiating the investigation: 0.75 UIT.

(d) The service to which the complaint must be submitted is the Technical Secretariat of the Commission to Investigate Dumping and Subsidies.

(e) The authority which is competent to issue decisions relating to this procedure is the Commission to Investigate Dumping and Subsidies.

(f) The following forms of recourse are available in these cases:

- An application for reconsideration, which shall be submitted to the Commission to Investigate Dumping and Subsidies within 15 working days of the day following notification of the decision, subject to payment of 0.5 UIT.
- An appeal, which shall be submitted to the Commission to Investigate Dumping and Subsidies within 15 working days of the day following notification of the corresponding decision, subject to payment of 0.5 UIT. The authority with the power of decision on such appeals is the Tribunal for the Defence of Competition and Intellectual Property.

(2) PROCEDURES TO PREVENT AND REMEDY DISTORTIONS OF COMPETITION CAUSED BY SUBSIDIES

(a) Requirements:

- A complaint, which must contain the following:

  - General information:

    - The name or business name, domicile and telephone number of the complainant. Where the complaint is submitted by a legal person, general information must be supplied concerning its representative (name, identity documents and legal entitlement to represent).

    - Principal economic activity of the complainant(s).

    - Complainant’s production as a percentage share of total domestic production in the activity concerned.

    - Names of the principal domestic producers of the product.

    - Detailed description of the domestic product(s) affected by the subsidies, with indication of the trade and technical names, make or model, tariff heading and technical specifications.

** Fiscal unit subject to taxation (UIT), equivalent to US$685.
Detailed description of the subsidized product imported, with indication of the trade and technical names, make or model and technical specifications, tariff heading, and duties and other import taxes on the product covered by the complaint.

Country of origin or provenance (or both where they are not the same) from which the product is imported.

Name and domicile of foreign producers or exporters.

Name or business name and domicile of the domestic enterprises which are importing the product covered by the complaint.

Value and volume of imports entered and expected to be entered (deeming a minimum period of six months prior to the date of the complaint).

In cases where the complaint covers products from Member States of the Cartagena Agreement, the complainant must submit a sworn statement in which he certifies that a similar complaint in respect of a like product has not been submitted to the Board of the Cartagena Agreement, and undertakes not to submit any such complaint without first notifying the Commission to Investigate Dumping and Subsidies so that it can terminate its investigation.

Export price of the product in the country of origin or of export, with a general indication of the conditions of sale.

Selling price on the market of the country of origin or of exportation of the product under investigation, with a general indication of the terms and conditions under which it is marketed.

The amount of the duties claimed and the method of collection.

The bounty, aid, rebate or premium and, in general, the description of the subsidy practice granted, directly or indirectly, in the country of origin or exportation in connection with the production, manufacture, transport or exportation of the imported product or its raw materials or inputs.

Authority or agency granting the subsidy.

Where appropriate, a copy of the legislation authorizing the subsidy and describing the procedure for obtaining it, if known.

Value or amount of the subsidy granted to producers and/or exporters of the product in question and its impact on the price of the latter.

Information concerning the domestic industry and producers:

Statistical data for at least the last three years (or the period for which the enterprise has been in operation, if shorter than the above) and monthly statistics for the past year concerning:

The production of the complainant enterprise.
The production capacity of the complainant enterprise and the extent to which it is utilized.

Sales of the product concerned on the domestic market and abroad, in terms of both quantity and value.

Selling prices and marketing conditions on the domestic market and the export market, where appropriate.

Information concerning the injury or the threat of injury:

Evaluation of the impact which subsidized imports are having or may have on the domestic industry (sales, domestic prices, production, utilization of capacity, inventories, employment, investment, wages, etc.).

Documents which must be attached to the complaint:

- Proof of corresponding payment.

- Where appropriate, copies of the documents granting the power to represent the natural or legal person submitting the complaint.

- Enough copies of the application for the parties complained against.

- Where the complaint is submitted by a sector, association or grouping, the information must be consolidated.

At the request of the Commission or at its own initiative, the complainant enterprise shall submit any document with a close bearing on the complaint.

