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DIRECTORATE GENERAL OF TRADE REMEDIES
DEPARTMENT OF COMMERCE

MINISTRY OF COMMERCE AND INDUSTRY
GOVERNMENT OF INDIA

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CUSTOMS TARIFF ACT, 1975

Customs Tariff Act, 1975

Enactment Date: 18-August-1975 | Last Updated: 28-March-2021

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1. Short title, extent and commencement

(1) This Act may be called the Customs Tariff Act, 1975.

(2) It extends to the whole of India.

(3) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. Duties specified in the Schedules to be levied

The rates at which duties of customs shall be levied under the Customs Act, 1962 (52 of 1962), are specified in the First and Second Schedules.

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8A. Emergency power of Central Government to increase import duties

(1) Where in respect of any article included in the First Schedule, the Central Government is satisfied that the import duty leviable thereon under section 12 of the Customs Act, 1962 (52 of 1962) should be increased and that circumstances exist which render it necessary to take immediate action, itmay, by notification in the Official Gazette, direct an amendment of that Schedule to be made so as to provide for an increase in the import duty leviable on such article to such extent as it thinks necessary:

Provided that the Central Government shall not issue any notification under this sub-section for substituting the rate of import duty in respect of any article as specified by an earlier notification issued under this

sub-section by that Government before such earlier notification has been approved with or without modifications under sub-section (2).

(2) The provisions of sub-sections (3) and (4) of section 7 shall apply to any notification issued under sub-section (1) as they apply in relation to any notification increasing duty issued under sub-section (2) of section 7.

[1] **[Section 8B. Power of Central Government to apply safeguard measures. -**

(1) If the Central Government, after conducting such enquiry as it deems fit, is satisfied that any article is imported into India in such increased quantity an under such conditions so as to cause or threaten to cause serious injury to domestic industry, it may, by notification in the Official Gazette, apply such safeguard measures on that article, as it deems appropriate.

(2) The safeguard measures referred to in sub-section (1) shall include imposition of safeguard duty, application of tariff-rate quota or such other measure, as the Central Government may consider appropriate, to curb the increased quantity of imports of an article to prevent serious injury to domestic industry:

Provided that no such measure shall be applied on an article originating from a developing country so long as the share of imports of that article from that country does not exceed three percent or where the article is originating from more than one developing country, then, so long as the aggregate of the imports from each of such developing countries with less than three percent import share taken together, does not exceed nine percent of the total imports of that article into India:

Provided further that the Central Government may, by notification in the Official Gazette, exempt such quantity of any article as it may specify in the notification, when imported from any country or territory into India, from payment of the whole or part of the safeguard duty leviable thereon.

(3) Where tariff-rate quota is used as a safeguard measure, the Central Government shall not fix such quota lower than the average level of imports in the last three representative years for which statistics are available, unless a different level is deemed necessary to prevent or remedy serious injury.

(4) The Central Government may allocate such tariff-rate quota to supplying countries having a substantial interest in supplying the article concerned, in such manner as may be provided by rules.

(5) The Central Government may, pending the determination under sub-section (1), apply provisional safeguard measures under this sub-section on the basis of a preliminary determination that increased imports have caused or threatened to cause serious injury to a

[1] Substituted (w.e.f. 27-3-2020) by s. 116 of the Finance Act, 2020 (12 of 2020).

domestic industry:

Provided that where, on final determination, the Central Government is of the opinion that increased imports have not caused or threatened to cause serious injury to a domestic industry, it shall refund the safeguard duty so collected:

Provided further that any provisional safeguard measure shall not remain in force for more than two hundred days from the date on which it was applied.

(6) Notwithstanding anything contained in the foregoing sub-sections, a notification issued under sub-section (1) or any safeguard measures applied under sub-sections (2), (3), (4) and (5), shall not apply to articles imported by a hundred percent export-oriented undertaking or a unit in a special economic zone, unless-

(i) it is specifically made applicable in such notification or to such undertaking or [2] [unit; or]
(ii) such article is either cleared as such into the domestic tariff area or used in the manufacture of any goods that are cleared into the domestic tariff area, in which case, safeguard measures shall be applied on the portion of the article so cleared or used, as was applicable when it was imported into India.

[3][**Explanation.** - For the purposes of this sub-section, -
(a) the expression “hundred percent export-oriented undertaking" shall have the same meaning as assigned to it in clause (i) of Explanation 2 to sub-section (1) of section 3 of the Central Excise Act, 1944 (1 of 1944);

(b) the expression “special economic zone" shall have the same meaning as assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005 (28 of 2005).]

(7) The safeguard duty imposed under this section shall be in addition to any other duty imposed under this Act or under any other law for the time being in force.

(8) The safeguard measures applied under this section shall, unless revoked earlier, cease to have effect on the expiry of four years from the date of such application:

Provided that if the Central Government is of the opinion that the domestic industry has taken measures to adjust to such injury or threat thereof and it is necessary that the safeguard measures should continue to be applied, it may extend the period of such application:

Provided further that in no case the safeguard measures shall continue to be applied beyond a period of ten years from the date on which such measures were first applied.

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[2] Substituted by s. 101 (i) of the Finance Act, 2021 (13 of 2021).
[3] Substituted by s. 101(ii) of the Finance Act, 2021 (13 of 2021).

(9) The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short-levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.

(10) The Central Government may, by notification in the Official Gazette, make rules for the purposes of this section, and without prejudice to the generality of the foregoing power, such rules may provide for-

(i) the manner in which articles liable for safeguard measures may be identified;
(ii) the manner in which the causes of serious injury or causes of threat of serious injury in relation to identified article may be determined;
(iii) the manner of assessment and collection of safeguard duty;
(iv) the manner in which tariff-rate quota on identified article may be allocated among supplying countries;
(v) the manner of implementing tariff-rate quota as a safeguard measure;
(vi) any other safeguard measure and the manner of its application.

(11) For the purposes of this section, -

(a) "developing country" means a country notified by the Central Government in the Official Gazette;
(b) "domestic industry" means the producers-
(i) as a whole of the like article or a directly competitive article in India; or
(ii) whose collective output of the like article or a directly competitive article in India constitutes a major share of the total production of the said article in India;
(c) "serious injury" means an injury causing significant overall impairment in the position of a domestic industry;
(d) "threat of serious injury" means a clear and imminent danger of serious injury.

(12) Every notification issued under this section shall be laid, as soon as may be after it is issued, before each House of Parliament, while it is in session, for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if, before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the notification or both Houses agree that the notification should not be issued, the notification shall thereafter have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulment shall be without prejudice to the validity of anything previously done under that notification.

[4] **[Section 8C- omitted.]**

[5] **[Section 9. Countervailing duty on subsidized articles. –**

(1) Where any country or territory pays, bestows, directly or indirectly, any subsidy upon the manufacture or production therein or the exportation therefrom of any article including any subsidy on transportation of such article, then, upon the importation of any such article into India, whether the same is imported directly from the country of manufacture, production or otherwise, and whether it is imported in the same condition as when exported from the country of manufacture or production or has been changed in condition by manufacture, production or otherwise, the Central Government may, by notification in the Official Gazette, impose a countervailing duty not exceeding the amount of such subsidy.

Explanation. - For the purposes of this section, a subsidy shall be deemed to exist if –

(a) there is financial contribution by a Government, or any public body [6] [in the exporting or producing country or territory], that is, where –

(i) a Government practice involves a direct transfer of funds (including grants, loans and equity infusion), or potential direct transfer of funds or liabilities, or both;

(ii)Government revenue that is otherwise due is foregone or not collected (including fiscal incentives);

(iii) a Government provides goods or services other than general infrastructure or purchases goods;

(iv) a Government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions specified in clauses (i) to (iii) above which would normally be vested in the Government and the practice in, no real sense, differs from practices normally followed by Governments; or

(b) a Government grants or maintains any form of income or price support, which operates directly or indirectly to increase export of any article from, or to reduce import of any article into, its territory, and a benefit is thereby conferred.

[7][(1A) Where the Central Government, on such inquiry as it considers necessary, is of the opinion that circumvention of countervailing duty imposed under sub-section (1) has taken place, either by altering the description or name or composition of the article on which such duty has been imposed or by import of such article in an unassembled or disassembled form or

[4] Omitted (w.e.f. 14-05-2016) by s.140 of the Finance Act, 2016 (28 of 2016).
[5] Substituted (w.e.f. 1-1-1995) by s. 2 of the Customs Tariff (Amendment) Ordinance, 1994 (14 of 1994).
[6] Substituted (w.e.f. 18-4-2006) by s. 61 of the Finance Act, 2006 (21 of 2006).
[7] Inserted (w.e.f. 1-8-2019) by s. 86 of the Finance (No. 2) Act, 2019 (23 of 2019).

by changing the country of its origin or export or in any other manner, whereby the countervailing duty so imposed is rendered ineffective, it may extend the countervailing duty to such other article also [8] [from such date, not earlier than the date of initiation of the inquiry, as the Central Government may, by notification in the Official Gazette, specify]]

[9][(1B) Where the Central Government, on such inquiry as it considers necessary, is of the opinion that absorption of countervailing duty imposed under sub-section (1) has taken place whereby the countervailing duty so imposed is rendered ineffective, it may modify such duty to counter the effect of such absorption, from such date, not earlier than the date of initiation of the inquiry, as the Central Government may, by notification in the Official Gazette, specify.

Explanation. - For the purposes of this sub-section, "absorption of countervailing duty" is said to have taken place, -

(a) if there is a decrease in the export price of an article without any commensurate change in the resale price in India of such article imported from the exporting country or territory; or

(b) under such other circumstances as may be provided by rules.]

(2) The Central Government may, pending the determination in accordance with the provisions of this section and the rules made thereunder of the amount of subsidy, impose a countervailing duty under this sub-section not exceeding the amount of such subsidy as provisionally estimated by it and if such countervailing duty exceeds the subsidy as so determined, -

(a) the Central Government shall, having regard to such determination and as soon as may be after such determination, reduce such countervailing duty; and

(b) refund shall be made of so much of such countervailing duty which has been collected as is in excess of the countervailing duty as so reduced.

[10] [(2A) Notwithstanding anything contained in sub-sections (1) and (2), a notification issued under sub-section (1) or any countervailing duty imposed under sub-section (2) shall not apply to article imported by a hundred percent export-oriented undertaking or a unit in a special economic zone, unless, -

(i) it is specifically made applicable in such notification or to such undertaking or unit; or

(ii) such article is either cleared as such into the domestic tariff area or used in the manufacture of any goods that are cleared into the domestic tariff area, in which case, countervailing duty shall be imposed on that portion of the article so cleared or used, as was applicable when it was imported into India.

