

10 May 2022

(22-3668)

Page: 1/26

Committee on Subsidies and Countervailing Measures

Original: Spanish

**NOTIFICATION OF LAWS AND REGULATIONS UNDER
ARTICLE 32.6 OF THE AGREEMENT**

COLOMBIA

The following communication, dated and received on 29 April 2022, is being circulated at the request of the delegation of Colombia.

In accordance with Article 32.6 of the Agreement on Subsidies and Countervailing Measures, the Government of Colombia hereby submits the text of Decree No. 653 of 27 April 2022 "adding Chapter 9 on the application of countervailing duties to Title 3 of Part 2 of Book 2 of Decree No. 1074 of 2015 and introducing other provisions", published in Official Journal No. 52.018 of 27 April 2022.

MINISTRY OF TRADE, INDUSTRY AND TOURISM

DECREE NO. 653 OF 2022

27 APRIL 2022

"adding Chapter 9 on the application of countervailing duties to Title 3 of Part 2 of Book 2 of Decree No. 1074 of 2015 and introducing other provisions"

THE PRESIDENT OF THE REPUBLIC OF COLOMBIA

In exercise of his constitutional powers, in particular those conferred upon him by Article 189, paragraph 25, of the Political Constitution, in conformity with Article 10 of Law No. 7 of 1991 and Law No. 170 of 1994, and

WHEREAS

Article 10 of Law No. 7 of 1991 instructs the National Government to regulate the protection of domestic production against unfair international trade practices and to establish requirements, procedures and factors for determining the imposition of charges or duties, as appropriate, with a view to preventing and counteracting such practices;

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

The WTO Agreement on Subsidies and Countervailing Measures establishes rules for the application of countervailing duties, particularly in respect of the calculation of the amount of a subsidy, procedures for initiating and pursuing an investigation, including the establishment and treatment of the facts, the imposition of provisional measures, the imposition and collection of countervailing duties, the duration and review of countervailing measures, and the disclosure of information relating to investigations;

The National Government issued Decree No. 299 of 10 February 1995 "*regulating the application of anti-dumping and countervailing duties*" on the basis of the provisions of Article 10 of Law No. 7 of 1991, with a view to regulating requirements, procedures and factors for determining the application of countervailing duties;

Decree No. 299 of 1995 regulated the application of countervailing duties, as well as the procedure for the application of anti-dumping duties, the latter being that most frequently used, which has enabled it to be updated on four occasions at the national level, thanks to the experiences of the investigating authority and developments at the WTO. The subsidy mechanism, however, is the mechanism least used at the international level - in Colombia, for instance, an investigation of this type was conducted for the first time only in 2019;

In view of the foregoing, and given the length of time that the rules on subsidies and countervailing duties have been in existence, it is necessary to update them and to include procedural provisions from the Agreement on Subsidies and Countervailing Measures relating to stages and terms in respect of the holding of hearings of interested parties, the examination of evidence, verification visits, concluding arguments, statements of intent (price undertakings), the communication of essential facts for the final determination, and references to the current names of the Ministry and its agencies acting as the investigating and decision-making authority for the implementation of the measures;

The regulatory framework must be brought into line with changes in international trade in respect of the applicable procedure, in the light of technical and legislative progress in this field, as well as the use of information and communications technology, especially the development and use of electronic processing through the web application or a similar mechanism, as provided for in the WTO Agreement on Subsidies and Countervailing Measures, for the purpose of counteracting injury to domestic production caused by subsidies, by imposing countervailing duties;

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

The content of this Decree was published for public comment from 19 November until 3 December 2021 on the website of the Ministry of Trade, Industry and Tourism, pursuant to Article 8, paragraph 8, of Law No. 1437 of 2011 (Code of Administrative Procedure and Administrative Disputes) and Article 2.1.2.1.14 of Decree No. 1081 of 2015, Single Regulatory Decree of the Office of the President of the Republic;

In light of the above,

HEREBY DECREES:

Article 1. Chapter 9 is hereby added to Title 3 of Part 2 of Book 2 of Decree No. 1074 of 2015, Single Regulatory Decree for the Trade, Industry and Tourism Sector, and reads as follows:

"CHAPTER 9 APPLICATION OF COUNTERVAILING DUTIES

SECTION 1 GENERAL PROVISIONS

Article 2.2.3.9.1.1. Definitions. For the purposes of this chapter, and in accordance with the provisions of the WTO Agreement on Subsidies and Countervailing Measures, the following definitions apply:

- 1. AGREEMENT ON SUBSIDIES:** The Agreement on Subsidies and Countervailing Measures, which forms part of the multilateral trade agreements contained in the Final Act of the Uruguay Round that were approved by the National Congress through Law No. 170 of 1994.

2. **THREAT OF INJURY:** The risk of material injury to a domestic industry, as set forth in Article 15.7 and other relevant provisions of the WTO Agreement on Subsidies and Countervailing Measures.
3. **INVESTIGATING AUTHORITY:** The Foreign Trade Directorate of the Ministry of Trade, Industry and Tourism, through the Trade Practices Subdirectorate.
4. **INJURY:** Unless otherwise specified, material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of an industry, as set forth in Article 15 and other relevant provisions of the WTO Agreement on Subsidies and Countervailing Measures.
5. **COUNTERVAILING DUTIES:** A measure in the form of an additional customs duty on imports, which restores the conditions of competition distorted by a subsidy, in accordance with the procedure set out below.
6. **BEST INFORMATION AVAILABLE:** Available facts on the basis of which preliminary or final determinations, affirmative or negative, may be made in cases in which an interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation.
7. **COUNTRY OF ORIGIN:** Country or territory, whether or not a WTO Member, in which the subsidized goods originate.
8. **RELATED PARTIES:** One shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter, in the following situations:
 1. One of them directly or indirectly controls the other;
 2. Both of them are directly or indirectly controlled by a third person; or
 3. Both of them directly or indirectly control a third person, provided that there are grounds for believing that the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers.

For the purposes of this definition, "control" shall mean the subjection of the decision-making power of a company to the will of one or more other persons, by having, *inter alia*:

1. Over 50% of its capital either directly or together with its subsidiaries, or with the subsidiaries of those subsidiaries;
 2. Minimum decision-making majority at the partners' meeting or assembly;
 3. Power under the enterprise's articles of association or an agreement;
 4. When the parent company, directly or through or together with its subsidiaries, by reason of an act or business with the controlled company or its partners, exercises a dominant influence over the decisions of the company's management bodies;
 5. Power to appoint or remove the majority of members of the board of directors or equivalent governing body; or
 6. Power to cast the majority of votes at meetings of the board of directors or equivalent governing body.
9. **INTERESTED PARTIES:** The following shall be considered interested parties:
1. The applicant.
 2. An exporter, foreign producer or importer of the product under consideration, or a trade or business association a majority of the members of which are producers, exporters or importers of the product.
 3. The government of the country of origin.
 4. Domestic producers of the like product to the product under investigation or trade or business associations a majority of the members of which produce the said product in the national territory.
 5. Colombian or foreign persons other than those indicated above, as determined by the investigating authority.