Where the parties, and especially the complainants, supply information which they consider to be confidential, the investigating authority may request them to make non-confidential summaries of that information so that it can be divulged in this form to the other parties concerned. Where the party providing the information declines to provide the requested summary, it must give reasons for its refusal. In cases where it is impossible for the information considered confidential to be divulged by the party supplying it, such information shall only be taken into account if the investigating authority has sufficient evidence to show that it is accurate.

No appeal may be lodged against the decision by which the Commission imposes provisional anti-dumping duties.

(b) This procedure shall be initiated following the submission of the documents and the complaint, which must be in accordance with the form set out in Annex No. 1, which forms part of this TUPA.

(c) The administrative fees for this procedure are:

- For receiving the complaint: 0.25 UIT.***

***Fiscal unit subject to taxation (UIT), equivalent to US$685.
For initiating the investigation: 0.75 UIT.

(d) The service to which the complaint must be submitted is the Technical Secretariat of the Commission to Investigate Dumping and Subsidies.

(e) The authority which is competent to issue decisions relating to this procedure is the Commission to Investigate Dumping and Subsidies.

(f) The following forms of recourse are available in these cases:

- An application for reconsideration, which shall be submitted to the Commission to Investigate Dumping and Subsidies within 15 working days of the day following notification of the decision, subject to payment of 0.5 UIT.

- An appeal, which shall be submitted to the Commission to Investigate Dumping and Subsidies within 15 working days of the day following notification of the corresponding ruling, subject to payment of 0.5 UIT. The authority with the power of decision on such appeals is the Tribunal for the Defence of Competition and Intellectual Property.

SUPREME DECREE NO. 025-93-ITINCI

REGULATIONS OF THE LAW ON THE ORGANIZATION AND THE FUNCTIONS OF THE NATIONAL INSTITUTE FOR THE DEFENCE OF COMPETITION AND THE PROTECTION OF INTELLECTUAL PROPERTY

TITLE I
NATURE, OBJECTIVES AND FUNCTIONS

Article 1 - The National Institute for the Defence of Competition and the Protection of Intellectual Property (INDECOPI) is a decentralized public agency of the Ministry of Industry, Tourism, Integration and International Trade Negotiations, which enjoys technical, economic, budgetary and administrative autonomy and has as its objectives those laid down in Article 2 of the Law on the organization and functions of INDECOPI (Decree Law No. 25868) and in the third supplementary provision of the Law on the Restructuring of Enterprises (Decree Law No. 26116).

For the purposes of these regulations, the "Law" means Decree Law No. 25868, "Ministry" means the Ministry of Industry, Tourism, Integration and International Trade Negotiations, "Board of Directors" means the Board of Directors of INDECOPI, and "Tribunal" means the Tribunal for the Defence of Competition and Intellectual Property.
TITLE II
STRUCTURE

Article 2 - For the purpose of achieving its objectives, INDECOPI has been given the following structure:

(a) HIGHER BODIES
    - Board of Directors
    - Advisory Council

(b) OPERATIONAL STRUCTURE
    - Tribunal for the Defence of Competition and Intellectual Property
    - Commissions
    - Offices

(c) ADMINISTRATIVE STRUCTURE
    - General Management
    - Technical Secretariats

(d) SUPERVISORY BODY
    - Internal Supervisory Body

TITLE III
HIGHER BODIES

CHAPTER 1 - BOARD OF DIRECTORS

Article 3 - The Board of Directors is responsible for directing and supervising the activities of the operational and administrative bodies of the Institute. It does not participate in or interfere with the jurisdictional decisions of the operational bodies. The General Manager provides it with the administrative support necessary to the performance of its functions.

Article 4 - In addition to the functions mentioned in Article 4 of the Law, the Board of Directors is responsible for:

(a) Approving the administrative, financial, public relations, international relations and pay policies, the hiring of staff, the programme of activities and the budget of INDECOPI;

(b) appointing the members of the Commissions and their alternates and the Heads of the Offices referred to in Chapters II and III of Title V of Decree Law No. 25868, with reference to the short lists proposed by the Advisory Council, and dismissing them;

(c) appointing and dismissing the General Manager of INDECOPI;

(d) other functions necessary for INDECOPI to operate properly.
Article 5 - The President of the Board of Directors officially represents the Institute and in that capacity is the only one authorized to make public statements on any of the matters that fall within the competence of the bodies of the Institution, except where such authority is expressly delegated. The post of President of the Board of Directors may be remunerated, when so determined by the Board of Directors in accordance with the requirements of the Institution.