Explanation. - For the purposes of this sub-section, -

(a) the expression "hundred percent export-oriented undertaking" shall have the same meaning as assigned to it in clause (1) of Explanation 2 to sub-section (1) of section 3 of the Central

[8] Inserted by s. 102(i) of the Finance Act, 2021 (13 of 2021).
[9] Inserted by s. 102(ii) of the Finance Act, 2021 (13 of 2021).
[10] Inserted by s. 102(iii) of the Finance Act, 2021 (13 of 2021).

Excise Act, 1944 (1 of 1944);
(b) the expression “special economic zone" shall have the same meaning as assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005 (28 of 2005).]

(3) Subject to any rules made by the Central Government, by notification in the Official Gazette, the countervailing duty under sub-section (1) or sub-section (2) shall not be levied unless it is determined that -

(a) the subsidy relates to export performance;

(b) the subsidy relates to the use of domestic goods over imported goods in the export article; or

(c) the subsidy has been conferred on a limited number of persons engaged in manufacturing, producing or exporting the article unless such a subsidy is for -

(i) research activities conducted by or on behalf of persons engaged in the manufacture, production or export;

(ii) assistance to disadvantaged regions within the territory of the exporting country; or

(iii) assistance to promote adaptation of existing facilities to new environmental requirements.

(4) If the Central Government, is of the opinion that the injury to the domestic industry which is difficult to repair, is caused by massive imports in a relatively short period, of the article benefiting from subsidies paid or bestowed and where in order to preclude the recurrence of such injury, it is necessary to levy countervailing duty retrospectively, the Central Government may, by notification in the Official Gazette, levy countervailing duty from a date prior to the date of imposition of countervailing duty under sub-section (2) but not beyond ninety days from the date of notification under that sub-section and notwithstanding anything contained in any law for the time being in force, such duty shall be payable from the date as specified in the notification issued under this sub-section.

(5) The countervailing duty chargeable under this section shall be in addition to any other duty imposed under this Act or any other law for the time being in force.

(6) The countervailing duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition:

Provided that if the Central Government, [11] [on consideration of a review], is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of subsidization and injury, it may, from time to time, extend the period of such imposition for a further period [12] [up to five years] and such further period shall commence from the date of order of such extension:

Provided further that where a review initiated before the expiry of the aforesaid period of five

[11] Substituted by s.134(i)(a) of the Finance Act, 2023 (8 of 2023).
[12] Substituted by s.102(iv)(a) of the Finance Act, 2021 (13 of 2021).

years has not come to a conclusion before such expiry, the countervailing duty may continue to remain in force pending the outcome of such a review for a further period not exceeding one year:

[13][**Provided** also that if the said duty is revoked temporarily, the period of such revocation shall not exceed one year at a time.]

(7) The amount of any such subsidy as referred to in sub-section (1) or sub-section (2) shall, from time to time, be ascertained [14] [***] by the Central Government, after such inquiry as it may consider necessary and the Central Government may, by notification in the Official Gazette, make rules for the identification of such article and for the assessment and collection of any countervailing duty imposed upon the importation thereof under this section.

[15] [(7A) The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.]

(8) Every notification issued under this section shall, as soon as may be after it is issued, be laid before each House of Parliament.

Section 9A. Anti-dumping duty on dumped articles. -

(1) Where [16] [any article is exported by an exporter or producer] from any country or territory (hereinafter in this section referred to as the exporting country or territory) to India at less than its normal value, then, upon the importation of such article into India, the Central Government may, by notification in the Official Gazette, impose an anti-dumping duty not exceeding the margin of dumping in relation to such article.

Explanation. For the purposes of this section, -

(a)"margin of dumping", in relation to an article, means the difference between its export price and its normal value;

(b) "export price", in relation to an article, means the price of the article exported from the exporting country or territory and in cases where there is no export price or where the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported articles are first resold to an independent buyer or if the article is not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as may be determined in accordance with the rules

[13] Inserted by s.102(iv)(b) of the Finance Act, 2021 (13 of 2021).
[14] Omitted by s.134(i)(b) of the Finance Act, 2023 (8 of 2023).
[15] Substituted (w.e.f 1-1-1995) by s. 99 of the Finance (No. 2) Act, 2009 (33 of 2009).
[16] Substituted (w.e.f. 19-8-2009) by s. 101 of the Finance (No.2) Act, 2009 (33 of 2009).

made under sub-section (6);

(c)"normal value", in relation to an article, means -

(i) the comparable price, in the ordinary course of trade, for the like article when [17][destined for consumption] in the exporting country or territory as determined in accordance with the rules made under sub section (6); or

(ii) when there are no sales of the like article in the ordinary course of trade in the domestic market of the exporting country or territory, or when because of the particular market situation or low volume of the sales in the domestic market of the exporting country or territory, such sales do not permit a proper comparison, the normal value shall be either -

(a) comparable representative price of the like article when exported from the exporting country or [18] [territory to] an appropriate third country as determined in accordance with the rules made under sub-section (6); or

(b) the cost of production of the said article in the country of origin along with reasonable addition for administrative, selling and general costs, and for profits, as determined in accordance with the rules made under sub-section (6):

Provided that in the case of import of the article from a country other than the country of origin and where the article has been merely transhipped through the country of export or such article is not produced in the country of export or there is no comparable price in the country of export, the normal value shall be determined with reference to its price in the country of origin.

[19][(1A) Where the Central Government, on such inquiry as it may consider necessary, is of the opinion that circumvention of antidumping duty imposed under sub-section (1) has taken place, either by altering the description or name or composition of the article subject to such anti-dumping duty or by import of such article in an unassembled or disassembled form or by changing the country of its origin or export or in any other manner, whereby the anti-dumping duty so imposed is rendered ineffective, it may extend the anti-dumping duty to such article or an article originating in or exported from such country, as the case may be [20][,from such date, not earlier than the date of initiation of the inquiry, as the Central Government may, by notification in the Official Gazette, specify].]

[21][(1B) Where the Central Government, on such inquiry as it may consider necessary, is of the opinion that absorption of anti¬dumping duty imposed under sub-section (1) has taken place whereby the anti-dumping duty so imposed is rendered ineffective, it may modify such duty to counter the effect of such absorption, from such date, not earlier than the date of initiation of the inquiry, as the Central Government may, by notification in the Official Gazette, specify.

Explanation. - For the purposes of this sub-section,"absorption of anti-dumping duty" is said

[17] Substituted (w.e.f. 18-4-2006) by s. 62 of the Finance Act, 2006 (21 of 2006).
[18] Substituted (w.e.f. 14-5 -2003) by s. 131 of the Finance Act, 2003 (32 of 2003).
[19] Inserted by s. 58 of the Finance Act, 2011 (8 of 2011).
[20] Inserted by s.103 (i) of the Finance Act, 2021 (13 of 2021).
[21] Inserted by s.103(ii) of the Finance Act, 2021 (13 of 2021).

to have taken place, -

(a) if there is a decrease in the export price of an article without any commensurate change in the cost of production of such article or export price of such article to countries other than India or resale price in India of such article imported from the exporting country or territory; or

(b) under such other circumstances as may be provided by rules.]

(2) The Central Government may, pending the determination in accordance with the provisions of this section and the rules made thereunder of the normal value and the margin of dumping in relation to any article, impose on the importation of such article into India an anti-dumping duty on the basis of a provisional estimate of such value and margin and if such anti-dumping duty exceeds the margin as so determined: -

(a) the Central Government shall, having regard to such determination and as soon as may be after such determination, reduce such anti-dumping duty; and

(b) refund shall be made of so much of the anti-dumping duty which has been collected as is in excess of the anti-dumping duty as so reduced.

[22][(2A) Notwithstanding anything contained in sub-section (1) and sub-section (2), a notification issued under sub- section (1) or any anti-dumping duty imposed under sub-section (2) shall not apply to articles imported by a hundred percent export-oriented undertaking or a unit in a special economic zone, unless, -

(i) it is specifically made applicable in such notification or to such undertaking or unit; or

(ii) such article is either cleared as such into the domestic tariff area or used in the manufacture of any goods that are cleared into the domestic tariff area, in which case, anti-dumping duty shall be imposed on that portion of the article so cleared or used, as was applicable when it was imported into India.

Explanation. - For the purposes of this section, -

(a) the expression "hundred percent export-oriented undertaking" shall have the same meaning as assigned to it in clause (i) of Explanation 2 to sub-section (1) of section 3 of the Central Excise Act, 1944 (1 of 1944);

(b) the expression "special economic zone" shall have the same meaning as assigned to it in clause (za) of section 2 of the Special Economic Zones Act, 2005 (28 of 2005).]

(3) If the Central Government, in respect of the dumped article under inquiry, is of the opinion that -

(i) there is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practices dumping and that such dumping would cause injury; and

(ii) the injury is caused by massive dumping of an article imported in a relatively short time which in the light of the timing and the volume of imported article dumped and

[22] Substituted by s.103(iii) of the Finance Act, 2021 (13 of 2021).

other circumstances is likely to seriously undermine the remedial effect of the anti-dumping duty liable to be levied,

the Central Government may, by notification in the Official Gazette, levy anti-dumping duty retrospectively from a date prior to the date of imposition of anti-dumping duty under sub-section (2) but not beyond ninety days from the date of notification under that sub-section, and notwithstanding anything contained in any law for the time being in force, such duty shall be payable at such rate and from such date as may be specified in the notification.

(4) The anti-dumping duty chargeable under this section shall be in addition to any other duty imposed under this Act or any other law for the time being in force.

(5) The anti-dumping duty imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of five years from the date of such imposition:

Provided that if the Central Government,[23] [on consideration of a review], is of the opinion that the cessation of such duty is likely to lead to continuation or recurrence of dumping and injury, it may, from time to time, extend the period of such imposition for a further period [24][up to five years] and such further period shall commence from the date of order of such extension:

Provided further that where a review initiated before the expiry of the aforesaid period of five years has not come to a conclusion before such expiry, the anti-dumping duty may continue to remain in force pending the outcome of such a review for a further period not exceeding one year.

[25] [**Provided** also that if the said duty is revoked temporarily, the period of such revocation shall not exceed one year at a time.]

(6) The margin of dumping as referred to in sub-section (1) or sub-section (2) shall, from time to time, be ascertained [26] [***] by the Central Government, after such inquiry as it may consider necessary and the Central Government may, by notification in the Official Gazette, make rules for the purposes of this section, and without prejudice to the generality of the foregoing, such rules may provide for the manner in which articles liable for any anti-dumping duty under this section may be identified, and for the manner in which the export price and the normal value of, and the margin of dumping in relation to, such articles may be determined and for the assessment and collection of such anti-dumping duty.

