HAVING REGARD to the existing instruments for offsetting unfair trading practices;

WHEREAS (I) It has been found desirable to establish a new system in order to achieve a proper balance between the principles of transparency, effectiveness and harmonization with the relevant international regulations to be applied during the transition period laid down in the Treaty of Asunción;

(II) It is necessary to set up a provisional system to deal with the sectors with minimum export prices and reference prices established under the previous system;

MINDFUL of the above;

THE PRESIDENT OF THE REPUBLIC

HEREBY DECREES AS FOLLOWS:

Article 1. (Principles). In the case of Articles 18 and 22, the Executive or the Ministry of the Economy and Finance may establish minimum export prices when:

(a) The export price of the country of origin of the imports does not conform to international prices considered normal, in accordance with the criteria laid down in Articles 2 and 3 of this Decree, and

(b) This causes or threatens material injury to a domestic producing activity or retards the starting-up of a producing activity which is in the process of implementation.
Article 2. (Normal price). For the purposes of determining whether export prices conform to international prices considered normal, the following shall be taken into account:

(a) The ex-factory prices of like or, failing that, similar goods intended for sale on the domestic market of the country of origin or consignment, the necessary costs of bringing the goods to the place of shipment to Uruguay, and the taxes payable on domestic consumption and recoverable by reason of exportation;

(b) The export prices of a similar product in transactions between the country of origin or consignment and Uruguay or third countries considered representative;

(c) The cost of production in the country of origin or, alternatively, an estimated cost of production when the corresponding information is not available, in both cases increased by a reasonable amount for costs and profits;

(d) The export prices of countries that normally export the product in question, with respect to which there is no presumption of the existence of unfair trading practices;

(e) Uruguayan export prices.

Article 3. (Export price). The export price shall be the price actually paid or payable for the product exported to Uruguay net of taxes and any discounts and reductions directly related to the sales concerned. Where there is no export price or where it appears to the competent authorities that there is association or a compensatory arrangement between the exporter and the importer or a third party or that, for some other reason, the price actually paid or payable for the product exported to Uruguay cannot be considered a valid reference, the export price may be constructed:

(a) On the basis of the price at which the imported product was first resold to an independent buyer or, if the product was not so resold or was not resold in the condition as imported, on such reasonable basis as the implementing authority shall determine. In this case it will be necessary to make adjustments in order to take into account the costs incurred between importation and resale, a reasonable profit margin and discounts, and other appropriate adjustments depending upon the particular commercial arrangements made. These costs shall include those normally borne by the importer, irrespective of whether he pays them inside or outside the country. Such adjustments shall include, \textit{inter alia}:

(i) Transport, insurance, maintenance, unloading and incidental costs;

(ii) Import duties and other taxes payable in the country of importation as a consequence of the importation or sale of the goods;

(iii) A reasonable amount for general expenses and profits and for any commissions usually paid or agreed;

(iv) Discounts and other rebates, direct or indirect, which have the effect of depressing the price actually paid by the consumer, or other means of sales promotion which affect comparability;

(b) On the basis of the declared prices in transactions involving the importation into Uruguay of like or similar goods prior to the entry into force of a definitive or provisional minimum export price;
(c) On the basis of an internationally recognized price quotation, in the case of agricultural products with international prices distorted by the generalized application of subsidies.

Article 4. (Importation from customs territories or intermediate countries). Where goods are imported from customs territories or intermediate countries, the original invoice must be produced. If the invoice is not produced, the price actually paid or payable may be considered not to be a valid reference for determining the export price.

Article 5. (Comparison). The normal price and the export price, determined in accordance with the provisions of Articles 2 and 3 of this Decree, shall be compared at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time. In order to establish a comparison in each case, on its merits, for adjustment purposes allowance shall be made for differences which affect price comparability, in particular:

(a) The physical characteristics of the products;
(b) Import duties and indirect taxes;
(c) Selling costs arising from sales made:
   - at different levels of trade, or
   - in different quantities, or
   - under different conditions of sale.

Article 6. (Degree of price distortion). By the degree of export price distortion is meant the extent to which the normal price exceeds the export price, determined by origin.

Article 7. (Injury). For the purpose of the application of minimum export prices, a domestic industry established in Uruguay shall be considered to have been injured when the imports subject to price distortion:

- significantly prejudice the domestic production of a similar product; or
- threaten to prejudice such production; or
- retard the starting-up of a producing activity in the process of implementation.