Article 6 - In application of paragraph (c) of Article 5 of the Law, the President of the Board of Directors shall:

(a) Convene meetings of the Board of Directors;

(b) delegate authority to represent INDECOPI in its public and private acts to one of the members of the Board of Directors or one of the officials of the Institution;

(c) propose to the appropriate authorities of the Government the adoption of the measures which he deems necessary to ensure the protection of the rights covered by the Law, including the amendments made by Decree Law No. 26116;

(d) inform the Ministry of the candidates proposed by the Advisory Council for the appointment of the members of the Tribunal and their alternates;

(e) conclude agreements and contracts with natural or legal persons, Peruvian or foreign; and

(f) perform other functions that may be assigned to him by the Board of Directors.

Article 7 - The President of the Board of Directors shall serve for a period of five (5) years. At the end of this period, the outgoing President shall remain in office until a new President has been appointed.

If the President is absent or temporarily indisposed, he shall be replaced by the other representative of the Ministry.

Three (3) months from the date on which his absence or temporary indisposition began, the mandate of the President of the Board of Directors shall automatically lapse, whereupon the Ministry of Industry, Tourism, Integration and International Trade Negotiations must appoint a new President, in accordance with the Law. The same procedure shall apply in the case of the other members of the Board of Directors.

Article 8 - The President of the Board of Directors can be removed from his post only after completion of the corresponding administrative procedure in which the grounds mentioned in Article 15 of the Law are established and assessed. The Ministry of Industry, Tourism, Integration and International Trade Negotiations will issue a ministerial decision to that effect.

The provisions of the previous article and the present article also apply to the other members of the Board of Directors.

Article 9 - The Board of Directors will meet as required by the institutional functioning of INDECOPI, and at least twice a month. Meetings will be convened in writing with one working day's notice.
In addition, the Board of Directors must meet within three months of the end of the corresponding financial year, to approve the financial statements, the general balance sheet and the annual report. Moreover, before the end of the financial year, it must meet to approve the Programme of Activity for the following period.

The Board of Directors may hold a valid meeting with two (2) members present. Resolutions will be adopted when two directors vote in favour. In the event of a tied vote, the President shall have the deciding vote, and the resolutions must be recorded in the minutes.

**Article 10** - The post of member of the Board of Directors may fall vacant as a result of:

(a) The acceptance of his resignation by the appointing Minister;

(b) his dismissal by the appointing Minister, in the circumstances specified in Article 8 of these Regulations;

(c) death or permanent disability that prevents him from performing his duties.

**CHAPTER II - ADVISORY COUNCIL**

**Article 11** - The Advisory Council of INDECOPI issues opinions and recommends and proposes the adoption of policies and measures to protect the rights covered by the Law, including the amendments introduced by Decree Law No. 26116.

**Article 12** - The members of the Advisory Council are appointed by supreme resolution signed by the Minister of Industry, Tourism, Integration and International Trade Negotiations, on the proposal of the bodies they represent.

If the associations of consumers and authors and inventors do not propose or cannot agree upon a representative the Ministry shall appoint one.

**Article 13** - The Vice-President of the Advisory Council shall replace the President in his absence.

The Advisory Council meets when convened by the President or when three (3) or more of its members so request. Meetings shall be convened in writing, with not less than one (1) working day’s notice. Five (5) members must be present to constitute a quorum.

All the members of the Advisory Council have the right to speak and vote. Resolutions are adopted by a simple majority of the members present and are recorded in the minutes. In the event of a tied vote, the President has the deciding vote.
TITLE IV
OPERATIONAL STRUCTURE

CHAPTER I - TRIBUNAL FOR THE DEFENCE OF COMPETITION
AND INTELLECTUAL PROPERTY

FIRST SECTION
GENERAL PROVISIONS

Article 14 - The Tribunal is the second and last administrative instance in matters falling within the competence of the Commissions and Offices of INDECOPI.

Article 15 - The Tribunal is composed of five (5) members. It is assisted in its work by a Secretary.

There are three (3) alternate members who may be called upon if a titular member is absent, prevented from attending, is challenged, does not wish to participate or is temporarily incapacitated.