[27][(6A) The margin of dumping in relation to an article, exported by an exporter or producer, under inquiry under sub-section (6) shall be determined on the basis of records concerning

[23] Substituted by s.134(ii) (a) of the Finance Act, 2023 (8 of 2023).
[24] Substituted by s. 103(iv)(a) of the Finance Act, 2021 (13 of 2021).
[25] Inserted by s. 103(iv)(b) of the Finance Act, 2021 (13 of 2021).
[26] Omitted by s.134(ii)(b) of the Finance Act, 2023 (8 of 2023).
[27] Inserted (w.e.f. 19-8-2009) by s.101 of the Finance (No.2) Act, 2009 (33 of 2009).

normal value and export price maintained, and information provided, by such exporter or producer:

Provided that where an exporter or producer fails to provide such records or information, the margin of dumping for such exporter or producer shall be determined on the basis of facts available.]

(7) Every notification issued under this section shall, as soon as may be after it is issued, be laid before each House of Parliament.

[28][(8) The provisions of the Customs Act, 1962 (52 of 1962) and the rules and regulations made thereunder, including those relating to the date for determination of rate of duty, assessment, non-levy, short levy, refunds, interest, appeals, offences and penalties shall, as far as may be, apply to the duty chargeable under this section as they apply in relation to duties leviable under that Act.]

[29][Section 9AA. Refund of anti-dumping duty in certain cases. -

(1) [30][Where upon determination by an officer authorised in this behalf by the Central Government under clause (ii) of sub-section (2), an importer proves to the satisfaction of the Central Government that he has paid anti-dumping duty imposed under sub-section (1) of section 9A on any article, in excess of the actual margin of dumping in relation to such article, the Central Government shall, as soon as may be, reduce such anti-dumping duty as is in excess of actual margin of dumping so determined, in relation to such article or such importer, and such importer shall be entitled to refund of such excess duty]:

Provided that such importer shall not be entitled to refund of so much of such excess duty under this sub-section which is refundable under sub-section (2) of section 9A.

Explanation - for the purposes of this sub-section, the expressions, "margin of dumping", "export price" and "normal value" shall have the same meaning respectively assigned to them in the Explanation to sub-section (1) of section 9A.

(2) The Central Government may, by notification in the Official Gazette, make rules to-

(i) provide for the manner in which and the time within which the importer may make application for the purposes of sub-section (1);

(ii) authorise the officer of the Central Government who shall dispose of such application on behalf of the Central Government within the time specified in such rules; and

(iii) provide the manner in which the excess duty referred to in sub-section (1) shall be -

(A) determined by the officer referred to in clause (ii); and

(B) refunded by the Deputy Commissioner of Customs or Assistant Commissioner of

[28] Substituted (w.e.f. 1-1-1995) by s.101 of the Finance (No.2) Act, 2009 (33 of 2009).
[29] Inserted by s. 89 of the Finance Act, 2000 (10 of 2000).
[30] Substituted by s. 59 of the Finance Act, 2011 (8 of 2011).

Customs, as the case may be, after such determination.

Section 9B. No levy under section 9 or section 9A in certain cases. -

(1) Notwithstanding anything contained in section 9 or section 9A, -

(a) no article shall be subjected to both countervailing duty and anti-dumping duty to compensate for the same situation of dumping or export subsidization;

(b) the Central Government shall not levy any countervailing duty or anti-dumping duty -

(i) under section 9 or section 9A by reasons of exemption of such articles from duties or taxes borne by the like article when meant for consumption in the country of origin or exportation or by reasons of refund of such duties or taxes;

(ii) under sub-section (1) of each of these sections, on the import into India of any article from a member country of the World Trade Organisation or from a country with whom Government of India has a most favoured nation agreement (hereinafter referred as a specified country), unless in accordance with the rules made under sub-section (2) of this section, a determination has been made that import of such article into India causes or threatens material injury to any established industry in India or materially retards the establishment of any industry in India; and

(iii) under sub-section (2) of each of these sections, on import into India of any article from the specified countries unless in accordance with the rules made under sub-section (2) of this section, a preliminary finding has been made of subsidy or dumping and consequent injury to domestic industry; and a further determination has also been made that a duty is necessary to prevent injury being caused during the investigation:

Provided that nothing contained in sub-clauses (ii) and (iii) of clause (b) shall apply if a countervailing duty or an anti-dumping duty has been imposed on any article to prevent injury or threat of an injury to the domestic industry of a third country exporting the like articles to India;

(c) the Central Government may not levy -

(i) any countervailing duty under section 9, at any time, upon receipt of satisfactory voluntary undertakings from the Government of the exporting country or territory agreeing to eliminate or limit the subsidy or take other measures concerning its effect, or the exporter agreeing to revise the price of the article and if the Central Government is satisfied that the injurious effect of the subsidy is eliminated thereby;

(ii) any anti-dumping duty under section 9A, at any time, upon receipt of satisfactory voluntary undertaking from any exporter to revise its prices or to cease exports to the area in question at dumped price and if the Central Government is satisfied that the injurious effect of dumping is eliminated by such action.

(1) The Central Government may, by notification in the Official Gazette, make rules for the purposes of this section, and without prejudice to the generality of the foregoing, such rules may provide for the manner in which any investigation may be made for the purposes of this section, the factors to which regard shall be at in any such investigation and for all matters connected with such investigation.

Section 9C. Appeal. -

[31][(1) An appeal against the [32] [***] determination or review thereof shall lie to the Customs, Excise and Service Tax Appellate Tribunal constituted under section 129 of the Customs Act, 1962 (52 of 1962) (hereinafter referred to as the Appellate Tribunal), in respect of the existence, degree and effect of -

(i) any subsidy or dumping in relation to import of any article; or

(ii) import of any article into India in such increased quantities and under such condition so as to cause or threatening to cause serious injury to domestic industry requiring imposition of safeguard duty in relation to import of that article.]

[33][(1A) An appeal under sub-section (1) shall be accompanied by a fee of fifteen thousand rupees.

(1B) Every application made before the Appellate Tribunal, -

(a) in an appeal under sub-section (1), for grant of stay or for rectification of mistake or for any other purpose; or

(b) for restoration of an appeal or an application, shall be accompanied by a fee of five hundred rupees.]

(2) Every appeal under this section shall be filed within ninety days of the date of [34][determination or review] under appeal:

Provided that the Appellate Tribunal may entertain any appeal after the expiry of the said period of ninety days, if it is satisfied that the appellant was prevented by sufficient cause from filing the appeal in time.

(3) The Appellate Tribunal may, after giving the parties to the appeal, an opportunity of being heard, pass such [35][determination or review] thereon as it thinks fit, confirming, modifying or annulling the order appealed against.

(4) The provisions of sub-sections (1), (2), (5) and (6) of section 129C of the Customs Act, 1962 (52 of 1962) shall apply to the Appellate Tribunal in the discharge of its functions under this Act as they apply to it in the discharge of its functions under the Customs Act, 1962 (52 of 1962).

(5) Every appeal under sub-section (1) shall be heard by a Special Bench constituted by the President of the Appellate Tribunal for hearing such appeals and such Bench shall consist of the President and not less than two members and shall include one judicial member and one technical member.

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[31] Substituted (w.e.f. 1-8-2019) by s. 87 of the Finance (No. 2) Act, 2019 (23 of 2019).
[32] Omitted by s.134(iii) (a) of the Finance Act, 2023 (8 of 2023).
[33] Inserted [w.e.f. 1-11-2004 vide Notification No. 121/2004-Cus. (N.T.), dated 25-10-2004] by s. 77 of the Finance (No. 2) Act, 2004 (23 of 2004)
[34] Substituted by s.134(iii) (b) of the Finance Act, 2023 (8 of 2023).
[35] Substituted by s.134(iii) (c) of the Finance Act, 2023 (8 of 2023).

[36]**Explanation.** - For the purpose of this section, "determination" or "review" means the determination or review done in such manner as may be specified in the rules made under section 8B, 9, 9A and 9 B.

10: Rules to Be Laid Before Parliament

Every rule made under this Act shall be laid, as soon as may be after it is made,before each House of Parliament, while it is in session for a total period of thirty days which may be comprised in one session or in two or more successive sessions, and if before the expiry of the session immediately following the session or the successive sessions aforesaid, both Houses agree in making any modification in the rule, or both Houses agree that the rule should not be made,the rule shall, thereafter, have effect only in such modified form or be of no effect, as the case may be; so, however, that any such modification or annulmentshall be without prejudice to the validity of anything previously done under that rule.

[36] Inserted by s.134 (iii) (d) of the Finance Act, 2023 (8 of 2023).

B

THE FOREIGN TRADE(DEVELOPMENT AND REGULATION) ACT, 1992

[1]Chapter III A

9A. Power of Central Government to impose quantitative restrictions -

(1) If the Central Government, after conducting such enquiry as it deems fit, is satisfied that any goods are imported into India in such increased quantities and under such conditions as to cause or threaten to cause serious injury to domestic industry, it may, by notification in the Official Gazette, impose such quantitative restrictions on the import of such goods as it may deem fit:

Provided that no such quantitative restrictions shall be imposed on any goods originating from a developing country so long as the share of imports of such goods from that country does not exceed three per cent or where such goods originate from more than one developing country, then, so long as the aggregate of the imports from all such countries taken together does not exceed nine per cent of the total imports of such goods into India.

(2) The quantitative restrictions imposed under this section shall, unless revoked earlier, cease to have effect on the expiry of four years from the date of such imposition.

Provided that if the Central Government is of the opinion that the domestic industry has taken measures to adjust to such injury or threat thereof and it is necessary that the quantitative restrictions should continue to be imposed to prevent such injury or threat and to facilitate the adjustments, it may extend the said period beyond four years:

Provided further that in no case the quantitative restrictions shall continue to be imposed beyond a period of ten years from the date on which such restrictions were first imposed.

(3) The Central Government may, by rules provide for the manner in which goods, the import of which shall be subject to quantitative restrictions under this section, may be identified and the manner in which the causes of serious injury or causes of threat of serious injury in relation to such goods may be determined.

(4) For the purposes of this section -

(a) "developing country" means a country notified by the Central Government in the Official Gazette, in this regard;

(b) "domestic industry" means the producers of goods (including producers of agricultural goods)

[1] Inserted (w.e.f. 27-8-2010 vide notification S.O. No. 2099(E), dated 27-8-2010) by Foreign Trade (Development & Regulation) Amendment Act, 2010.