- 10. EXPORT PRICE:** Export price means the price actually paid or payable for the product sold for export to Colombia.
- 11. LIKE PRODUCT:** "Like product" means a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration. For these purposes, the physical and chemical characteristics, the details of the raw materials used, the manufacturing or production process, channels of distribution, tariff classification, end uses and consumer preferences, *inter alia*, may be taken into consideration.
- 12. MATERIAL RETARDATION:** This concept refers to cases in which the product under investigation is not yet being produced, as well as to those cases in which, although some production has occurred, it has not attained a level sufficient to permit the examination of the other two types of injury.

Article 2.2.3.9.1.2. Scope of application. This Decree establishes the provisions applicable to investigations concerning imports of subsidized products originating in WTO Members, where they cause or threaten to cause material injury to the domestic industry or cause material retardation of the establishment or expansion of this domestic industry.

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

Article 2.2.3.9.1.3. Grounds for decisions. Countervailing duties shall only be applied following investigations initiated and conducted in accordance with the provisions laid down herein. This Decree shall be applied and interpreted in accordance with the provisions of the WTO Agreement on Subsidies and Countervailing Measures and the WTO Agreement on Agriculture.

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

Article 2.2.3.9.1.4. General interest. The countervailing duty investigation and the imposition of countervailing duties are in the public interest and seek to prevent and remedy the possible causes of material injury, threat of material injury or material retardation of the establishment of a domestic industry, provided that there is a link to subsidized imports, and generally apply for any importer of products to which such duties apply.

SECTION 2 DETERMINATION OF THE EXISTENCE OF SUBSIDIES

Article 2.2.3.9.2.1. Concept. A subsidy is deemed to exist where a benefit is conferred: (i) by means of a financial contribution by the government, any public body within the territory of the country of origin regardless of its provenance or a private body entrusted or directed by the government to make such a contribution; or (ii) through some form of income or price support within the meaning of Article XVI of the General Agreement on Tariffs and Trade (GATT) 1994.

For the purposes of this Article, a financial contribution by a government or public body shall be deemed to exist where:

1. The practice of a government or public body involves a direct transfer of funds, potential direct transfers of funds or liabilities;
2. Government revenue that is otherwise due is foregone or not collected. In this respect, the exemption of an exported product from duties or taxes borne by the like product when destined for domestic consumption, or the remission of such duties or taxes in amounts not in excess of those which have accrued, shall not be deemed to be a subsidy;
3. The government or public body provides goods or services other than general infrastructure, or purchases goods; or

4. The government or public body makes payments to a funding system, or entrusts a private body to carry out one or more of the type of functions illustrated in the paragraphs above, which would normally be vested in the government or public body, and the practice, in no real sense, differs from practices normally followed by governments or public bodies.

Article 2.2.3.9.2.2. Specificity. Subsidies shall only be subject to countervailing measures where they are specific to an enterprise or domestic industry or group of enterprises or domestic industries referred to in this Decree as "certain enterprises".

All prohibited subsidies shall be deemed specific.

Article 2.2.3.9.2.3. Criteria for determining specificity. In order to determine whether a subsidy is specific to certain enterprises within the jurisdiction of the granting authority, the following criteria shall apply:

1. Where a government or a public or semi-public body, or the legislation pursuant to which the granting authority operates, explicitly limits access to a subsidy to certain enterprises, such a subsidy shall be specific.
2. Where a government or a public or semi-public body, or the legislation pursuant to which the granting authority operates, establishes objective criteria or conditions governing the eligibility for, and the amount of, a subsidy, specificity shall not exist, provided that the eligibility is automatic and that such criteria and conditions are strictly adhered to.
The criteria or conditions must be clearly spelled out in a law, regulation, or other official document, so as to be capable of verification. For the purposes of this Article, objective criteria or conditions shall mean criteria or conditions which are neutral, which do not favour certain enterprises or groups of enterprises over others, and which are economic in nature and horizontal in application, such as number of employees or size of enterprise.
3. Where, notwithstanding the application of the criteria set forth in paragraphs 1 and 2 of this Article, there is reason to believe a subsidy is specific, other factors may be considered. Such factors are: use of a subsidy programme by a limited number of certain enterprises, predominant use of a subsidy programme by certain enterprises, the granting of disproportionately large amounts of subsidy to certain enterprises, and the manner in which discretion has been exercised by the granting authority in the decision to grant a subsidy. In this regard, in particular, information on the frequency with which applications for a subsidy are refused or approved and the reasons for such decisions shall be considered.

Paragraph. In applying the criterion established in paragraph 3 of this Article, account shall be taken of the extent of diversification of economic activities within the jurisdiction of the government or public or semi-public body, or the legislation, as well as of the length of time during which the subsidy programme has been in operation.

Article 2.2.3.9.2.4. Specific subsidies. A subsidy which is limited to certain enterprises located within a designated geographical region within the territory of the granting authority shall be specific. The setting or change of generally applicable tax rates by the public authorities entitled to do so shall not be deemed to be a specific subsidy for the purposes of this Decree.

Article 2.2.3.9.2.5. Evidence. Any determination of specificity under the provisions of this Section shall be clearly substantiated on the basis of positive evidence.

Article 2.2.3.9.2.6. Classification of subsidies. For the purposes of this Decree and as provided for in the WTO Agreement on Subsidies and Countervailing Measures, subsidies are classified as prohibited and actionable;

1. The following subsidies are prohibited:
 - 1.1 Subsidies contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance, including those illustrated in Annex I of the Agreement on Subsidies;
 - 1.2 Subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods.

Countervailing measures and actions in response to prohibited subsidies shall be governed by the WTO Agreement on Subsidies and Countervailing Measures and the provisions of this Decree.

2. Actionable subsidies are those that cause adverse effects to the interests of Colombia, i.e.:
 - 2.1 They cause injury to the domestic industry. This term shall be interpreted in accordance with Article 15 of the Agreement on Subsidies and Countervailing Measures;
 - 2.2 Nullification or impairment of benefits accruing directly or indirectly under GATT 1994, in particular the benefits of concessions bound under Article II of GATT 1994;
 - 2.3 Serious prejudice to the interests of the country, in accordance with the provisions of Article 6 of the WTO Agreement on Subsidies and Countervailing Measures.

The provisions of paragraph 2 do not apply to subsidies maintained on agricultural products that are subject to the conditions provided for in Article 13 of the WTO Agreement on Agriculture. Countervailing measures and actions in response to actionable subsidies shall be governed by the Agreement on Subsidies and Countervailing Measures and the provisions of this Decree.

SECTION 3 DETERMINATION OF THE AMOUNT OF SUBSIDY

Article 2.2.3.9.3.1. Calculation of the amount of a subsidy in terms of the benefit to the recipient. The amount of the countervailable subsidy, for the purposes of this Decree, shall be calculated in terms of the benefit conferred on the recipient which is found to exist during the investigation period for subsidization. This period shall be the beneficiary's most recent accounting period, comprising at least six months, prior to the filing of the application for an investigation, for which reliable financial or other relevant data are available.