Article 16 - The post of member of the Tribunal is a full-time post and the holder must not engage in any other activity, except for teaching, unless he is an official or public servant who performs other tasks or duties remunerated by the State. In the latter case, such public officials will receive an expense allowance, the amount and frequency of which will be fixed by the Board of Directors. Members of the Tribunal are appointed for an indefinite period.

Members of the Tribunal can be dismissed only under the conditions laid down in Article 8 of these Regulations.

The Tribunal elects its President from among its members, for a period of three (3) years. The post of President is rotated. The Vice-President assumes the functions of the President when the latter is absent, or is prevented from or temporarily incapable of performing his duties.

Article 17 - In addition to the functions mentioned in Article 13 of the Law, the Tribunal shall:

(a) promote enforcement or forcible recovery, in accordance with the provisions of Decree Law No. 17355;

(b) rule on disputes relating to competition submitted to it for examination by the various operational bodies of INDECOPI.

Article 18 - In order to be appointed a member of the Tribunal it is necessary:

(a) To have an official professional qualification;

(b) to have not less than ten years experience in any of the matters which fall within the competence of the Tribunal, including years spent in the exercise of a profession or professorship, publications, academic degrees, and work done in related occupations;

(c) to have full capacity to exercise civil rights, in accordance with the provisions of Article 42 of the Civil Code;

(d) to be of good repute.
Article 19 - The members of the Tribunal are governed by the provisions of Articles 5, 9, 12, 184, 196 and 197 of the Sole Text of the Constitutional Law on the Judiciary approved by Supreme Decree No. 017-93-JUS, in so far as they are applicable. For these purposes, the conflicts of interest mentioned in Article 198 of the said Sole Text include the members of the Judiciary.

Article 20 - The members of the Tribunal are subject to challenge and obliged to stand down for the reasons laid down in the Civil Procedural Code.

A member with any of the above-mentioned impediments must decline to participate in the proceedings, otherwise he may be challenged.

A party wishing to challenge a member must submit a written petition to the Secretary together with supporting evidence.

Article 21 - The licences of the members of the Tribunal are granted by the Board of Directors.

Article 22 - A post of member of the Tribunal may fall vacant as a result of:

(a) Acceptance of resignation by Supreme Resolution signed by the Ministry;

(b) dismissal in accordance with the provisions of Article 8 of these Regulations and Article 15 of the Law;

(c) any of the conflicts of interest specified in Article 19 of the Sole Text of the Constitutional Law on the Judiciary, approved by Supreme Decree No. 017-93-JUS, or in these Regulations;

(d) death or permanent inability to perform the duties of the post.

If a vacancy arises, the replacement will be appointed in accordance with the formalities laid down by the Law. Until an appointment is made, the vacancy will be provisionally filled by one of the alternates, in order of appointment.

Article 23 - The responsibilities and disciplining sanctions of the members of the Tribunal are governed by the provisions of Chapters V and VI of Title III of the Fourth Section of the Sole Text of the Constitutional Law on the Judiciary, approved by Supreme Decree No. 017-93-JUS, in so far as applicable. The Internal Supervisory Body of INDECOPI is responsible for carrying out the relevant investigations, either ex officio or at the request of an interested party.

The disciplinary measures referred to in the previous paragraph will be imposed by the Tribunal, except in the case of dismissal, when the fact must be communicated to the President of INDECOPI in order that he may request the announcement of a vacancy in accordance with the provisions of paragraph (b) of Article 22 of these Regulations.

SECOND SECTION
PROCEDURES

Article 24 - The laws and regulations which govern the matters falling within the competence of the operational bodies of INDECOPI, the Law concerning INDECOPI and these Regulations apply to the procedures dealt with by the Tribunal. In any event, the members of the Tribunal are obliged to respect the rules of administrative simplification set out in Legislative Decree No. 757, its Regulations,
the provisions of the Law on the General Rules of Administrative Procedures, and Law No. 25035 (the Administrative Simplification Act), non-administrative formalities or requirements not being applicable.

Article 25 - In the absence of an express provision in the legislation regulating the establishment and operation of the various Commissions and Offices of INDECOPI, the maximum time-limit for submitting an appeal is governed by the provisions of Article 102 of the Law on the General Rules of Administrative Procedures.