(i) as a whole of the like goods or directly competitive goods in India; or
(ii) whose collective output of the like goods or directly competitive goods in India constitutes a major share of the total production of the said goods in India;

(c) "serious injury" means an injury causing significant overall impairment in the position of a domestic industry;

(d) "threat of serious injury" means a clear and imminent danger of serious injury.

C

CUSTOMS TARIFF (IDENTIFICATION,ASSESSMENT AND COLLECTION OF ANTIDUMPING DUTY ON DUMPED ARTICLES AND FOR DETERMINATION OF INJURY)RULES, 1995.

CUSTOMS TARIFF (IDENTIFICATION, ASSESSMENT AND COLLECTION OF ANTIDUMPING DUTY ON DUMPED ARTICLES AND FOR DETERMINATION OF INJURY) RULES, 1995.

[Notification No. 2/95-Cus. (N.T.), dated 1-1-1995 as amended by Notification No. 44/99-Cus (N.T.) dated 15-07-99; No. 28/2001-Cus. (N.T.), dated 13-5-2001; No. 1/2002-Cus. (N.T.), dated 4-1-2002; No. 101/2003-Cus. (N.T.), dated 10-11-2003; No. 18/2010-Cus. (N.T.), dated 27-2-2010; No. 15/2011-Cus. (N.T.), dated 1-3-2011; No. 86/2011-Cus. (N.T.), dated 1-12-2011; No. 6/2012-Cus. (N.T.), dated 19-1-2012, No. 9/2020-Cus. (N.T.), dated 2-2-2020 and No. 10/2021-Cus. (N.T.), dated 1-2-2021, No. 84/2021-Cus. (N.T), dated 27-10-2021.]

In exercise of the powers conferred by sub-section (6) of section 9A and sub-section (2) of section 9B of the Customs Tariff Act, 1975 (51 of 1975) and in supersession of the Customs Tariff (Identification, Assessment and Collection of Duty or Additional Duty on Dumped Articles and for Determination of Injury) Rules, 1985, except as respect things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely :-

Rule 1. Short title and commencement. -

(1) These rules may be called the Customs Tariff (Identification, Assessment and Collection of Anti-dumping Duty on Dumped Articles and for Determination of Injury) Rules, 1995.

(2) They shall come into force on the 1st day of January, 1995.

Rule 2. Definitions. -

In these rules, unless the context otherwise requires, -

(a) "Act" means the Customs Tariff Act, 1975 (51 of 1975),

(b) "domestic industry" means the domestic producers as a whole engaged in the manufacture of the like article and any activity connected therewith or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are

themselves importers thereof [38][in such case the term "domestic Industry" may be construed as [39][referring to the rest of producers] :

Provided that in exceptional circumstances referred to in sub-rule (3) of Rule 11, the domestic industry in relation to the article in question shall be deemed to comprise two or more competitive markets and the producers within each of such market a separate industry, if -

(i) the producers within such a market sell all or almost all of their production of the article in question in that market; and

(ii) the demand in the market is not in any substantial degree supplied by producers of the said article located elsewhere in the territory;

[40]**[Explanation.** - For the purposes of this clause, producers shall be deemed to be related to exporters or importers only if, -

(a) one of them directly or indirectly controls the other; or

(b) both of them are directly or indirectly controlled by a third person; or

(c) together they directly or indirectly control a third person subject to the condition that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producers to behave differently from non-related producers.

Note: For the Purpose of this Explanation, a producer shall be deemed to control another producer when the former is legally or operationally in a position to exercise restraint or direction over the latter.]

(c) "interested party" includes -

(i) an exporter or a foreign producer or the importer of an article subject to investigation for being dumped in India, or a trader or business association a majority of the members of which are producers, exporters or importers of such an article;

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[38] Substituted by M.F. (D.R) Notification No. 18/2010-Cus. (N.T.), dated 27-2-2010.
[39] Substituted by Notification No. 86/2011-Cus. (N.T.), dated 1-12-2011.
[40] Substituted by Notification No. 9/2020-Cus. (N.T.), dated 2-2-2020.

(ii) the government of the exporting country; and

(iii) a producer of the like article in India or a trade and business association a majority of the members of which produce the like article in India;

(d) "like article" means an article which is identical or alike in all respects to the article under investigation for being dumped in India or in the absence of such an article, another article which although not alike in all respects, has characteristics closely resembling those of the articles under investigation;

[41] [(da) "period of investigation" means the period during which the existence of dumping is examined;]

(e) "provisional duty" means an anti dumping duty imposed under sub-section (2) of section 9A of the Act;

(f) "specified country" means a country or territory which is a member of the World Trade Organisation and includes the country or territory with which the Government of India has an agreement for giving it the most favoured nation treatment;

(g) all words and expressions used and not defined in these rules shall have the meanings respectively assigned to them in the Act.

Rule 3. Appointment of designated authority. -

(1) The Central Government may, by notification in the Official Gazette, appoint a person not below the rank of a Joint Secretary to the Government of India or such other person as that Government may think fit as the designated authority for purposes of these rules.

(2) The Central Government may provide to the designated authority the services of such other persons and such other facilities as it deems fit.

Rule [42][4. Duties of the designated authority. -

[41] Substituted by Notification No. 9/2020-Cus. (N.T.), dated 2-2-2020.
[42] Substituted by Notification No. 15/2011-Cus. (N.T.), dated 1-3-2011.

(1) It shall be the duty of the designated authority in accordance with these rules -

(a) to investigate as to the existence, degree and effect of any alleged dumping in relation to import of any article;

(b) to identify the article liable for anti-dumping duty;

(c) to submit its findings, provisional or otherwise to the Central Government as to -

(i) normal value, export price and the margin of dumping in relation to the article under investigation; and

(ii) the injury or threat of injury to an industry established in India or material retardation to the establishment of an industry in India consequent upon the import of such article from the specified countries;

(d) to recommend to the Central Government -

(i) the amount of anti-dumping duty equal to the margin of dumping or less, which if levied, would remove the injury to the domestic industry, after considering the principles laid down in the Annexure III to these rules; and

(ii) the date of commencement of such duty;

(e) to review the need for continuance of anti-dumping duty.]

Rule 5. Initiation of investigation. -

(1) Except as provided in sub-rule (4), the designated authority shall initiate an investigation to determine the existence, degree and effect of any alleged dumping only upon receipt of a written application by or on behalf of the domestic industry.

(2) An application under sub-rule (1) shall be in the form as may be specified by the designated authority and the application shall be supported by evidence of -

(a) dumping,

(b) injury, where applicable, and

(c) where applicable, a causal link between such dumped imports and alleged injury.

(3) The designated authority shall not initiate an investigation pursuant to an application made under sub-rule (1) unless -

(a) it determines, on the basis of an examination of the degree of support for, or opposition to the application expressed by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry:

Provided that no investigation shall be initiated if domestic producers expressly supporting the application account for less than twenty five per cent of the total production of the like article by the domestic industry, and

(b) it examines the accuracy and adequacy of the evidence provided in the application and satisfies itself that there is sufficient evidence regarding -

(i) dumping,

(ii) injury, where applicable; and

(iii) where applicable, a causal link between such dumped imports and the alleged injury,

to justify the initiation of an investigation.

Explanation. - For the purpose of this rule the application shall be deemed to have been made by or on behalf of the domestic industry, if it is supported by those domestic producers whose collective output constitute more than fifty per cent of the total production of the like article produced by that portion of the domestic industry expressing either support for or opposition, as the case may be, to the application.

[43][(3A) The period of investigation shall, -

[43] Inserted (w.e.f. 2-2-2021) by Notification No. 10/2021-Cus. (N.T.), dated 1-2-2021.

(i) not be more than six months old as on the date of initiation of investigation;

(ii) be for a period of twelve months normally and for reasons to be recorded in writing, the designated authority may consider a minimum of six months or maximum of eighteen months.]

(4) Notwithstanding anything contained in sub-rule (1) the designated authority may initiate an investigation *suo moto* if it is satisfied from the information received from the [44][Principal Commissioner of Customs or Commissioner of Customs, as the case may be,] appointed under the Customs Act, 1962 (52 of 1962) or from any other source that sufficient evidence exists as to the existence of the circumstances referred to in clause (b) of sub-rule (3).

(5) The designated authority shall notify the government of the exporting country before proceeding to initiate an investigation.

Rule 6. Principles governing investigations. -

(1) The designated authority shall, after it has decided to initiate investigation to determine the existence, degree and effect of any alleged dumping of any article, issue a public notice notifying its decision and such public notice shall, *inter alia,* contain adequate information on the following: -

(i) the name of the exporting country or countries and the article involved;

(ii) the date of initiation of the investigation;

(iii) the basis on which dumping is alleged in the application;

(iv) a summary of the factors on which the allegation of injury is based;

(v) the address to which representations by interested parties should be directed; and

(vi) the time-limits allowed to interested parties for making their views known.

[44] Substituted (w.e.f. 2-2-2021) by Notification No. 10/2021-Cus. (N.T.), dated 1-2-2021.

(2) A copy of the public notice shall be forwarded by the designated authority to the known exporters of the article alleged to have been dumped, the Governments of the exporting countries concerned and other interested parties.

(3) The designated authority shall also provide a copy of the application referred to in sub-rule (1) of Rule 5 to -

(i) the known exporters or to the concerned trade association where the number of exporters is large, and

(ii) the governments of the exporting countries:

Provided that the designated authority shall also make available a copy of the application to any other interested party who makes a request therefor in writing.

(4) The designated authority may issue a notice calling for any information, in such form as may be specified by it, from the exporters, foreign producers and other interested parties and such information shall be furnished by such persons in writing within thirty days from the date of receipt of the notice or within such extended period as the designated authority may allow on sufficient cause being shown.

Explanation: For the purpose of this sub-rule, the notice calling for information and other documents shall be deemed to have been received one week from the date on which it was sent by the designated authority or transmitted to the appropriate diplomatic representative of the exporting country.

(5) The designated authority shall also provide opportunity to the industrial users of the article under investigation, and to representative consumer organisations in cases where the article is commonly sold at the retail level, to furnish information which is relevant to the investigation regarding dumping, injury where applicable, and causality.

(6) The designated authority may allow an interested party or its representative to present the information relevant to the investigation orally but such oral information shall be taken into consideration by the designated authority only when it is subsequently reproduced in writing.

(7) The designated authority shall make available the evidence presented to it by one interested party to the other interested parties, participating in the investigation.