Article 2.2.3.9.3.2. Calculation of the benefit to the recipient. For the calculation of the benefit to the recipient of a subsidy, the following rules shall apply:

1. The provision of equity capital by a government or public body shall not be considered as conferring a benefit, unless the investment decision can be regarded as inconsistent with the usual investment practice (including for the provision of risk capital) of private investors in the territory of the country of origin;
2. A loan by a government or public body shall not be considered as conferring a benefit, unless there is a difference between the amount that the firm receiving the loan pays on the government loan and the amount the firm would pay on a comparable commercial loan which the firm could actually obtain on the market. In this case the benefit shall be the difference between the two amounts;
3. A loan guarantee by a government or public body shall not be considered as conferring a benefit, unless there is a difference between the amount that the firm receiving the guarantee pays on a loan guaranteed by the government or public body and the amount that the firm would pay for a comparable commercial loan in the absence of the guarantee of the government or public body. In this case the benefit shall be the difference between these two amounts, adjusted for any differences in fees;
4. The provision of goods or services or purchase of goods by a government or public body shall not be considered as conferring a benefit unless the provision is made for less than adequate remuneration, or the purchase is made for more than adequate remuneration. The adequacy of remuneration shall be determined in relation to prevailing market conditions for the good or service in question in the country of provision or purchase (including price, quality, availability, marketability, transportation and other conditions of purchase or sale).

Article 2.2.3.9.3.3. Deductions from the subsidy amount. The amount of the countervailable subsidy shall be determined per unit or measure of the exported subsidized product.

When establishing the amount of the subsidy, the following may be deducted from the total subsidy: any cost necessarily incurred in order to qualify for, or to obtain, the subsidy; or any tax, duty or other charge levied on the export, specifically intended to offset the subsidy.

Where an interested party claims a deduction, it is required to prove that the claim is justified.

Article 2.2.3.9.3.4. Calculation of the amount of a subsidy where the subsidy is not granted by reference to the quantities produced, sold or exported. Where the subsidy is not granted by reference to the quantities manufactured, produced, exported or transported, the amount of the subsidy shall be calculated by allocating the value of the total subsidy, as appropriate, over the level of production, sales or exports of the products concerned during the investigation period.

Article 2.2.3.9.3.5. Calculation of the amount of a subsidy where the subsidy can be linked to the acquisition or future acquisition of fixed assets. Where the subsidy can be linked to the acquisition or future acquisition of fixed assets, the amount of the countervailable subsidy shall be calculated by spreading the subsidy across a period which reflects the normal depreciation of such assets in the industry concerned. The amount so calculated which is attributable to the investigation period, including that which derives from fixed assets acquired before that period, shall be calculated as described in Article 2.2.3.9.3.4. of this Decree.

Article 2.2.3.9.3.6. Calculation of the amount of a subsidy in the absence of a link to fixed assets. Where a subsidy cannot be linked to the acquisition of fixed assets, the amount of the benefit received during the investigation period shall, in principle, be attributed to this period, and allocated as described in Article 2.2.3.9.3.4 of this Decree, unless special circumstances arise justifying attribution over a different period.

SECTION 4

DETERMINATION OF THE EXISTENCE OF MATERIAL INJURY, A THREAT OF MATERIAL INJURY AND RETARDATION TO THE DOMESTIC INDUSTRY

Article 2.2.3.9.4.1. Examination of injury and the causal relationship between subsidized imports and injury. A determination of injury shall be based on an objective examination of the volume of subsidized imports, the effect of these imports on the prices of like products in the market under investigation and the effects of those imports on the domestic industry concerned.

1. With regard to the volume of the subsidized imports, consideration shall be given to whether there has been a significant increase in the subsidized imports, either in absolute terms or relative to domestic production or consumption. The volume of subsidized imports of the product concerned shall normally be regarded as negligible if the volume of subsidized imports originating in a particular country accounts for less than 3% of the total imports of the like product in Colombia, unless countries which individually account for less than 3% of imports of the like product in Colombia collectively account for more than 7% of such imports.
2. With regard to the effect of subsidized imports on prices, consideration shall be given to whether there has been a significant price undercutting as compared with the price of a domestically produced like product, or whether the effect of such imports is to depress prices to a significant degree or, equally, to prevent a price increase that would have occurred had there been no such imports.
3. The examination of the impact of subsidized imports on the domestic industry concerned shall include an assessment of the relevant economic factors and indices having a bearing on the state of the industry and, if applicable, on the development of the industry using the product, including actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilization of productive capacity; factors affecting domestic prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, and ability to raise capital or investments. This list is not considered to be exhaustive, nor can one or several of these factors necessarily give decisive guidance.
4. In order to determine whether there is a causal relationship between the subsidized imports and the injury to the domestic industry concerned, any known factors other than the subsidized imports, which at the same time are injuring or could injure the domestic industry, shall be examined, and injury caused by such other factors shall not be attributed to the subsidized imports. The relevant factors in this respect include, *inter alia*, the volumes and prices of non-subsidized imports of the product in question, contraction in demand or changes in patterns of consumption, competition between foreign and domestic producers, developments in technology, export performance and productivity of the domestic industry concerned.

5. The effect of the subsidized imports shall be assessed in relation to the domestic production of the like product when available data permit the separate identification of that production on the basis of such criteria as the production process, producers' sales and profits. If such separate identification of that production is not possible, the effects of the subsidized imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided.

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

Article 2.2.3.9.4.2. Determination of the existence of a threat of injury. A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances that would create a situation in which the subsidy would cause injury must be clearly foreseen and imminent. In making a determination regarding the existence of a threat of material injury, the following factors shall be considered, *inter alia*, in addition to the provisions of Article 2.2.3.9.4.1. of this Decree:

1. A significant rate of increase of subsidized imports into the market under investigation indicating the likelihood of substantially increased importations in the immediate future;
2. The nature of the subsidy in question and its probable effects on trade;
3. Sufficiently freely disposable, or an imminent substantial increase in, the exporter's installed capacity, which indicates the likelihood of substantially increased subsidized exports to Colombia, taking into consideration the availability of other export markets able to absorb the possible increase in exports;
4. The fact that the imports are entering at prices that are likely to have a significant impact on the domestic prices of domestic producers, depressing prices or preventing a price increase that would have occurred had there been no such imports, and which would likely increase demand for further imports; and
5. Inventories of the product being investigated in the country of export.

Paragraph. No one of these factors by itself can necessarily give decisive guidance, but the totality of the factors considered must lead to the conclusion that further subsidized exports are imminent and that, unless protective action is taken, material injury will occur.

Article 2.2.3.9.4.3. Determination of material retardation of the establishment of a domestic industry. A determination of material retardation of the establishment of a domestic industry shall be based on evaluation of the potential of the domestic industry at the time when the allegedly subsidized imports commenced or were imminent, in order to establish whether or not such imports had an adverse effect on the probable development of this potential. For this purpose, the following factors, *inter alia*, shall be taken into account, where appropriate:

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

Article 2.2.3.9.4.4. Cumulative assessment of injury or threat of injury. Where imports of a product from more than one country are simultaneously subject to countervailing investigations, the investigating authority may cumulatively assess the effects of such imports only if it determines that the amount of subsidization established in relation to the imports from each country of origin is more than the *de minimis* margin established in Article 2.2.3.9.6.21. of this Decree, and the volume of imports from each country is significant in accordance with the provisions of Article 2.2.3.9.4.1. of this Decree.

Article 2.2.3.9.4.5. *Period for examination of injury.* Unless the investigating authority determines otherwise, the factors mentioned in Article 2.2.3.9.4.1. of this Decree shall be examined with reference to a period comprising the three years preceding the submission of the application for an investigation and the current year.