The provisions of the previous paragraph also apply to the determination of the time-limit for the Tribunal to issue its decisions.

Article 26 - For the Tribunal to hold a valid session, four (4) members must be present. Its decisions and resolutions are approved by a majority of the votes of the members present. The President of the Tribunal has the deciding vote.

The decisions must be recorded in the minutes, together with the votes, individual or dissenting. Minutes, which must include the resolutions adopted by the Tribunal, are taken at all its sessions. The resolutions are signed solely by the President.

Article 27 - The Tribunal will hear the cases submitted to it only in the following circumstances:

(a) Appeals against decisions taken by the Commissions and Offices of INDECOPI;
(b) administrative complaints against officials of the Commissions and Offices;
(c) disputes with respect to competence which arise between Commissions, between Offices or between Commissions and Offices, which are submitted to it for consideration;
(d) requests for the amendment, amplification or clarification of the rulings of the Tribunal itself.

Article 28 - The Tribunal may amend its decisions only if they contain obvious clerical or numerical errors or are clearly inaccurate. Amendments may be made ex officio or at the request of an interested party. The request for amendment must be made within three (3) working days from the date of notification of the decision and the Tribunal must rule within three (3) days of the lodging of the request.

Similarly, a decision may be amplified when the Tribunal has not ruled on one of the points at issue. The request must be lodged within three (3) working days from the date of notification of the decision and the Tribunal must provide the amplification within ten (10) days of the lodging of the request.

Article 29 - In the absence of an agreement between Commissions and Offices, conflicts of jurisdiction, negative or positive, must be taken up by the Tribunal within not more than seven (7) days of the start of the dispute. The Tribunal must rule within ten (10) days of receiving the files.

In these cases, once jurisdiction has been assigned, the period for issuing a final decision of first instance shall run from the date on which the files are returned with the Tribunal’s ruling.
If a particular matter has to be examined by two (2) Commissions or Offices, the Tribunal will arrange for the issuing of the corresponding copies and specify the points on which each must rule. In these circumstances, the periods for handing down a decision of first instance shall run in parallel, starting from the date of notification of the Tribunal's decision.

**Article 30** - When a ruling by one Commission or Office requires a prior ruling by some other Commission or Office, the proceedings of the former shall be suspended, and resumed once the latter has announced its own ruling.

**Article 31** - Where appropriate, once an appeal has been received, the Tribunal shall inform the other party so that he may contest it within fifteen (15) calendar days of the date of notification of the receivability of the appeal, unless a different period is provided for in the rules governing the settlement of disputes.

**Article 32** - The Tribunal may impose sanctions and remedial measures, as well as provisional measures required to prevent serious or irreparable injury, provided that these measures are envisaged in the legislation governing the matter which is the subject of the proceedings.

**Article 33** - Without prejudice to the observance of the time-limits established for appeals, the Tribunal may request from the Commissions, Offices and other public and private bodies the reports and opinions referred to in Article 77 of the Law on the General Rules of Administrative Procedures and, in general, any information that might be helpful in deciding the case.

Moreover, public and, exceptionally, private hearings may be held in accordance with Article 14 of the Law in order to question the parties, hear their arguments and obtain the opinions of third parties with a legitimate interest in the matter, whether they so request or are invited to appear by the Tribunal itself.

**Article 34** - The Tribunal's decisions shall have binding effect from the day following their notification.

**Article 35** - The decisions of the Tribunal exhaust administrative channels and appeals against them may be lodged through judicial channels, in accordance with Article 17 of the Law.

Chapter II - Commissions

First Section

General Provisions

**Article 36** - In accordance with Article 19(a) of the Law, the Commissions enjoy technical and operational autonomy. By this is meant the exercise of the functions mentioned in the next article.