(8) In a case where an interested party refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes the investigation, the designated authority may record its findings on the basis of the facts available to it and make such recommendations to the Central Government as it deems fit under such circumstances.

Rule 7. Confidential information. -

(1) Notwithstanding anything contained in sub-rules (2), (3) and (7) of rule 6, sub-rule (2) of rule 12, sub-rule (4) of rule 15 and sub-rule (4) of rule 17, the copies of applications received under sub-rule (1) of rule 5, or any other information provided to the designated authority on a confidential basis by any party in the course of investigation, shall, upon the designated authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed to any other party without specific authorisation of the party providing such information.

(2) The designated authority may require the parties providing information on confidential basis to furnish non-confidential summary thereof and if, in the opinion of a party providing such information, such information is not susceptible of summary, such party may submit to the designated authority a statement of reasons why summarisation is not possible.

(3) Notwithstanding anything contained in sub-rule (2), if the designated authority is satisfied that the request for confidentiality is not warranted or the supplier of the information is either unwilling to make the information public or to authorise its disclosure in a generalised or summary form, it may disregard such information.

Rule 8. Accuracy of the information. -

Except in cases referred to in sub-rule (8) of rule 6, the designated authority shall during the course of investigation satisfy itself as to the accuracy of the information supplied by the interested parties upon which its findings are based.

Rule 9. Investigation in the territory of other specified countries. -

The designated authority may carry out investigation in the territories of other countries, if the circumstances of a case so warrant:

Provided that the designated authority obtains the consent of the person concerned and notifies the representatives of the concerned government and the concerned government does not object to such investigation.

Rule 10. Determination of normal value, export price and margin of dumping. -

An article shall be considered as being dumped if it is exported from a country or territory to India at a price less than its normal value and in such circumstances the designated authority shall determine the normal value, export price and the margin of dumping taking into account, *inter alia* , the principles laid down in Annexure I to these rules.

Rule 11. Determination of injury. -

(1) In the case of imports from specified countries, the designated authority shall record a further finding that import of such article into India causes or threatens material injury to any established industry in India or materially retards the establishment of any industry in India.

(2) The designated authority shall determine the injury to domestic industry, threat of injury to domestic industry, material retardation to establishment of domestic industry and a causal link between dumped imports and injury, taking into account all relevant facts, including the volume of dumped imports, their effect on price in the domestic market for like articles and the consequent effect of such imports on domestic producers of such articles and in accordance with the principles set out in Annexure II to these rules.

(3) The designated authority may, in exceptional cases, give a finding as to the existence of injury even where a substantial portion of the domestic industry is not injured, if -

(i) there is a concentration of dumped imports into an isolated market, and

(ii) the dumped articles are causing injury to the producers of all or almost all of the production within such market.

Rule 12. Preliminary findings. -

(1) The designated authority shall proceed expeditiously with the conduct of the investigation and shall, in appropriate cases, record a preliminary finding regarding export price, normal value and margin of dumping, and in respect of imports from specified countries, it shall also record a further finding regarding injury to the domestic industry and such finding shall contain sufficiently detailed information for the preliminary determinations on dumping and injury and shall refer to the matters of fact and law which have led to arguments being accepted or rejected. It will also contain: -

(i) the names of the suppliers, or when this is impracticable, the supplying countries involved;

(ii) a description of the article which is sufficient for customs purposes;

(iii) the margins of dumping established and a full explanation of the reasons for the methodology used in the establishment and comparison of the export price and the normal value;

(iv) considerations relevant to the injury determination; and

(v) the main reasons leading to the determination.

(2) The designated authority shall issue a public notice recording its preliminary findings.

Rule 13. Levy of provisional duty. -

The Central Government may, on the basis of the preliminary findings recorded by the designated authority, impose a provisional duty not exceeding the margin of dumping:

Provided that no such duty shall be imposed before the expiry of sixty days from the date of the public notice issued by the designated authority regarding its decision to initiate investigations:

Provided further that such duty shall remain in force only for a period not exceeding six months which may upon request of the exporters representing a significant percentage of the trade involved be extended by the Central Government to nine months.

Rule 14. Termination of investigation. -

The designated authority shall, by issue of a public notice, terminate an investigation immediately if -

(a) it receives a request in writing for doing so from or on behalf of the domestic industry affected, at whose instance the investigation was initiated;

(b) it is satisfied in the course of an investigation, that there is not sufficient evidence of dumping or, where applicable, injury to justify the continuation of the investigation;

(c) it determines that the margin of dumping is less than two per cent of the export price;

(d) it determines that the volume of the dumped imports, actual or potential, from a particular country account for less than three per cent of the imports of the like product, unless, the countries which individually account for less than three per cent of the imports of the like product, collectively account for more than seven per cent of the import of the like product; or

(e) it determines that the injury where applicable, is negligible.

Rule 15. Suspension or termination of investigation on price undertaking. -

(1) The designated authority may suspend or terminate an investigation if the exporter of the article in question, -

(i) furnishes an undertaking in writing to the designated authority to revise the prices so that no exports of the said article are made to India at dumped prices, or

(ii) in the case of imports from specified countries undertake to revise the prices so that injurious effect of dumping is eliminated and the designated authority is satisfied that the injurious effect of the dumping is eliminated:

Provided further that the designated authority shall complete the investigation and record its finding, if the exporter so desires, or it so decides.

(2) No undertaking as regards price increase under clause (ii) of the sub-rule (1) shall be accepted from any exporter unless the designated authority had made preliminary determination of dumping and the injury.

(3) The designated authority may, also not accept undertakings offered by any exporter, if it considers that acceptance of such undertaking is impractical or is unacceptable for any other reason.

(4) The designated authority shall intimate the acceptance of an undertaking and suspension or termination of investigation to the Central Government and also issue a public notice in this regard. The public notice shall, contain *inter alia* , the non-confidential part of the undertaking.

(5) In cases where an undertaking has been accepted by the designated authority the Central Government may not impose a duty under sub-section (2) of section 9A of the Act for such period the undertaking acceptable to the designated authority remains valid.

(6) Where the designated authority has accepted any undertaking under sub-rule (1), it may require the exporter from whom such undertaking has been accepted to provide from time to time information relevant to the fulfilment of the undertaking and to permit verification of relevant data :

[45][**Provided** that in case of any violation of an undertaking, the designated authority shall, as soon as may be possible, inform the Central Government of the violation of the undertaking and recommend imposition of provisional duty from the date of such violation in accordance with the provisions of these rules.]

(7) The designated authority shall, *suo motu* or on the basis of any request received from exporters or importers of the article in question or any other interested party, review from time to time the need for the continuance of any undertaking given earlier.

Rule 16. Disclosure of information. -

The designated authority shall, before giving its final findings, inform all interested parties of the essential facts under consideration which form the basis for its decision.

Rule 17. Final findings. -

[45] Substituted by M.F. (D.R) Notification No. 44/99-Cus. (N.T.), dated 15-7-1999.

(1) The designated authority shall, within one year from the date of initiation of an investigation, determine as to whether or not the article under investigation is being dumped in India and submit to the Central Government its final finding -

(a) as to, -

(i) the export price, normal value and the margin of dumping of the said article;

(ii) whether import of the said article into India, in the case of imports from specified countries, causes or threatens material injury to any industry established in India or materially retards the establishment of any industry in India;

(iii) a causal link, where applicable, between the dumped imports and injury;

(iv) whether a retrospective levy is called for and if so, the reasons therefor and date of commencement of such retrospective levy:

Provided that the Central Government may, [1][in its discretion in special circumstances] extend further the aforesaid period of one year by six months:

Provided further that in those cases where the designated authority has suspended the investigation on the acceptance of a price undertaking as provided in rule 15 and subsequently resumes the same on violation of the terms of the said undertaking, the period for which investigation was kept under suspension shall not be taken into account while calculating the period of said one year,

[46] [(b) recommending the amount of duty which, if levied, would remove the injury where applicable, to the domestic industry [47][after considering to the principles laid down in the Annexure III to these rules.]]

(2) The final finding, if affirmative, shall contain all information on the matter of facts and law and reasons which have led to the conclusion and shall also contain information regarding -

[46] Substituted by M.F. (D.R) Notification No. 44/99-Cus. (N.T.), dated 15-7-1999.
[47] Inserted by Notification No. 15/2011-Cus (N.T.), dated 1-3-2011.

(i) the names of the suppliers, or when this is impracticable, the supplying countries involved;

(ii) a description of the product which is sufficient for customs purposes;

(iii) the margins of dumping established and a full explanation of the reasons for the methodology used in the establishment and comparison of the export price and the normal value;

(iv) considerations relevant to the injury determination; and

(v) the main reasons leading to the determination.

(3) The designated authority shall determine an individual margin of dumping for each known exporter or producer concerned of the article under investigation:

Provided that in cases where the number of exporters, producers, importers or types of articles involved are so large as to make such determination impracticable, it may limit its findings either to a reasonable number of interested parties or articles by using statistically valid samples based on information available at the time of selection, or to the largest percentage of the volume of the exports from the country in question which can reasonably be investigated, and any selection, of exporters, producers, or types of articles, made under this proviso shall preferably be made in consultation with and with the consent of the exporters, producers or importers concerned :

Provided further that the designated authority shall, determine an individual margin of dumping for any exporter or producer, though not selected initially, who submit necessary information in time, except where the number of exporters or producers are so large that individual examination would be unduly burdensome and prevent the timely completion of the investigation.

(4) The designated authority shall issue a public notice recording its final findings.

Rule 18. Levy of duty. -

(1) The Central Government may, within three months of the date of publication of final findings by the designated authority under rule 17, impose by notification in the Official Gazette, upon importation into India of the article covered by the final finding, anti-dumping duty not exceeding the margin of dumping as determined under rule 17 :

[48][* * * * *]

(2) In cases where the designated authority has selected percentage of the volume of the exports from a particular country, as referred to sub-rule (3) of rule 17, any anti-dumping duty applied to imports from exporters or producers not included in the examination shall not exceed -

(i) the weighted average margin of dumping established with respect to the selected exporters or producers or,

(ii) where the liability for payment of anti-dumping duties is calculated on the basis of a prospective normal value, the difference between the weighted average normal value of the selected exporters or producers and the export prices of exporters or producers not individually examined:

Provided that the Central Government shall disregard for the purpose of this sub-rule any zero margin, margins which are less than 2 per cent expressed as the percentage of export price and margins established in the circumstances detailed in sub-rule (8) of rule 6. The Central Government shall apply individual duties to imports from any exporter or producer not included in the examination who has provided the necessary information during the course of the investigation as referred to in the second proviso to sub-rule (3) of rule 17.