With regard to threat of injury, the examination period shall be that indicated in the preceding paragraph, unless the investigating authority specifies another period.

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

SECTION 5 DOMESTIC INDUSTRY

Article 2.2.3.9.5.1. *Concept.* For the purposes of this Decree, the term "domestic industry" shall be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products.

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

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

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

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

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

SECTION 6 INVESTIGATION PROCEDURE

Article 2.2.3.9.6.1. *Initiation of the procedure.* An investigation to determine the existence, degree and effect of any alleged subsidy shall be initiated by the Foreign Trade Directorate of the Ministry of Trade, Industry and Tourism through the Trade Practices Subdirectorato upon a written application by or on behalf of the domestic industry, when it considers itself to be injured by imports of subsidized like products, made within the 12 months before the application, and never less than six months.

In exceptional circumstances, the Foreign Trade Directorate, through the Trade Practices Subdirectorate, may undertake an investigation on its own initiative if there is sufficient evidence of the existence of subsidization and injury, a threat of injury or material retardation caused by subsidized imports.

The information concerning injury needed to proceed with the investigation must be provided by the affected or interested domestic producers, in accordance with the requirements of the investigating authority.

Article 2.2.3.9.6.2. Application by or on behalf of the domestic industry. The question of whether an application has been made by or on behalf of the domestic industry shall be considered on the basis of the degree of support among domestic producers of the like product to the imported product allegedly subsidized. The foregoing shall be without prejudice to the provisions of Article 2.2.3.9.5.1. of this Decree.

Article 2.2.3.9.6.3. Requirements and submission of the application. The application mentioned shall include evidence of subsidization, injury and the causal relationship between the allegedly subsidized imports and the alleged injury that is reasonably available to the applicant.

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

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

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

In addition to the above, the application shall contain such information as is reasonably available to the applicant on the following:

1. The identity of the applicant. The name or trade name and proof that it represents the domestic industry. For this purpose, the applicant shall provide the certificate from the National Producers' Register issued by the group in charge of the Register of Producers of Domestic Goods at the Ministry of Trade, Industry and Tourism or its representatives, or any other type of document that reliably proves such status and the applicant's percentage of the volume of total production.
Where an application is made on behalf of the domestic industry or by any form of domestic producer association, it shall identify the domestic industry on behalf of which it is made by means of a list of all known domestic producers or associations of producers of the like product and shall provide a description of the volume and value of domestic production of the like product accounted for by such producers.
2. Description of the like domestic product in respect of the allegedly subsidized product under consideration.
3. Description of the allegedly subsidized product under consideration, indicating its commonly used tariff heading.
4. Countries of origin and of export.
5. The names and legal addresses of the importers, exporters and foreign producers, if known.
6. Evidence to presume the existence of the subsidy.
7. Information on the evolution of the volume of the allegedly subsidized imports, the effect of these imports on prices of the like product in the domestic market and the consequent impact of the imports on the domestic industry, as demonstrated by relevant factors and indices having a bearing on the state of the domestic industry.
8. An offer to submit the corresponding documents to the authorities for verification of the information supplied, and to authorize visits for verification purposes.
9. Elements for determining the causal relationship between the subsidy practice and material injury.
10. The evidence it is intended to adduce.

11. Identification of the confidential documentation, justification of its confidentiality and a non-confidential summary or version thereof, together with a justification where it cannot be summarized.
12. Power of attorney when acting through an agent.

Paragraph 1. The application shall be accompanied by two copies, one to be placed in the public electronic file and the other in the confidential file. Likewise, all information shall be submitted in Spanish or, failing that, the respective official translation shall be attached.

Paragraph 2. The application referred to in this Article, as well as the completed forms and the evidence and information required therein, shall be submitted through the web application or a similar mechanism, in accordance with the guidelines drawn up by the investigating authority for this purpose, failing which the application shall be disregarded.

Article 2.2.3.9.6.4. Evaluation of the grounds for the application in order to decide whether to initiate an investigation. The investigating authority shall have a period of 15 days as from the day following the expiry of the 15-day maximum period for consultations provided for in Article 2.2.3.9.6.7. of this Decree to evaluate the accuracy and adequacy of the information and evidence provided to determine whether there is sufficient evidence to justify the opening of an investigation. If the investigating authority finds it necessary to request missing information for the purpose of the evaluation, it shall ask the applicant to provide it.

This request shall interrupt the period established in the first paragraph, which shall start anew when the applicant supplies the information requested.

If, after 20 days following the request for missing information, such information has not been supplied in full, the applicant shall be considered to have withdrawn the application and the information supplied shall be returned to the applicant.

The investigating authority shall find grounds for initiating a subsidy investigation, provided that it:

1. Confirms, by verifying the degree of support for, or opposition to, the application, that it has been made by or on behalf of the domestic industry. For these purposes, the investigating authority may send notifications to the known domestic producers or associations, which, within five days from the day following the date of dispatch of the notification, shall express in writing their support for, or opposition to, the application. Where the petitioning domestic industry represents over 50% of total domestic production, this requirement shall be deemed to be fulfilled.
If no reply is received within the specified period, this shall indicate that there has been no expression of interest on the part of the domestic producer or association concerned.
2. Determines the existence of sufficient evidence of subsidization, injury and a causal relationship between the two.

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

Article 2.2.3.9.6.5. Confidentiality of the application for an investigation. The investigating authority shall avoid any publicizing of the submission of an application for an investigation before a decision to initiate an investigation has been made. However, in the period between the filing of an application and the initiation of an investigation, it shall notify the government of the exporting country or countries concerned that an application has been submitted.

Article 2.2.3.9.6.6. Initiation of the investigation. If, in evaluating the application, it is found that there are grounds for initiating an investigation, a reasoned resolution of the Foreign Trade Directorate to that effect shall be published in the Official Journal. Likewise, if the Directorate finds no grounds for opening an investigation, it shall adopt a reasoned resolution to that effect within the same time-limits.

Article 2.2.3.9.6.7. Consultations. Without prejudice to the remedies provided for in Articles 4 and 7 of the WTO Agreement on Subsidies and Countervailing Measures, within five days following the filing of the application for investigation submitted in accordance with Article 2.2.3.9.6.3. of this Decree, the government of the country or countries the products of which are the subject of the investigation shall be given the opportunity to hold consultations with the aim of clarifying the situation related to the application and reaching a mutually agreed solution. The consultations shall be held by the Ministry of Trade, Industry and Tourism within a maximum period of 15 days from the date of receipt of the invitation. If, as a result of the consultations provided for in the previous paragraph, a mutually agreed solution is reached, the Ministry of Trade, Industry and Tourism shall refrain from initiating an investigation.

Furthermore, throughout the period of investigation, the government of the country or countries the products of which are the subject of the investigation shall be afforded the opportunity, until a final determination is made, to continue consultations, with a view to clarifying the factual situation and reaching a mutually agreed solution.

Without prejudice to the obligation to afford reasonable opportunity for consultation, these provisions regarding consultations are not intended to interrupt the period of investigation or to prevent the competent authorities from proceeding expeditiously with regard to initiating the investigation, reaching preliminary or final determinations, whether affirmative or negative, or from applying provisional or final measures, in accordance with the provisions of this Decree.