**Article 37** - The Commissions have the following functions:

(a) To rule, as a first administrative instance, on the procedures which fall within their competence;

(b) to rule, where appropriate, on applications for reconsideration of their decisions;

(c) to order the adoption of precautionary measures, provided that they have been granted these powers by the legislation governing their establishment or spheres of competence;
(d) to apply the appropriate sanctions, in accordance with the legislation governing their establishment and spheres of competence;

(e) to refrain from hearing cases which fall outside their sphere of competence, channelling them, where appropriate, towards the pertinent operational body;

(f) to propose to the President of the Board of Directors candidates for appointment to the corresponding Technical Secretariat;

(g) to request from public sector entities, through the President of INDECOPI, the data and information required for the performance of their functions, these entities being responsible for the information supplied;

(h) to make a corresponding report to the appropriate authority when they discover evidence of the commission of offenses in the matters submitted to them for examination;

(i) to act as conciliator in the cases brought before them, provided that these powers are granted by the legislation governing their establishment and spheres of competence;

(j) to classify as private or confidential certain documents or proceedings brought before them, if the industrial or commercial secrets of any of the parties involved might otherwise be disclosed;

(k) to give a technical opinion on draft legislation relating to matters falling within their competence;

(l) to call upon the assistance of the forces of law and order to implement their decisions, including enforcement and forcible recovery in accordance with the provisions of Decree Law No. 17355, where appropriate.

In order to implement the precautionary measures referred to in Article 22 of Decree Law No. 26122 (Law on the Repression of Unfair Competition) entry may be forced, where necessary. Premises may be temporarily closed by placing signs on the door indicating the reasons for closure and the times at which the measure is to begin and end.

(m) Other functions laid down by the legislation governing their spheres of competence.

Article 38 - The Commissions shall have a Vice-President who shall stand in for the President when the latter is absent or temporarily prevented from performing his duties.

If a member of the Commission is absent or temporarily prevented from performing his duties, one of the alternates may be called upon to replace him, in order of appointment.

If the President of the Commission has been absent or temporarily prevented from performing his duties for one month without justification the post automatically falls vacant. In this case the Commission must elect a President.

The expense allowances of the members of the Commissions are determined by the Board of Directors.
Article 39 - If a member of the Commission is involved in a conflict of interest in any proceedings brought before his Commission, he must inform the other members of the fact and decline to participate in the examination of the case or the decision.

Moreover, a member of the Commission is required to sponsor or participate in proceedings brought before his Commission or another operational body of INDECOPI.

Anyone contravening the provisions of this Article shall be liable for any injury caused to the State and to the parties, without prejudice to any civil, criminal or administrative action which may lie. In such cases, the person concerned will be immediately dismissed in accordance with paragraph (b) of Article 22 of the Law.

Article 40 - The offices of the Commissions are in the city of Lima and they meet periodically as convened by their President.

SECOND SECTION
PROCEEDINGS

Article 41 - The proceedings before the Commissions are governed by the provisions of Articles 24 to 35 of these Regulations, where applicable.

THIRD SECTION
JURISDICTION

Article 42 - The Free-Competition Commission is competent to deal with any matter relating to the abuse of a dominant position in the market and with actions or behaviour that limit, restrict or distort free competition, in accordance with the provisions of Legislative Decree No. 701.

Article 43 - The Commission to Investigate Dumping and Subsidies is competent to deal with any matter relating to the distortion of free competition in the market as a result of dumping or subsidies, in accordance with the provisions of Supreme Decree No. 133-92 EF and the amending legislation.

Article 44 - The Consumer Protection Commission is exclusively competent to deal with any matter relating to the protection of the consumer's right to adequate information on products and services in accordance with the provisions of Legislative Decree No. 716 and other related legislation.

Article 45 - The Commission for the Supervision of Publicity is competent to deal with any matter relating to the commercial advertising of goods and services, in accordance with the provisions of Legislative Decree No. 691 and other related legislation.

Article 46 - The Commission for the Repression of Unfair Competition is responsible for the application of Supreme Decree No. 075-93-EF, and for dealing with any matter relating to commercial practices contrary to good faith and the normal development of economic activity, as specified by Decree Law No. 26122, provided that such behaviour is not within the sphere of competence or the speciality of another Commission or one of the Offices of INDECOPI, in accordance with the provisions of these Regulations.

Article 47 - The Commission for the Supervision of Technical Standards, Measurements, Quality Control and Para-Tariff Restrictions is competent to deal with any matter relating to the imposition of para-tariff restrictions, in accordance with the provisions of Legislative Decree No. 668 and Article 4 of Decree Law No. 25629, being empowered to order their non-application in specific cases.
Moreover, it is competent to approve technical and national metrological standards. In addition, it is competent to deal with any matter relating to the registration and supervision of the bodies authorised to certify quality and conformity with technical standards, in accordance with the provisions of Legislative Decree No. 658.