Article 8. (Prejudice). The determination of prejudice shall be based on indisputable evidence and shall involve an objective examination of the following factors:

(a) The volume of the imports subject to price distortion, for the purpose of determining whether that volume has increased significantly, either in absolute terms or relative to production or consumption in Uruguay;
(b) the prices of the imports subject to distortion as compared with the prices of similar products in Uruguay, so as to determine whether the former are significantly lower or whether they helped to depress the prices of similar domestic products to a significant degree or prevented price increases which otherwise would have occurred, in the absence of such imports;
(c) The impact of the imports subject to price distortion on domestic producers of such products, taking into consideration, *inter alia*, the following economic factors and indices having a bearing on the domestic situation:

- output;
- utilization of installed capacity;
- description of the technology and the production process used;
- inventories of the products concerned;
- sales;
- market share;
- prices, with indication of the price depressing effect or the prevention of price increases which otherwise would have occurred;
- employment.

Other factors which may be taken into account include the volume of imports whose prices are not distorted, contraction and demand or changes in the pattern of consumption, developments in technology, etc., which are simultaneously prejudicing the domestic industry and causing injury, which must not be attributed to the imports subject to price distortion.

Article 9. (Threat of prejudice). A determination of a threat of prejudice shall be based on facts and not merely on allegation, conjecture or remote possibility, and the determination that the imports subject to price distortion will cause prejudice must be clearly foreseen and imminent. In determining the existence of a material threat of prejudice the presence, *inter alia*, of the following factors must be taken into account:

(a) A significant rate of increase of imports or, in the case of agricultural products, a significant quantity of imports, in accordance with the provisions of Article 10, indicating the likelihood of substantially increased importation;

(b) the existence of exporting capacity or an imminent, substantial increase in the capacity of the exporter, indicating the likelihood of increased exports of the product subject to price distortion into Uruguay;

(c) the nature, value and degree of generalization of any subsidy and the effects it may have on trade;

(d) reliable confirmation of the application of subsidy policies by the countries of exportation or origin and the distortion of international price formation resulting from such policies;

(e) the entry into Uruguay of imports of products subject to price distortion at a price level that would exert a depressing effect on domestic prices and create an increased demand for such imports.
Article 10. (Agricultural products). In investigating a threat of prejudice, when the imports are agricultural products the term "significant quantity" shall be understood as follows:

(i) The importation, within the previous 12 months, of a cumulative volume exceeding 2 per cent (two per cent) of Uruguay’s annual average production or consumption during the three calendar years preceding the commencement of the investigation period;

(ii) The importation of a volume exceeding 1 per cent (one per cent) of the average mentioned in (i) during a period of up to 30 days.

Article 11. (Minimum export price). The establishment of a minimum export price shall result in the application of a sliding surcharge or duty equivalent to the difference between the minimum export price and the export price defined in Article 3.

Article 12 (Maximum level of the minimum export price). The minimum export price may not exceed the lowest normal price in the supplier countries in which normal conditions of competition prevail nor the level considered necessary to remove the injury.

Article 13. (Basis of application). The minimum export price may be established on the basis of c.i.f. or f.o.b. prices.

The establishment of a minimum export price on a c.i.f. basis shall result in the Aggregate Tariff Rate being applied to that price or to the value for customs purposes, whichever is the greater.

If the minimum export price is established on a f.o.b. basis, then for the purposes of the preceding paragraph the appropriate insurance and freight shall be added.

Article 14. (Implementing authority). An Implementation Commission shall be set up with the task of verifying:

(a) The existence of distortions in the prices of goods exported to Uruguay, in accordance with the provisions of Articles 2 to 6 of this Decree;

(b) The injury caused to domestic industry, in accordance with the provisions of Articles 7 to 10 of this Decree;

(c) The causal link between (a) and (b); and

(d) Recommending to the Executive or the Ministry of the Economy and Finance the establishment of definitive or provisional minimum export prices respectively, at a level determined in accordance with the provisions of Articles 12 and 13.

Article 15. (Composition). This Commission shall be composed of a representative of the Ministry of the Economy and Finance, who shall act as its Chairman, and representatives of the Ministries of Industry, Energy and Mining and of Livestock, Agriculture and Fisheries. The Commission shall operate under the auspices of the Ministry of the Economy and Finance, which shall provide the resources necessary for its proper functioning.

The Implementation Commission may seek from any natural or legal person, whether public or private information of any kind relevant to the case under reference which it considers necessary in order to give an opinion. The agencies of the Central Administration shall offer the Commission full support in the performance of its tasks.
Article 16. (Complaints). Complaints concerning the distortion of the export prices of goods imported into Uruguay shall be lodged with the Implementation Commission and shall include all the facts necessary to verify the satisfaction of the application criteria mentioned in Articles 1 to 10 of this Decree and the existence of a causal link between the imports shown to be subject to price distortion and the injury to domestic industry.

Article 17. (Opinion of the Implementation Commission). The Implementation Commission shall have a period of 30 days from the day following the lodgement of the complaint concerning import price distortion to determine whether the application criteria of the system established under this Decree are satisfied in principle and to determine whether the application of provisional prices is considered necessary to prevent injury being caused during the investigation period.