(3) Notwithstanding anything contained in sub-rule (1), where a domestic industry has been interpreted according to the proviso to sub-clause (b) of rule 2, a duty shall be levied only after the exporters have been given opportunity to cease exporting at dumped prices to the area concerned or otherwise give an undertaking pursuant to rule 15 and such undertaking has not been promptly given and in such cases duty shall not be levied only on the articles of specific producers which supply the area in question.

(4) If the final finding of the designated authority is negative that is contrary to the evidence on whose basis the investigation was initiated, the Central Government shall, within forty-five days of the publication of final findings by the designated authority under rule 17, withdraw the provisional duty imposed, if any.

[48] Omitted by M.F. (D.R) Notification No. 44/99-Cus. (N.T.), dated 15-7-1999.

Rule 19. Imposition of duty on non-discriminatory basis. -

Any provisional duty imposed under rule 13 or an anti-dumping duty imposed under rule 18 shall be on a non-discriminatory basis and applicable to all imports of such articles, from whatever sources found dumped and, where applicable, causing injury to domestic industry except in the case of imports from those sources from which undertaking in terms of rule 15 has been accepted.

Rule 20. Commencement of duty. -

(1) The anti-dumping duty levied under rule 13 and rule 19 shall take effect from the date of its publication in the Official Gazette.

(2) Notwithstanding anything contained in sub-rule (1) -

(a) where a provisional duty has been levied and where the designated authority has recorded a final finding of injury or where the designated authority has recorded a final finding of threat of injury and a further finding that the effect of dumped imports in the absence of provisional duty would have led to injury, the anti-dumping duty may be levied from the date of imposition of provisional duty;

(b) in the circumstances referred to in sub-section (3) of section 9A of the Act, the anti-dumping duty may be levied retrospectively from the date commencing ninety days prior to the imposition of such provisional duty :

Provided that no duty shall be levied retrospectively on imports entered for home consumption before initiation of the investigation:

Provided further that in the cases of violation of price undertaking referred to in sub-rule (6) of rule 15, no duty shall be levied retrospectively on the imports which have entered for home consumption before the violation of the terms of such undertaking:

[49][**Provided** also that notwithstanding anything contained in the foregoing proviso, in case of violation of such undertaking, the provisional duty shall be deemed to have been levied from

[49] Inserted by M.F. (D.R) Notification No. 44/99-Cus. (N.T.), dated 15-7-1999.

the date of violation of the undertaking or such date as the Central Government may specify in each case.]

Rule 21. Refund of duty. -

(1) If the anti-dumping duty imposed by the Central Government on the basis of the final findings of the investigation conducted by the designated authority is higher than the provisional duty already imposed and collected, the differential shall not be collected from the importer.

(2) If, the anti-dumping duty fixed after the conclusion of the investigation is lower than the provisional duty already imposed and collected, the differential shall be refunded to the importer.

(3) If the provisional duty imposed by the Central Government is withdrawn in accordance with the provisions of sub-rule (4) of rule 18, the provisional duty already imposed and collected, if any, shall be refunded to the importer.

[50][Rule 21A. Determination of amount paid in excess of actual margin of dumping. -

(1) Where an importer is of the opinion that he has paid any anti-dumping duty imposed under sub-sections (1) or sub-sections (1A) of sections 9A of the Act on any imported goods, in excess of the actual margin of dumping in relation of such goods, he may file an application for determination of the actual margin of dumping in relation to such goods before the designated authority in such form and accompanied by such documents as the said authority may specify in this behalf.

(2) Where the application referred to in sub rule (1) is found to be deficient in any material particulars, the same shall be returned to the importer pointing out deficiencies within one month of the receipt thereof and the importer may, after making good the deficiencies, resubmit the application to the designated authority within one month thereafter.

(3) On receipt of the application with complete information, the designated authority shall initiate an investigation to determine the actual margin of dumping in relation to such goods.

(4) In determining the actual margin of dumping, when the export price is constructed in accordance with these rules, the designated authority shall take into account any change in normal value, costs incurred between importation and resale and any movement in the sale price which is duly reflected in the subsequent selling price.

(5) While calculating constructed export price, referred to in sub-rule (4), no deduction shall be

[50] Inserted by Notification No. 6/2012-Cus. (N.T.), dated 19-1-2012.

made for the amount of anti-dumping duties paid when conclusive evidence of the same is provided.

(6) Where the designated authority finds that there is change in, -

(a) costs incurred between importation and resale, and

(b) movement in the sale price which is duly reflected in the subsequent selling price, the actual margin of dumping may be determined in accordance with the provisions of sub-rules (4) and (5).

(7) The designated authority shall, after investigation under sub-rule (3), determine the actual margin of dumping for the goods and if the anti-dumping paid on the goods is in excess of the margin of dumping so determined, the authority shall make recommendation to the Central Government within nine months and in no case more than 12 months, from the date of receipt of the application, complete in all respects, to refund the difference between the two to the importer.]

Rule 22. Margin of dumping, for exporters not originally investigated. -

(1) If a product is subject to anti-dumping duties, the designated authority shall carry out a periodical review for the purpose of determining individual margins of dumping for any exporters or producers in the exporting country in question who have not exported the product to India during the period of investigation, provided that these exporters or producers show that they are not related to any of the exporters or producers in the exporting country who are subject to the anti-dumping duties on the product.

(2) The Central Government shall not levy anti-dumping duties under sub-section (1) of section 9A of the Act on imports from such exporters or producers during the period of review as referred to in sub-rule (1) of this rule:

Provided that the Central Government may resort to provisional assessment and may ask a guarantee from the importer if the designated authority so recommends and if such a review results in a determination of dumping in respect of such products or exporters, it may levy duty in such cases retrospectively from the date of the initiation of the review.

[51][(3) The anti-dumping duty already imposed for co-operative un-sampled exporters or producers may also be extended to such exporters or producers who were not originally investigated.

[51] Inserted by Notification No. 9/2020-Cus. (N.T.), dated 2-2-2020.

[52] [Explanation. ***]

Rule 23. Review. -

[53][(1) Any Anti-dumping duty imposed under the provision of section 9A of the Act, shall remain in force, so long as and to the extent necessary, to counteract dumping, which is causing injury.

(1A) The designated authority shall review the need for the continued imposition of any anti-dumping duty, where warranted, on its own initiative or upon request by any interested party who submits positive information substantiating the need for such review, and a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty and upon such review, the designated shall recommend to the Central Government for its withdrawal, where it comes to a conclusion that the injury to the domestic industry is not likely to continue or recur, if the said dumping duty is removed or varied and is therefore no longer warranted.

(1B) Notwithstanding anything contained in sub-rule (1) or 1(A), any definitive anti-dumping duty levied under the Act shall be effective for a period not exceeding five years from the date of its imposition, unless the designated authority comes to a conclusion, on a review initiated before that period on its 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 the expiry of that period, that the expiry of the said anti-dumping duty is likely to lead the continuation or recurrence of dumping and injury to the domestic industry.]

(2) Any review initiated under [54][sub-rule (1A) or (1B)] shall be concluded within a period not exceeding twelve months from the date of initiation of such review:

[55][**Provided** that not withstanding anything contained in rule 17, such review shall be completed at least three months prior to expiry of the anti-dumping duty under review.]

[56] [(3) Subject to sub-rule (2), the provisions of rules 6, 7, 8, 9, 10, 11, 16, 17, 18, 19, and 20 shall be *mutatis mutandis* applicable in the case of review.]

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[52] Omitted (w.e.f. 2-2-2021) by Notification No. 10/2021-Cus. (N.T.), dated 1-2-2021.
[53] Substituted by Notification No. 15/2011-Cus. (N.T.), dated 1-3-2011.
[54] Substituted by Notification No. 84/2021-Cus. (N.T), dated 27-10-2021.
[55] Inserted (w.e.f. 1-7-2021) by Notification No. 10/2021-Cus. (N.T.), dated 1-2-2021.
[56] Substituted (w.e.f. 2-2-2021) by Notification No. 10/2021-Cus. (N.T.), dated 1-2-2021.

Rule 24. Dumping causing injury to a third country. -

(1) The designated authority may initiate investigation into any dumping alleged to be taking place into India and causing injury to the domestic industry of any third country which is a member of the World Trade Organisation.

(2) The designated authority in such cases shall follow the procedures laid down in Article 14 of the Agreement on Implementation of Article VI of the General Agreement on Tariff and Trade, 1994, as contained in the Final Act of Uruguay Round Multilateral Trade Negotiations.

[57] [58]**[Rule 25. Circumvention of anti-dumping duty. -**

(1) Circumvention shall be considered as a change in the pattern of trade between any country and India or between individual companies in any country subject to measure and India, as a result of practice, process or work for which there is insufficient cause or economic justification other than the imposition of the duty; and where there is evidence of injury or that the remedial effects of the duty are being undermined in terms of the prices or quantities or both of the like product, and where there is evidence of dumping in relation to the normal values previously established for the like product, if necessary with appropriate changes or adjustments or in accordance with the provisions of rule 10.

(2) The practice, process or work referred to in the sub-rule (1) includes, inter alia, -

(a) where an article subject to anti-dumping is imported into India from any country including the country of origin of country of export notified for the purposes of levy of anti-dumping duty, in an unassembled, unfinished or incomplete form and is assembled, finished or completed in India or in any other country, such assembly, finishing or completion shall be considered to circumvent the anti-dumping in force if, -

(i) the operation started or increased after, or just prior to, the anti-dumping investigations and the parts and components are imported from the country of origin or country of export notified for purpose of levy of anti-dumping duty; and

[57] Inserted by Notification No. 6/2-12-Cus. (N.T.), dated 19-1-2012.
[58] Substituted by Notification No. 9/2020-Cus. (N.T.), dated 2-2-2020.

(ii) the value added to the inputs brought in, during the assembly or completion operation, is less than 35% of the manufacturing cost :

Provided that for calculation of value addition, expenses on account of procurement of technology, such as patents, copyright, trademark, royalty, technical know-how, consultancy charges, etc., shall not be included in the value of the parts brought in

Explanation I. - 'Value' means the cost of assembled, complete or finished article less value of imported parts or components.

Explanation II. - For the purposes of calculating the 'value', expenses on account of payments relating to intellectual property rights, royalty, technical know-how fees, and consultancy charges, shall not be taken into account.