**Article 48** - The Commission for Simplification of Market Access and Egress is competent to deal with any matter relating to the erection of bureaucratic obstacles that prevent or impede enterprises from engaging in or giving up economic activity, or relating to the declaration of insolvency on the part of debtors and the recognition of the ownership, legitimacy and amount of assets, in accordance with the provisions of Decree Law No. 26116, and to monitor the implementation of the provisions on administrative simplification contained in Legislative Decrees Nos. 283 and 757 and in Law No. 25035 (Administrative Simplification Act).

**Article 49** - The operational bodies may issue general regulations only when the legislation governing their spheres of competence expressly empowers them to do so.

**CHAPTER III - OFFICES**

**FIRST SECTION**

**GENERAL PROVISIONS**

**Article 50** - The Offices enjoy technical, operational and administrative autonomy in connection with the procedures that fall within their competence in accordance with the functions assigned to them by the next Article.

**Article 51** - The functions of the Offices are as follows:

(a) To rule, as the first administrative instance, on matters that lie within their competence;

(b) to rule on applications for reconsideration made against the decisions they issue;

(c) to keep the corresponding registers within their sphere of competence, being empowered to record rights, renew entries and declare them void, cancelled or lapsed, in accordance with the relevant Regulations of each Register;

(d) to declare the abandonment of registration applications, in accordance with the provisions of the relevant Regulations of each Register;

(e) to authenticate or certify transcripts of the documents they issue;

(f) to order the adoption of precautionary measures, provided that they are so empowered by the corresponding legislation governing their establishment or sphere of competence;

(g) to apply the corresponding sanctions, in accordance with the legislation governing their establishment and sphere of competence;

(h) to refrain from dealing with matters which fall outside their sphere of competence, channelling them, where appropriate, to the relevant operational body;

(i) to request from public sector entities, through the President of INDECOPI, the data and information they need to perform their functions, the former being required to supply this information on their own responsibility;
(j) report to the appropriate authority any evidence they find of the commission of offenses in the cases brought before them for examination;

(k) to act as conciliator in the cases brought before them for examination, provided that they are so empowered by the legislation governing their establishment and sphere of competence;

(l) to classify as private and confidential specific documents submitted to them, if there is a possibility of the industrial or commercial secrets of any of the parties involved being disclosed.

(m) to give a technical opinion on draft legislation relating to matters within their competence;

(n) to call upon the assistance of the forces of law and order to implement their decisions, including ordering enforcement or forcible recovery in accordance with the provisions of Decree Law No. 17355, where appropriate;

In order to implement the precautionary measures referred to in Articles 175 and 179 of Decree Law No. 26017 (General Industrial Property Act) they may order forcible entry, where necessary. The temporary closure of premises is effected by placing notices on the door indicating the reasons for closure and the time at which the measure is to begin and end;

(o) Other functions necessary to their proper functioning.

Article 52 - The Offices are under the authority of a Head appointed by the Board of Directors. The post is a full-time one and the Head may not hold any other position.

If the Head is absent or temporarily prevented from performing his duties, he will be replaced by an official designated by the Board of Directors.

Article 53 - Head of Offices may not sponsor or participate in proceedings before their own Office or any other operational body of INDECOPI.

Anyone contravening the provisions of this Article will be liable for any injury caused to the State and the parties, without prejudice to any civil, criminal or administrative action that may lie. In these circumstances the person concerned will be immediately dismissed by the Board of Directors.

SECOND SECTION
JURISDICTION

Article 54 - The cases which come before the Offices are governed by the provisions of Articles 24 to 35 of these Regulations, where applicable.

TITLE V
ADMINISTRATIVE STRUCTURE

CHAPTER I - GENERAL MANAGEMENT

Article 55 - The General Management is responsible to the Board of Directors and provides support for the other bodies of the Institute. The technical and administrative staff of INDECOPI,
including the Technical Secretaries of the Commissions and the Heads of Offices, report to the General Management as far as administrative matters are concerned.