For the purposes of the consultations, the Ministry of Trade, Industry and Tourism shall permit, upon request, the authorities of the country or countries the products of which are the subject of investigation access to non-confidential evidence, including the public summary of confidential data being used for initiating or conducting the investigation.

Article 2.2.3.9.6.8. Dispatch and receipt of questionnaires. Within the five days following the publication of the resolution ordering the initiation of the investigation, the investigating authority shall inform known importers, exporters or foreign producers, and the diplomatic or consular representatives of the country of origin and of export, of the initiation of the investigation and indicate where the questionnaires designed for the purpose of requiring information on the case may be consulted. Furthermore, all interested parties shall be convened within the same period by a notice published in the Official Journal so that they may express their duly substantiated position and present or request the evidence they consider relevant, within the time frame for replying to questionnaires.

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

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

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

Article 2.2.3.9.6.9. Notice of the application to foreign producers, exporters and authorities in the exporting country. Within five days following the date of publication of the resolution initiating the investigation, the investigating authority shall provide the text of the application to the foreign producers, exporters and authorities of the exporting country, and to other interested parties that so request, subject to the requirement to protect confidential information.

Article 2.2.3.9.6.10. Preliminary determination. Within a period of 60 calendar days following the date of publication of the resolution initiating the investigation, the Foreign Trade Directorate shall, in a reasoned resolution, announce the preliminary results of the investigation and, if appropriate, shall order the imposition of provisional duties. The resolution in question shall be published in the Official Journal.

Under no circumstances may the preliminary determination be adopted before 60 calendar days following the date of publication of the resolution ordering the initiation of the investigation have elapsed.

Within five days following the publication of the resolution, a copy will be forwarded to the Member country or countries the products of which are the subject of the determination in question, as well as to other interested parties that have expressed an interest in the investigation and have supplied their address.

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

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

Article 2.2.3.9.6.11. Examination of evidence. The investigating authority shall, *ex officio* or at the request of an interested party, examine the evidence it considers useful, necessary and effective for the purpose of verifying the facts investigated. Oral and documentary evidence shall be accepted, together with the other evidence provided for in this Decree in conformity with the provisions laid down in the WTO Agreement on Subsidies and Countervailing Measures.

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

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

Article 2.2.3.9.6.12. Verification visits. For the purpose of verifying information received or obtaining more elements needed for the investigation, the investigating authority may make any verification visits it considers relevant at any time during the conduct of the investigation or prior to the commencement of the period for submitting arguments.

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

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

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

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

Article 2.2.3.9.6.13. Verification visits in the country of origin. The investigating authority may make verification visits in the territory of the country of origin of the investigated imports, provided that the said country's government has been duly notified and does not object to the visit. In addition, the procedures set out in Annex VI to the WTO Agreement on Subsidies and Countervailing Measures shall apply to visits at the premises of an enterprise.

The results of verification visits shall be made available to all interested parties by the investigating authority, except for any relevant confidential information. The verification team may include non-government officials or experts, whose inclusion shall be notified to the enterprises and authorities in the country of origin where the enterprises to be visited have their legal domicile. Such officials or experts shall be subject to sanctions for breach of confidentiality requirements..

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

Article 2.2.3.9.6.14. Public hearings of interested parties. Within five days following publication of the resolution adopting the preliminary determination, parties interested in the investigation and in general any persons who have demonstrated a legitimate interest in the investigation may request the holding of a hearing of interested parties representing different interests so that opposing views may be presented and rebuttal arguments put forward concerning the elements evaluated during the investigation up to the preliminary stage.

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

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

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

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

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

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

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

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

Article 2.2.3.9.6.15. Arguments. Within 10 days following the expiry of the period for the examination of evidence, the interested parties participating in the investigation shall be given an opportunity to submit their arguments and views concerning the investigation in writing and to rebut the evidence adduced and examined therein.

Article 2.2.3.9.6.16. Best information available. In cases where any interested party refuses access to, or otherwise fails to fully provide, necessary information within a reasonable period or significantly impedes the investigation by misusing legal instruments, preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available, including through the use of information available to the Colombian Government by means of databases used for customs purposes.

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

Article 2.2.3.9.6.17. Communication of essential facts and submission of final report. Within a period of two months following publication of the resolution adopting the preliminary determination, the investigating authority shall send the interested parties participating in the investigation a document containing the essential facts that form the basis for the decision whether or not to apply definitive measures so as to enable them, within a period of 10 days, to provide their comments in writing. The two-month period may be extended by the Foreign Trade Directorate for up to 10 days if it considers that special circumstances justify such an extension.

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

These comments may only refer to facts or circumstances put forward before the expiry of the period specified in Article 2.2.3.9.6.15 of this Decree.

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

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

Article 2.2.3.9.6.18. Conclusion of the investigation. Within five days following the adoption of the recommendation by the Trade Practices Committee referred to in the preceding Article, the Foreign Trade Directorate shall adopt the appropriate decision in a reasoned resolution.

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

Article 2.2.3.9.6.19. Early termination of the investigation. The authority shall reject the application and terminate the investigation as soon as it is satisfied that there is not sufficient evidence of either subsidization or of injury to justify proceeding with the case. There shall be immediate termination in cases where the amount of a subsidy is *de minimis*, or where the volume of subsidized imports, actual or potential, or the injury, is negligible. The amount of the subsidy shall be considered to be *de minimis* if it is less than 1% *ad valorem*.

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

If the requesting party withdraws its application after the Foreign Trade Directorate has decided to impose provisional measures, these shall be annulled *ex officio* by the Foreign Trade Directorate.

Article 2.2.3.9.6.20. Access to the electronic record. Any person may have access to the non-confidential documents contained in the public version of the electronic record.

Article 2.2.3.9.6.21. Confidentiality of documents. When initiating the investigation, the investigating authority shall open a separate file in which shall be placed the documents which the authorities, the applicant or the interested parties provide on a confidential basis. Such documents shall be treated as confidential in accordance with the provisions of the Political Constitution and other relevant regulations and may only be inspected by the competent authorities.

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

In exceptional circumstances, duly substantiated, such parties may indicate that such information cannot be summarized. If the investigating authority considers that the documents provided as confidential are not confidential in nature, it shall request the person providing them to waive such confidentiality or to state the reasons why they are unwilling to do so.

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

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

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

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

Paragraph 1. The treatment established in this Article shall be accorded to any classified public information provided for in Article 18 of Law No. 1712 of 2014 or the legislation replacing, amending or repealing it.

Paragraph 2. When, pursuant to this Article, documents are provided as confidential and the corresponding summaries are not supplied, or the confidentiality is not waived without any justification, these documents shall be disregarded in the investigation.

SECTION 7 IMPOSITION AND COLLECTION OF COUNTERVAILING DUTIES

Article 2.2.3.9.7.1. Countervailing duties. The Foreign Trade Directorate may determine and order the collection of definitive or provisional countervailing duties on any subsidized imported product found to be causing or threatening to cause material injury to domestic production.

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

Whenever the information so permits and the characteristics of the investigation so allow, duties may be calculated by reference to an amount sufficient to eliminate material injury or the threat of material injury to a domestic industry or material retardation of the establishment of such an industry. The amount of the countervailing duty imposed shall not exceed the amount of the subsidy.