(b) where an article subject to anti-dumping duty is imported into India from country of origin or country of export notified for the levy of anti-dumping duty after being subjected to any process involving alteration of the description, name or composition of an article, such alteration shall be considered to circumvent the anti-dumping duty in force if the alteration of the description or name or composition of the article subject to anti-dumping duty results in the article being altered in form or appearance even in minor forms regardless of the variation of tariff classification, if any;

(c) where an article subject to anti-dumping duty is imported into India through any exporter or producer or country not subject to anti-dumping duty, such exports shall be considered to circumvent the anti-dumping duty in force if the exporters or producers notified for the levy of anti-dumping duty change their trade practice, patterns of trade or channels of sales of the article in order to have their products exported to India through any exporter or producer or country not subject to anti-dumping duty;

(d) any other manner whereby the anti-dumping duty so imposed is rendered ineffective.]

Rule 26. Initiation of investigation to determine circumvention. -

(1) Except as provided herein below, the designated authority may initiate an investigation to determine the existence and effect of any alleged circumvention of the anti-dumping duty levied

under section 9A of the Act, upon receipt of a written application by or on behalf of the domestic industry.

(2) The application shall, inter alia, contain sufficient evidence as regards the existence of the circumstances to justify initiation of an anti-circumvention investigation.

(3) Notwithstanding anything contained in sub-rule (1), the designated authority may initiate an investigation suo motu if it is satisfied from the information received from the Commissioner of Customs appointed under the Customs Act, 1962 (52 of 1962) or any other source that sufficient evidence exists as to the existence of the circumstances pointing to circumvention of anti-dumping in force.

(4) The designated authority may initiate an investigation to determine the existence and effect of any alleged circumvention of the anti-dumping duty in force where it is satisfied that imports of the article circumventing an anti-dumping duty in force are found to be dumped:

[59][(4A) The Central Government may, on recommendation of the designated authority, resort to provisional assessment of the imports of the article alleged to be circumventing an antidumping duty in force and may ask a guarantee from the importer, till the time a decision under sub-rule (3) of rule 27 is taken by the Central Government:]

Provided that, the designated authority shall notify the government of the exporting country before proceeding to initiate such an investigation.

(5) The provisions regarding evidence and procedures under rule 6 shall apply mutatis mutandis to any investigation carried out under this rule.

(6) Any such investigation shall be concluded within 12 months and in no case more than 18 months of the date of initiation of investigation for reasons to be recorded in writing by the designated authority.

Rule 27. Determination of circumvention. -

(1) The designated authority, upon determination that circumvention of anti dumping duty exists, may recommend imposition of anti dumping duty to imports of articles found to be circumventing

[59] Inserted (w.e.f. 2-2-2021) by Notification No. 10/2021-Cus. (N.T.), dated 1-2-2021.

an existing anti dumping duty or to imports of article originating in or exported from countries other than those which are already notified for the purpose of levy of the anti dumping duty and such levy may apply retrospectively from the date of initiation of the investigation under rule 26.

(2) The designated authority shall issue a public notice recording its findings.

(3) The Central Government may, pursuant to the recommendations made by the designated authority, extend the anti dumping duty to imports of article including imports of such article from the date of initiation of the investigation under rule 26 or such date as may be recommended by the designated authority.

Rule 28. Review of circumvention. -

(1) The designated authority may review the need for the continued imposition of the duty, where warranted, on its own initiative or provided that a reasonable period of time has elapsed since the imposition of the measures, upon request by any interested party which submits positive information substantiating the need for the review.

(2) Any review initiated under sub-rule (1) shall be concluded within a period not exceeding twelve months from the date of initiation of review:]

[60][**Provided** that such review shall be completed at least three months prior to expiry of the duty under review]

[61]**[Rule 29. Anti-absorption review.**

(1) An anti-dumping duty imposed under section 9A of the Act may be considered to be absorbed when export prices of an article from the exporting country or countries decrease post imposition of the anti-dumping duty without any commensurate change in cost of production of such article or export prices of such article to countries other than India or resale price of such article in India imported from the exporting country or countries.

(2) Where an article subject to anti-dumping duty is imported into India at such price or under such condition which is considered as absorption of the existing anti-dumping duty, and such duty is

[60] Inserted (w.e.f. 1-7-2021) by Notification No. 10/2021-Cus. (N.T.), dated 1-2-2021.
[61] Inserted by Notification No. 84/2021 (N.T), dated 27-10-2021

thereby rendered or maybe rendered ineffective, the designated authority may, after conducting review, recommend modification in the form or basis of the anti-dumping duty, or the quantum of anti-dumping duty, or both, after reassessing the dumping margin and injury margin and appropriate changes or adjustments in previously determined normal value and injury, if necessary, in accordance with the provisions of rule 10 and Annexure III to these Rules, respectively, may be done.

(3) The domestic industry or any other interested party shall file the application seeking initiation of anti-absorption investigation normally within two years from the date of imposition of definitive anti-dumping duty:

Provided that in view of special circumstances in a given case, for reasons to be recorded in writing, the designated authority may accept an application for such initiation after expiry of the said period of two years:

Provided further that no such application shall be accepted in cases with less than twelve months period remaining for the anti-dumping duty to expire.]

[62][**Rule 30. Initiation of investigation to determine absorption.**

(1) Except as provided herein below, the designated authority may initiate an investigation to determine the existence and effect of any alleged absorption of the anti-dumping duty levied under section 9A of the Act, upon receipt of a written application by or on behalf of the domestic industry or by any other interested party.

(2) The application shall, inter-alia, contain sufficient evidence as regards the existence of circumstances referred in sub-rule (1) of rule 29 to justify initiation of an anti absorption investigation.

(3) Notwithstanding anything contained in sub-rule (1), the designated authority may initiate an investigation suo motu, if it is satisfied from the information received from the Principal Commissioner of Customs or the Commissioner of Customs appointed under the Customs Act,

[62] Inserted by Notification No. 84/2021 (N.T), dated 27-10-2021

1962 (52 of 1962) or any other source, that sufficient evidence exists as to the existence of the circumstances pointing to absorption of the anti-dumping duty in force.

(4) The designated authority may initiate an investigation to determine the existence and effect of any alleged absorption of the anti-dumping duty in force where it is satisfied that imports of the article are absorbing the anti-dumping duty:

Provided that the designated authority shall notify the government of the exporting country before proceeding to initiate such an investigation.

(5) The Central Government may, on recommendation of the designated authority, resort to provisional assessment of the imports of the article alleged to be absorbing an anti-dumping duty in force and may ask a guarantee from the importer, till the time a decision under sub-rule (3) of rule 31 is taken by the Central Government.

(6) The provisions regarding evidence and procedures under rule 6 shall apply mutatis mutandis to any investigation carried out under this rule and the review shall be limited only to recomputation of dumping and injury margin due to the reason that existence of injury and causal link has already been determined in the original investigation.

(7) Any such investigation shall be concluded within six months from the date of initiation of the investigation:

Provided that in special circumstances for reasons to be recorded in writing, the Central Government may extend the said period for another three months.]

[63][Rule 31. Determination of Absorption.

(1) The designated authority, upon determination that absorption of anti-dumping duty exists, may recommend modification of the form or basis of the anti-dumping duty, or the quantum of anti-dumping duty, or both, to imports of articles found to be absorbing an existing anti-dumping duty and such modification may apply retrospectively from the date of initiation of the investigation under rule 30.

[63] Inserted by Notification No. 84/2021 (N.T), dated 27-10-2021

(2) The designated authority shall issue a public notice recording its findings.

(3) The Central Government may, pursuant to the recommendations made by the designated authority, modify the form or basis of the anti-dumping duty, or the quantum of anti-dumping duty, or both, applicable to the imports of such article from the date of initiation of the investigation under rule 30 or such date as may be recommended by the designated authority.]

ANNEXURE I

(See rule 8)

Principles governing the determination of normal value, export price and margin of dumping
The designated authority while determining the normal value, export price and margin of dumping shall take into account *inter alia,* the following principles -

1. The elements of costs referred to in the context of determination of normal value shall normally be determined on the basis of records kept by the exporter or producer under investigation, provided such records are in accordance with the generally accepted accounting principles of the exporting country, and such records reasonably reflect the cost associated with production and sale of the article under consideration.

2. Sales of the like product in the domestic market of the exporting country or sales to a third country at prices below per unit (fixed and variable) costs of production plus administrative, selling and general costs may be treated as not being in the ordinary course of trade by reason of price. The designated authority may disregard these sales, in determining normal value, provided it has determined that -

(i) such sales are made within a reasonable period of time (not less than six months) in substantial quantities, i.e. when the weighted average selling price of the article is below the weighted average per unit costs or when the volume of the sales below per unit costs represents not less than twenty per cent of the volume sold in transactions under consideration, and

(ii) such sales are at prices which do not provide for the recovery of all costs within a reasonable period of time. The said prices will be considered to provide for recovery of costs within a reasonable period of time if they are above weighted average per unit costs for the period of investigation, even though they might have been below per unit costs at the time of sale.

3. (i) The said authority in the course of investigation shall consider all available evidence on the proper allocation of costs, including that which is made available by the exporter or producer provided that such allocation has been historically utilized by the exporter or producer, in relation

to establishing appropriate amortization and depreciation periods and allowances for capital expenditure and other development costs.

(ii) unless already reflected in allocation of costs referred to in clause (1) and sub-clause (i) above, the designated authority, will also make appropriate adjustments for those non-recurring items of cost which benefits further and/or current production, or for circumstances in which costs during the period of investigation are affected by start up operation.

4. The amounts for administrative, selling and general costs and for profits as referred to in sub-section (1) of section 9A of the Act, shall be based on actual data pertaining to production and sales in the ordinary course of trade, of the like article by the exporter or producer under investigation. When such amounts cannot be determined on this basis, the amounts may be determined on the basis of:

(i) the actual amounts incurred and realised by the exporter or producer in question, in respect of production and sales in the domestic market of the country of origin of the same general category of article;

(ii) the weighted average of the actual amounts incurred and realized by other exporters or producers subject to investigation in respect of production and sales of the like article in the domestic market of the country of origin; or

(iii) any other reasonable method, provided that the amount for profit so established shall not exceed the profit normally realized by the exporters or producers on sales of products of the same general category in the domestic market of the country of origin.

5. The designated authority, while arriving at a constructed export price, shall give due allowance for costs including duties and taxes, incurred between importation and resale and for profits.

6. (i) While arriving at margin of dumping, the designated authority shall make a fair comparison between the export price and the normal value. The comparison shall be made at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are demonstrated to affect price comparability.

(ii) In the cases where export price is a constructed price, the comparison shall be made only after establishing the normal value at equivalent level of trade.