Article 18. (Resolutions of the Ministry of the Economy and Finance). Once the opinion referred to in the previous Article has been given, then within 30 days the Ministry of the Economy and Finance shall decide on:

(a) the opening of an investigation;

(b) the establishment of provisional minimum export prices.

The resolutions of the Ministry of the Economy and Finance concerning the opening of an investigation and, where appropriate, the establishment of provisional prices shall be published in the Official Gazette and in two national newspapers.

If no decision is taken within the period in question, the application shall be considered to have lapsed.

Article 19. (Time-limit for the submission of evidence). The Implementation Commission must receive all the evidence submitted by the interested parties and request any reports which may be necessary within 60 days as from the day following the date of publication of the resolution concerning the opening of an investigation.

Article 20. (Time-limit for resolution). The Implementation Commission shall have 90 days as from the day following the date of the publication referred to in Article 18 to decide on the matters investigated, in accordance with the information at its disposal.

If, in the view of the Implementation Commission, it is possible to establish from this information that distortions in the price of the imported goods exist and are causing or threatening material prejudice to a domestic industry or are retarding the starting-up of a producing activity in the process of implementation, it shall record this in an opinion which shall include a recommendation concerning the level of the minimum export price to be applied.

Article 21. (Confidentiality of the information). When, during or upon conclusion of the investigation process, it prepares to open the records to inspection, the Implementation Commission shall establish which part of the information it deems to be private and confidential.

Article 22. (Provisional price and reassessment). Without prejudice to the provisions of Article 18, in any stage of the investigation the Ministry of the Economy and Finance, after receipt of a report by the Implementation Commission, may establish a provisional minimum export price. The establishment of a provisional minimum export price shall result in a sliding surcharge or duty being assessed subject to reassessment. For the purposes of such reassessment, the following criteria shall apply:
(a) If the definitive duty is higher than the provisional duty, then the difference shall not be collected;

(b) If a resolution is not issued within the time-limits stipulated in Article 23 or if the definitive duty is lower than the provisional duty, then the amount withheld or the resulting difference shall be refunded, as appropriate;

(c) The provisions of the preceding subparagraphs shall not apply when specific definitive prices are established for the period of application of the provisional prices, in which case these levels shall be used for reassessment calculation purposes.

Article 23. (Period of application of provisional prices). Provisional minimum export prices shall be established for a period of up to four months with a single possible extension for an additional period of up to two months.

Article 24. (Period of application of definitive prices). Definitive minimum export prices shall be established for a period of application which may not exceed one year from the date of the corresponding resolution. The Assessment Board set up under Article 8 of Decree No. 333/992 of 16 July 1992 shall give special consideration to products whose importation has been made subject to minimum export prices, immediately after the expiration of their period of application.

If immediately after the expiration of the period of application the Assessment Board finds that goods are being imported at prices lower than the pre-existing minimum export price, it shall bring the facts to the attention of the Implementation Commission, without prejudice to its other powers as regards the determination of the taxes applicable at importation.

In this case, the Implementation Commission may propose to the Ministry of the Economy and Finance, on its own initiative or at the request of an interested party, that the investigation be reopened.

Moreover, in the situation described in Article 26, the Commission may recommend to the Ministry of the Economy and Finance the establishment of a provisional minimum export price, with effect retroactive to the date of expiration of the minimum export price.

Article 25. (Publication of resolutions). The resolutions establishing definitive minimum export prices shall be published in the Official Gazette and in two national newspapers.

Article 26. (Retroactivity). When it is found that there has been massive importation of goods at distorted prices, in a relatively short time, on a scale such that the injurious effects extend into the future, a definitive minimum export price may be established retroactively for a maximum of 90 days prior to the decision to adopt the measure.

Article 27. (Rules of procedure). The procedures for establishing minimum export prices shall conform to the provisions of this Decree, the Decree No. 500/991 of 27 September 1991 concerning ordinary administrative procedure not being applicable, without prejudice to the right of the interested parties to be allowed to inspect the records when they so request the Implementation Commission, in which case the provisions of Article 21 of this Decree shall be taken into consideration.

Article 29. (Transitional provisions). The reference prices existing at the date of entry into force of this Decree, established under the system to be abolished, shall be maintained during the periods specified in the corresponding resolutions, the Executive being empowered to renew them upon expiration, reduce them or eliminate them. The minimum export prices in force, established under the system to be abolished, shall be governed by the following procedure:

(i) Shall remain in force for the period specified in the corresponding resolution;

(ii) shall be subject to appraisal \textit{ex officio} by the Implementation Commission established under Article 13 of this Decree.

Article 30. This Decree shall enter into force as from its publication in two national newspapers.

Article 31. This Decree shall be communicated, published in two national newspapers, etc.