Article 2.2.3.9.7.2. Provisional measures. To prevent injury being caused during the investigation period, the Foreign Trade Directorate of the Ministry of Trade, Industry and Tourism may, by a reasoned resolution, impose provisional duties where, after affording the party being investigated reasonable opportunity to participate in the investigation by replying to the questionnaires issued for the purpose, it makes a preliminary finding of the existence of subsidization of the imports subject to investigation that are causing injury to the domestic industry and deems that such measures are necessary to prevent injury being caused during the investigation.

The amount of the provisional countervailing duties shall be stated in the resolution establishing them and shall be paid by all importers on imports of the product which have been found to be subsidized and to be causing injury to an industry in Colombia.

Provisional measures shall not be applied before 60 calendar days have elapsed following the date of publication in the Official Journal of the resolution initiating the investigation.

The provisional measure shall not exceed the amount of the provisionally established subsidy and may be calculated at a level equal to or less than the full margin of the amount of the subsidy, where such lesser extent is appropriate to counteract the injury. Provisional measures shall be applied for as short a period as possible, not exceeding four months.

With regard to subsidized imports threatening to cause injury, the application of provisional measures shall be considered and decided with special care.

The aforementioned resolution shall be published in the Official Journal, and communicated in the manner and within the time-limits laid down in Article 2.2.3.9.6.9 of this Decree. A copy of this resolution shall be sent to the National Tax and Customs Directorate (DIAN), for action within its competence.

Article 2.2.3.9.7.3. Provision of security. Where provisional countervailing duties are adopted, in lodging their import declaration importers may opt to pay the respective duties or provide the National Tax and Customs Directorate (DIAN) with security for payment. The security shall be provided for the term indicated in the resolution adopting the duty and in accordance with the relevant customs regulations.

Article 2.2.3.9.7.4. Excess amounts and refunds of provisional duties. There shall be a refund of provisional duties paid or the security provided for this purpose shall be cancelled or collected in a reduced amount, as appropriate, when:

1. The definitive duties are lower than the provisional duties paid or covered by security, in an amount equivalent to the difference between them;
2. Where definitive duties are not established, the cancellation and return of the security shall be ordered or the entire amount paid by way of provisional duties refunded.

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

Article 2.2.3.9.7.5. Definitive duties. Where a definitive countervailing duty is imposed, it shall be collected in the amounts indicated in the relevant resolution on imports of the product found to be subsidized and causing injury to an industry in Colombia.

The Foreign Trade Directorate, on the recommendation of the Trade Practices Committee, shall adopt the decision most appropriate to the interests of the country and may decide that the countervailing duty should be equal to or less than the total amount of the subsidy, in order to eliminate the injury.

Article 2.2.3.9.7.6. Application and duration of countervailing duties. A countervailing duty shall expire after five years, or after a shorter period where this proves sufficient to eliminate the injury. In any event, a countervailing duty may be extended when the causes which gave rise to it persist.

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

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

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

Article 2.2.3.9.7.7. Imposition of duties on massive imports or for non-compliance. Without prejudice to the provisions in Article 2.2.3.9.7.5 of this Decree, the Foreign Trade Directorate may order the imposition of definitive duties on imports already made, in the following circumstances:

1. If injury is caused by massive subsidized imports, on imports made up to 90 days prior to the date of imposition of the provisional duties, but under no circumstances prior to the date of publication of the resolution to initiate the investigation;

2. If there is non-compliance with the price undertakings accepted in conformity with Article 2.2.3.9.8.1 of this Decree, on imports declared within the 90 days preceding the date of imposition of the provisional duties, but under no circumstances on imports declared prior to such non-compliance.

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

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

SECTION 8 UNDERTAKINGS

Article 2.2.3.9.8.1. Price undertakings. The Trade Practices Committee shall evaluate those cases in which the producers or exporters of the product investigated offer, through the investigating authority, at its suggestion or at the initiative of the parties, to revise the export prices or to cease subsidized exports to Colombia, as appropriate, in such a way as to eliminate the consequent injury.

The investigating authority shall only accept undertakings in the two months following the date of publication of the resolution containing the preliminary determination.

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

Offers shall not be considered where they do not include the provision of information and an authorization to carry out the checks that the investigating authority deems necessary to verify that such offers are fulfilled.

The Foreign Trade Directorate, on the recommendation of the Trade Practices Committee, subject to evaluation by the Trade Practices Subdirectorate, may suggest price undertakings but no exporter shall be forced to accept them.

The fact that exporters do not offer such undertakings, or do not accept an invitation to do so, shall in no way prejudice the consideration of the case. However, the authorities are free to determine that a threat of injury is more likely to be realized if the subsidized imports continue.

Article 2.2.3.9.8.2. Procedure. If price undertakings are submitted, the investigating authority shall, in a reasoned resolution issued by the Foreign Trade Directorate, communicate them within 10 days following their submission to parties interested in the investigation, granting the parties a period of five days to submit the comments they deem relevant concerning the content of the price undertakings.

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

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

Within five days of its publication, the resolution shall be communicated to the diplomatic or consular representatives of the country of origin and of export the products of which form the subject of the determination or undertaking, as well as to other interested parties that have expressed an interest in the investigation and have supplied their mailing or email address.

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

Article 2.2.3.9.8.3. Suspension of the investigation. If a price undertaking is accepted by the Foreign Trade Directorate, the resolution accepting it may order the suspension of the investigation, unless the party making the undertaking requests otherwise within the month following its publication or, at the request of the Trade Practices Committee, it is decided to terminate the investigation. In such cases, the Foreign Trade Directorate may order the continuation of the investigation until it is completed.

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

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

SECTION 9 REVIEW AND EXAMINATION OF DEFINITIVE COUNTERVAILING DUTIES

Article 2.2.3.9.9.1. Administrative review of duties. At any time, the investigating authority may, either *ex officio* or at the request of an interested party, provided that at least one year has elapsed since the imposition of the definitive countervailing duties, the acceptance of the price undertakings or sunset review, initiate a review process for the purpose of establishing whether there has been a change in the circumstances that gave grounds for their imposition or acceptance sufficient to justify varying such a determination.

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

Paragraph. The definitive countervailing duties shall remain in force pending the outcome of the review.

Article 2.2.3.9.9.2. Sunset review. Notwithstanding the foregoing provisions, any definitive countervailing duty shall be terminated on a date not later than five years from its imposition or from the date of the most recent review if that review has covered both subsidization and injury, or of the most recent review under this Article, unless the authorities determine, pursuant to a review initiated before that date on their own initiative or upon a duly substantiated request made by or on

behalf of the domestic industry within a reasonable period of time prior to that date, that the removal of the countervailing duty imposed would be likely to lead to continuation or recurrence of the subsidization and injury it was intended to correct.

The review may be initiated *ex officio* not later than two months prior to either the fifth year of the measure or its expiry date, reckoned in accordance with the provisions of the preceding paragraph, or at the request of the domestic industry, in which case the request must be submitted at least four months prior to the expiry date of the measure.

The definitive countervailing duties shall remain in force pending the outcome of the review.

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

Article 2.2.3.9.9.3. Purpose of the review or examination. In the application for review, interested parties may request that the investigating authority examine the amounts of subsidy determined during the immediately preceding year and, as a consequence of such review, vary or remove the duty imposed or terminate acceptance of the price undertaking.