CHAPTER II - TECHNICAL SECRETARIATS

**Article 56** - Each Commission has a Technical Secretariat, headed by a Technical Secretary, who occupies the post full-time and has no other duties, the provisions of Article 39 of these Regulations being applicable.

**Article 57** - In addition to performing the functions mentioned in Article 47 of the Law, the Technical Secretariats must:

(a) Carry out the studies and technical or administrative work requested by the Commissions, to enable them to perform their functions;

(b) deal with the matters brought before the Commissions, in accordance with the legislation governing the sphere of competence of the Commission in question;

(c) carry out the investigations, inspections and checks necessary to provide the Commissions with the facts they need to take their decisions and give their rulings, in accordance with the powers granted to them under the legislation governing the functioning of the Commission in question;

(d) propose to the Commission the adoption of provisional or precautionary measures and sanctions, in accordance with the provisions of the legislation governing the functioning of the Commission in question;

(e) report on and reply to, subject to the prior approval of the corresponding Commission, technical enquiries from INDECOPI's operational bodies; and

(f) perform other functions entrusted to them by the Commission to which they report.

**TITLE VI
SUPERVISORY BODY**

**Article 58** - The Internal Supervisory Body of INDECOPI is responsible for directing, planning and carrying out supervisory activities, in accordance with the rules of the National Supervision System.

The Board of Directors shall appoint a head of the Internal Supervisory Body.

**TITLE VII
EMPLOYMENT CONDITIONS**

**Article 59** - The conditions of employment of INDECOPI employees are subject to the provisions of Law 4916 and Legislative Decree No. 728 and their supplementary and regulatory provisions.

**TITLE VIII
FINANCIAL CONDITIONS**

**Article 60** - The resources listed in Article 48 of the Law constitute INDECOPI's own income, received in return for the services it renders.
SUPPLEMENTARY PROVISIONS

FIRST PROVISION - In accordance with the provisions of Article 26 of the Law, the Commission for the Supervision of Technical Standards, Measurements, Quality Control and Para-Tariff Restrictions of INDECOPI shall assume the functions relating to metrological standardization which under Law No. 23560 belonged to ITINTEC.

SECOND PROVISION - In accordance with the fourth supplementary provision of the Law, INDECOPI has assumed the obligations under international agreements which ITINTEC has signed while they remain in force.

THIRD PROVISION - In accordance with the provisions of the Law, the Office of Distinctive Signs has taken over the functions of the Trade Mark Department of the Industrial Property Directorate of ITINTEC and the corresponding Registry; the Inventions Office has taken over the functions of the Patent Department of the Industrial Property Directorate of ITINTEC and the corresponding Registry; the Office for the Registration of Transfers of Foreign Technology has taken over the functions relating to this matter which were performed by the National Investment and Foreign Technology Commission (CONITE); and the Copyright Office has taken over the functions of the General Copyright Directorate of the National Library of Peru.

Subject to the express provisions of the TUPA of INDECOPI, the procedures brought before the above-mentioned Offices shall be dealt with in accordance with the provisions that governed the said procedures in the corresponding Department, Commission or Directorate.

FOURTH PROVISION - Acts of unfair competition against the Law on the Repression of Competition approved by Decree Law No. 26122, which relate to the infringement of an industrial property right duly recorded in the corresponding Register, will be considered to be offences against industrial property and subject to the measures provided for in Title XIII of the General Industrial Property Act approved by Decree Law No. 26017. The Office of Distinctive Signs or the Inventions Office will be responsible for these measures, as appropriate.

FIFTH PROVISION - INDECOPI is responsible for the metrological laboratories which keep, preserve and maintain the National Standards for which ITINTEC was responsible.

The General Management of INDECOPI will make the Metrological Laboratories available to interested parties to carry out the tests which the latter request, in accordance with its regulations.

SIXTH PROVISION - The Public Prosecutor entrusted with the affairs of the Ministry shall be responsible for defending legal and/or administrative actions in hand and future actions against the former ITINTEC.

The obligations of the former ITINTEC deriving from the actions mentioned in the previous paragraph shall be assumed by the Ministry.

SEVENTH PROVISION - In accordance with the provisions of Article 37 of the Law, the documentary archives of the General Copyright Directorate of the National Library of Peru, which include the intangible deposits in the National Copyright Register of that institution, will be transferred to the Copyright Office.