Likewise, interested parties may request the investigating authority to examine whether the continued imposition of the definitive countervailing duty or acceptance of the price undertaking is necessary to offset the adverse effects of subsidization that it is intended to remedy, as well as the likelihood of the injury continuing or recurring if the duty were removed or modified or acceptance of the price undertaking was terminated.

Article 2.2.3.9.9.4. Review of the acceptance of price undertakings. The authorities may carry out reviews for the purpose of determining whether the resolution accepting the price undertakings should be extended.

If, as a result of the review, it is concluded that it is not necessary to maintain the commitment assumed in the price undertaking, the Foreign Trade Directorate shall issue a resolution ordering its termination, as well as that of the investigation, if the latter has been suspended.

Article 2.2.3.9.9.5. Content of applications. The applications for reviews and sunset reviews referred to in this Section shall be submitted through the web application or a similar mechanism, failing which the applications shall be disregarded.

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

1. The identity of the applicant.
2. The names and addresses of other interested parties, if available.
3. Arguments in support of what the authority is being asked to review in accordance with the provisions in this Section, i.e.:
 - (a) the change in circumstances;
 - (b) the need to maintain the duty in order to offset subsidization and/or prevent injury;
 - (c) the modification or elimination of the duty imposed;
 - (d) the determination of the individual subsidy calculation.
4. Supporting evidence.
5. Accounts and financial information concerning production, sales, inventories, prices and profits and information on installed capacity and employment. This information shall be provided in conformity with the legislation in force and shall be signed by a certified public accountant or the company's statutory auditor.
6. Description of the trend in demand and sales of the domestic product that is the like product in respect of the product subject to the countervailing measure from the time at which the measure to be reviewed commenced.
7. Identification and justification of confidential information, and a non-confidential summary thereof. If it is claimed that such information cannot be summarized, an explanation of the reasons why it is not possible to provide a summary.
8. An offer to provide the authorities with any additional documents they may request and to facilitate the verification of the information supplied.

Article 2.2.3.9.9.6. Assessment of the initiation and conduct of the review or examination.

For the purposes of the evaluation of the application, as well as of the initiation and conduct of the review or examination, the procedure followed shall be that laid down in Section 6 of this Decree, which includes:

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

This request shall interrupt the period established in the first paragraph, which shall start anew when the applicant duly supplies the information requested.

If, after 20 days following the request for missing information, such information has not been provided in full, the applicant shall be considered to have withdrawn the application and the information supplied shall be returned to the applicant.

The investigating authority shall determine that there are grounds for initiating a review or examination where:

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

If no reply is received within the specified period, this shall indicate that there has been no expression of interest on the part of the domestic producer or association concerned.

1.2 There is evidence constituting sufficient proof that the maintenance, modification or removal of the amount of the definitive countervailing duty or the acceptance of the price undertaking is necessary to offset the adverse effects of subsidization that it is intended to remedy, as well as the likelihood of the injury continuing or recurring if the duty were removed or modified or acceptance of the price undertaking was terminated.

Paragraph. For the purposes of establishing the accuracy and adequacy of the evidence supplied by the applicant, in order to determine whether there is sufficient evidence to justify the initiation of a review or examination, the investigating authority may, either *ex officio* or at the request of a party, extend the period specified in paragraph 1 of this Article, once only, for up to five additional days.

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

Article 2.2.3.9.9.7. Timeliness of participation in the proceedings. For the purposes of the dispatch of, and response to, questionnaires, and the right of defence provided for in Section 6 of this Decree, the following shall be applied to the review or examination provided for in this Section:

1. **Dispatch and receipt of questionnaires, and notice of the application to foreign producers, exporters and authorities in the exporting country.** The provisions of Articles 2.2.3.9.6.8 and 2.2.3.9.6.8 of Section 6 of this Decree shall apply.

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

The period for the examination of evidence at the request of a party shall end one month after the expiration of the questionnaire response period. Without prejudice to the foregoing, the investigating authority may *ex officio* order evidence as of the initiation of the investigation until the preparation of the final recommendation by the Trade Practices Committee.

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

3. **Verification visits and verification visits in the country of origin.** The provisions of Articles 2.2.3.9.6.12. and 2.2.3.9.6.13. of Section 6 of this Decree shall apply.
4. **Public hearings of interested parties.** Within five days following the expiry date of the questionnaire response period, parties interested in the investigation and in general any persons who have demonstrated a legitimate interest in the investigation may request the holding of a hearing of interested parties representing different interests so that opposing views may be presented and rebuttal arguments put forward concerning the elements evaluated in the investigation.

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

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

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

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

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

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

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

5. **Arguments.** The provisions of Article 2.2.3.9.6.15 of Section 6 of this Decree shall apply.

Article 2.2.3.9.9.8. Communication of essential facts and submission of final report. Within a period of two months following the expiration of the period for arguments, the investigating authority shall send the interested parties participating in the investigation a document containing the essential facts that form the basis for the decision on the review or examination, so as to enable

them, within a period of 10 days, to provide their comments in writing. The two-month period may be extended by the Foreign Trade Directorate for up to 10 days if it considers that special circumstances justify such an extension.

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

These comments may only relate to facts or circumstances put forward prior to the expiration of the period for arguments.

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

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

Article 2.2.3.9.9.9. *Conclusions of the review or examination.* For the purposes of the final determination, the provisions of Article 2.2.3.9.6.18. of Section 6 of this Decree shall be observed.

Article 2.2.3.9.9.10. *Termination of the duty imposed.* If, as a result of a review or examination under this Section, it is concluded that there is no justification for maintaining a definitive countervailing duty, the Foreign Trade Directorate shall terminate it immediately and inform the National Tax and Customs Directorate (DIAN) accordingly.

Article 2.2.3.9.9.11. *Access to the record and protection of confidential information.* In the proceedings for which this Section provides, the rules on access to the record and the protection of confidential information laid down in Section 6 of this Decree shall be observed.

SECTION 10 SPECIAL RULES APPLICABLE TO CHANGED CIRCUMSTANCES REVIEWS AND SUNSET REVIEWS

Article 2.2.3.9.10.1. *Determination of the likelihood of continuation or recurrence of injury.* In examinations and reviews carried out in accordance with the provisions of Section 9 of this Chapter, the investigating authority shall determine whether there is a likelihood that the removal of a duty imposed or the termination of acceptance of a price undertaking would lead to the continuation or recurrence of material injury within a reasonably foreseeable period.

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

1. The real or potential volume of imports.
2. Price effects and the possible effects of the imports subject to the definitive duty or the acceptance of the price undertaking on the domestic industry if such duties or price undertakings are removed or terminated.
3. Improvements in the state of the domestic industry brought about by the duty imposed or the price undertaking.
4. Whether the domestic industry is likely to suffer material injury if the duty imposed is removed or the price undertaking is terminated.

Article 2.2.3.9.10.2. *Volume of imports.* The investigating authority shall examine whether the likely volume of imports of the product subject to countervailing duties would be significant if the duty imposed were removed or the price undertaking terminated. For this purpose, it may take into account relevant economic factors such as the likely increase in production capacity in the exporting

country, existing inventories of the product subject to anti-dumping duties or price undertakings, as well as their likely increases and any barriers to the import of the product subject to countervailing duties or price undertakings to countries other than Colombia.

Article 2.2.3.9.10.3. Price effects. In examining the possible price effects of imports of the product subject to the definitive duty or price undertaking, the investigating authority shall take into account the likelihood of such products entering Colombia at prices that would have a significant depressing or suppressing effect on the prices of domestic like products, if either the definitive duty or price undertaking were revoked.

Article 2.2.3.9.10.4. Effects on the domestic industry. In evaluating the possible effects that imports of the product subject to the definitive duty or the acceptance of a price undertaking would have on the domestic industry if the definitive duty or price undertaking were removed or terminated, the investigating authority shall take into account relevant economic factors likely to have a bearing on the state of the domestic industry in Colombia, such as likely declines in output, sales, market share, profits, productivity, return on investment and utilization of capacity; negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital and investment; and negative effects on the development and production efforts of the domestic industry, including efforts to develop a derivative or more advanced version of the domestic like product.

Article 2.2.3.9.10.5. Basis for the determination. The presence or the absence of any factor that the investigating authority is required to take into account for the purpose of deciding on the likelihood that the material injury will continue or recur within a reasonably foreseeable period of time, if the definitive duty is removed or the price undertaking terminated, does not oblige it to reach a positive determination on the existence of such a possibility.

Paragraph. *De minimis* subsidy amounts shall not by themselves be sufficient to require the investigating authority to determine that the removal of a definitive duty or the termination of acceptance of a price undertaking would not be likely to lead to the continuation or recurrence of the subsidy.

Article 2.2.3.9.10.6. Cumulation. The investigating authority may cumulatively assess the volume and impact of imports of the product subject to the definitive duty or the price undertaking from all countries for which examinations or reviews have been initiated, provided that they are at the same procedural stage, if such imports might compete with each other and with domestic like products in the Colombian market.

SECTION 11 COMMON PROVISIONS

Article 2.2.3.9.11.1. Representation and participation of interested parties. In the course of the subsidy investigation, only those who are authorized to intervene in the different procedural stages, make submissions and, in general, act on behalf of the interested parties, and who can prove the capacity in which they are acting, may do so. Any communication received by unauthorized persons or on behalf of third parties shall be disregarded.

Oral interventions that are made during public hearings attended by representatives shall be governed by the circular referred to in the paragraph of Article 2.2.3.9.6.14 of this Decree.

Article 2.2.3.9.11.2. Single channel for action by interested parties. The Foreign Trade Directorate shall issue a circular making it mandatory to establish a single channel for the filing of all proceedings by interested parties after the initial request, during the different stages, processes and procedures of the administrative investigations carried out on the basis of this Decree, failing which they shall not be taken into account. The above is pending the technical development of the web application or a similar mechanism.

Article 2.2.3.9.11.3. Effectiveness of procedures. The procedures set out are not intended to prevent the investigating authority from proceeding expeditiously with regard to initiating an investigation, reaching preliminary or final determinations, whether affirmative or negative, or from applying provisional or final measures, in accordance with relevant provisions of the WTO Agreement on Subsidies and Countervailing Measures.

Article 2.2.3.9.11.4 Technical reports. Following the adoption of decisions by the Foreign Trade Directorate or the submission of the findings of its evaluations to the Trade Practices Committee, the Trade Practices Subdirectorato shall draw up a technical report containing the findings and conclusions reached with respect to all relevant points of fact and law.

Article 2.2.3.9.11.5. Content of resolutions or technical reports on initiation and preliminary and final determinations. The resolution ordering the initiation of the investigation shall contain, or otherwise make available through a separate technical report, adequate information on the following:

1. The name of the exporting country or countries and the product involved;
2. The date of initiation of the investigation;
3. A description of the subsidy practice or practices to be investigated;
4. A summary of the factors on which the allegation of injury, threat of injury or material retardation are based; and
5. The time-limits allowed to interested Members and interested parties for making their views known.

Resolutions on the imposition of provisional or final measures shall set forth, or otherwise make available through a separate technical report, sufficiently detailed explanations for the preliminary and final determinations on the existence of a subsidy and injury and shall refer to the matters of fact and law which have led to arguments being accepted or rejected.

Such a resolution or report shall, due regard being paid to the requirement for the protection of confidential information, contain in particular:

1. The names of the suppliers or, when this is impracticable, the investigated countries involved;
2. A description of the product;
3. The amount of subsidy established and the basis on which the existence of a subsidy has been determined;
4. Considerations relevant to the determination of injury, threat of injury or material retardation; and
5. The main reasons leading to the determination.

Article 2.2.3.9.11.6. Concurrent investigations. Investigations to establish the correct customs valuation of imports conducted by the National Tax and Customs Directorate (DIAN), as well as those relating to incorrect tariff classification, under-invoicing and subsidies by the Trade Practices Subdirectorato of the Foreign Trade Directorate, may be carried out simultaneously.

Article 2.2.3.9.11.7. Inter-institutional cooperation. If, in the course of administrative proceedings, the investigating authority has information that leads it to believe that customs undervaluation or underinvoicing may exist, it shall send, on its own initiative, a copy of all relevant documents to the National Tax and Customs Directorate (DIAN), without prejudice to the continuation of proceedings with regard to matters within its own competence.

Article 2.2.3.9.11.8. Forwarding of resolutions. The Trade Practices Subdirectorato shall forward to the National Tax and Customs Directorate (DIAN) copies of resolutions determining the application of provisional or definitive countervailing duties or modifying or suspending those already established.

Article 2.2.3.9.11.9. Responsibilities. For the purposes of this chapter, the Trade Practices Committee, the Foreign Trade Directorate and the Trade Practices Subdirectorato of the Ministry of Trade, Industry and Tourism shall have the following functions:

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

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

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

Trade Practices Subdirectorato: To conduct the investigations covered by this Decree and to act as the technical secretariat of the Trade Practices Committee, without prejudice to any other responsibilities.

For each procedure or investigation, the Trade Practices Subdirectorato shall draw up a study that includes the final results.

Article 2.2.3.9.11.10. Procedures and requirements. The Foreign Trade Directorate shall establish the internal procedures, the applications manual, the forms, the questionnaires and other requirements necessary for implementation of this Decree. Likewise, it shall determine and implement the electronic mechanisms to be used in the course of the investigations provided for herein.

Article 2.2.3.9.11.11. Review. The decisions adopted following the investigations referred to in this Decree may be subject to the control measures set out in the Code of Administrative Procedure and Administrative Disputes.

Article 2.2.3.9.11.12. Transitional regime. For applications which, at the time of entry into force of this Decree, are subject to administrative investigation, that investigation must be completed in accordance with the procedure described in Decree No. 299 of 1995, the Code of Administrative Procedure and Administrative Disputes and other applicable rules."

Article 2. Entry into force and repeal. This Decree shall enter into force on the date of its publication in the Official Journal, and repeals Decree No. 299 of 1995.

FOR PUBLICATION AND IMPLEMENTATION

27 APRIL 2022

Done at Bogotá D.C. on

IVAN DUQUE MARQUEZ

Minister of Finance and Public Credit,

JOSÉ MANUEL RESTREPO ABONDANO.

Minister of Trade, Industry and Tourism,

MARÍA XIMENA LOMBANA VILLALBA.