(iii) When the comparison under this para requires a conversion of currencies, such conversion should be made by using the rate of exchange on the date of sale, provided that when a sale on foreign currency on forward markets is directly linked to the export sale involved the rate of exchange in the forward sale shall be used. Fluctuations in exchange rates shall be ignored and in an investigation the exporters shall be given at least sixty days to have adjusted their export prices to reflect sustained movements in exchange rates during the period of investigation.

(iv) Subject to the provisions governing comparison in this paragraph, the existence of margin of dumping during the investigation phase shall normally be established on the basis of a comparison of a weighted average normal value and export prices on a transaction-to-transaction basis. A normal value established on a weighted average basis may be compared to prices of individual export transactions if it is found that a pattern of export prices which differ significantly among different purchasers, regions or time periods, and if an explanation is provided as to why such differences cannot be taken into account appropriately by the use of a weighted average-to-weighted average or transaction-to-transaction comparison.

[64][7. In case of imports from non-market economy countries, normal value shall be determined on the basis of the price or constructed value in a market economy third country, or the price from such a third country to other countries, including India, or where it is not possible, on any other reasonable basis, including the price actually paid or payable in India for the like product, duly adjusted if necessary, to include a reasonable profit margin. An appropriate market economy third country shall be selected by the designated authority in a reasonable manner [65][keeping in view the level of development of the Country concerned and the product in question] and due account shall be taken of any reliable information made available at the time of the selection. Account shall also be taken within time limits; where appropriate, of the investigation if any made in similar matter in respect of any other market economy third country. The parties to the investigation shall be informed without unreasonable delay the aforesaid selection of the market economy third country and shall be given a reasonable period of time to offer their comments.]

[64] Inserted by M.F. (D.R.) Notification No. 44/99-Cus. (N.T.), dated 15-7-1999.
[65] Inserted by M.F. (D.R.) Notification No. 28/2001-Cus. (N.T.), dated 31-5-2001.

[66] [8. (1) The term "non-market economy country" means any country which the designated authority determines as not operating on market principles of cost or pricing structures, so that sales of merchandise in such country do not reflect the fair value of the merchandise, in accordance with the criteria specified in sub-paragraph (3).

(2) There shall be a presumption that any country that has been determined to be, or has been treated as, a non-market economy country for purposes of an anti-dumping investigation by the designated authority or by the competent authority of any WTO member country during the three year period preceding the investigation is a non-market economy country.

Provided, however, that the non-market economy country or the concerned firms from such country may rebut such a presumption by providing information and evidence to the designated authority that establishes that such country is not a non-market economy country on the basis of the criteria specified in sub-paragraph (3).

(3) The designated authority shall consider in each case the following criteria as to whether:

(a) the decisions of concerned firms in such country regarding prices, costs and inputs, including raw materials, cost of technology and labour, output, sales and investment, are made in response to market signals reflecting supply and demand and without significant State interference in this regard, and whether costs of major inputs, substantially reflect market values;

(b) the production costs and financial situation of such firms are subject to significant distortions carried over from the former non-market economy system, in particular in relation to depreciation of assets other write-offs, barter trade and payment via compensation of debts;

(c) such firms are subject to bankruptcy and property laws which guarantee legal certainty and stability for the operation of the firms, and

(d) the exchange rate conversions are carried out at the market rate:

[66] Substituted by M.F. (D.R.) Notification No. 1/2002-Cus. (N.T.), dated 4-1-2002.

Provided, however, that where it is shown by sufficient evidence in writing on the basis of the criteria specified in this paragraph that market conditions prevail for one or more such firms subject to anti-dumping investigations, the designated authority may apply the principles set out in paragraphs 1 to 6 instead of the principles set out in paragraph 7 and in this paragraph].

[67][(4) Notwithstanding anything contained in sub-paragraph (2), the designated authority may treat such country as market economy country which, on the basis of the latest detailed evaluation of relevant criteria, which includes the criteria specified in sub-paragraph (3), has been, by publication of such evaluation in a public document, treated or determined to be treated as a market economy country for the purposes of anti-dumping investigations, by a country which is a Member of the World Trade Organisation.]

[67] Inserted by Notification No. 101/2003-Cus. (N.T.), dated 10-11-2003.

ANNEXURE II

[See rule 9(2)]

Principles for determination of injury

The designated authority while determining the injury or threat of material injury to domestic industry or material retardation of the establishment of such an industry, hereinafter referred to as "injury" and causal link between dumped imports and such injury, shall *inter alia,* take following principles under consideration -

(i) A determination of injury shall involve an objective examination of both (a) the volume of the dumped imports and the affect of the dumped imports on prices in the domestic market for like article and (b) the consequent impact of these imports on domestic producers of such products.

(ii) While examining the volume of dumped imports, the said authority shall consider whether there has been a significant increase in the dumped imports, either in absolute terms or relative to production or consumption in India. With regard to the affect of the dumped imports on prices as referred to in sub-rule (2) of rule 18 the designated authority shall consider whether there has been a significant price under cutting by the dumped imports as compared with the price of like product in India, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increase which otherwise would have occurred, to a significant degree.

[68][(iii) In cases where imports of a product from more than one country are being simultaneously subjected to anti-dumping investigation, the designated authority will cumulatively assess the effect of such imports, only when it determines that

(a) the margin of dumping established in relation to the imports from each country is more than two per cent expressed as percentage of export price and the volume of the imports from each country is three per cent. of the import of like article or where the export of individual countries less than three per cent., the imports collectively accounts for more than seven per cent. of the import of like article; and

[68] Substituted by Notification No. 9/2020-Cus. (N.T.), dated 2-2-2020.

(b) a cumulative assessment of the effect of imports is appropriate in light of the conditions of competition between the imported products and the conditions of competition between the imported products and the like domestic products.]

(iv) The examination of the impact of the dumped imports on the domestic industry concerned, shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including natural and [69] [Potential] decline in sales, profits, output, market share, productivity, return on investments or utilisation of capacity; factors affecting domestic prices; the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments.

(v) It must be demonstrated that the dumped imports are, through the effects of dumping, as set forth in paragraphs (ii) and (iv) above, causing injury to the domestic industry. The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of relevant evidence before the designated authority. The designated authority shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injury caused by these other factors must not be attributed to the dumped imports. Factors which may be relevant in this respect include, *inter alia,* the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and the productivity of the domestic industry.

(vi) The effect of the dumped imports shall be assessed in relation to the domestic production of the like article 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 dumped 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.

(vii) 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 which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent. In

[69] Substituted by M.F. (D.R.) Notification No. 44/99-Cus. (N.T.), dated 15-7-1999.

making a determination regarding the existence of a threat of material injury, the designated authority shall consider, *inter alia,* such factors as:

(a) a significant rate of increase of dumped imports into India indicating the likelihood of substantially increased importation;

(b) sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped exports to Indian markets, taking into account the availability of other export markets to absorb any additional exports;

(c) whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and

(d) inventories of the article being investigated.

70[ANNEXURE III

[see rule 17(I)]

Principles for determination of non-injurious price

(1) The designated authority is required under sub-rule (1) of rule 17 to recommend the amount of anti-dumping duty which, if levied, would remove the injury where applicable to the domestic industry.

(2) For the purpose of making recommendation under clause (1), the designated authority shall determine the selling (notional) price or non-injurious price of the like domestic product taking into account the principles specified herein under.

(3) The non-injurious price is required to be determined by considering the information or data relating to cost of production for the period of investigation in respect of the producers constituting domestic industry. Detailed analysis or exanimation and reconciliation of the financial and cost records maintained by the constituents of the domestic industry are to be carried out for this purpose.

(4) The following elements of cost of production are required to be examined for working out the non-injurious price, namely: -

(i) The best utilisation of raw materials by the constituents of domestic industry, over the past three years period and the period of investigation, and at period of investigation rates may be considered to nullity injury, if any, caused to the domestic industry by inefficient utilisation of raw materials.

(ii) The best utilisation of utilities by the constituents of domestic industry, over the past three years period and period of investigation, and at period of investigation rates may be considered to nullify injury, if any, caused to the domestic industry by inefficient utilization of utilities.
(iii) The best utilisation of production capacities, over the past three years period and period of investigation, and at period of investigation rates may be considered to nullify injury, if any, caused to the domestic industry by inefficient utilisation of production capacities.

[70] Inserted by Notification No. 15/2011-Cus. (N.T.), dated 1-3-2011.

(iv) The Propriety of all expenses, grouped and charged to the cost of production may be examined and any extraordinary or non-recurring expenses shall not be charged to the cost of production and salary and wages paid per employee and per month may also be reviewed and reconciled with the financial and cost records of the company.

(v) To ensure the reasonableness of amount of depreciation charged to cost of production, it may be examined that no charge has been made for facilities not deployed on the production of the subject goods, particularly in respect of multi-product companies and the depreciation of re-valued assets, if any, may be identified and excluded while arriving at reasonable cost of production.

(vi) The expenses to the extent identified to the product are to be directly allocated and common expenses or overheads classified under factory, administrative and selling overheads may be apportioned on reasonable and scientific basis such as machine hours, vessel occupancy hours, direct labour hours, production quantity, sales value, etc., as applied consistently by domestic producers and the reasonableness and justification of various expenses claimed for the period of investigation may be examined and scrutinised by comparing with the corresponding amounts in the immediate preceding year.

(vii) The expenses, which shall not to be considered while assessing non-injurious price include, -

(a) research and development Provisions (unless claimed and substantiated as related to the product specific research);

(b) since non-injurious price is determined at ex-factory level, the post manufacturing expenses such as commission, discount, freight-outward etc. at ex-factory level;

(c) excise duty, sales tax and other tax levies on sales;

(d) expenses on job work done for other units;

(e) royalty, unless it is related to technical know-how for the product;

(f) trading activity of product under consideration; or

(g) other non-cost items like bad debts, donations, loss on sale of assets, loss due to fire, flood, etc.

(viii) A reasonable return (pre-tax) on average capital employed for the product may be allowed for recovery of interest, corporate tax and profit. The average capital employed is the sum of "net fixed asset and net working capital" which shall be taken on the basis of average of the same as on the beginning and at the end of period of investigation. For assessment of reasonable level of working capital requirement, all the elements of net working capital shall be scrutinised in detail. The impact of revaluation of fixed assets shall not be considered in the calculation of capital employed. Interest is allowed as an item of cost of sales and after deducting the interest, the balance amount of return is to be allowed as pre-tax profit to arrive at the non-injurious price.

(ix) Reasonableness of interest cost may be examined to ensure that no abnormal expenditure on account of interest has been incurred. Details of term loans, cash credit limits, short term loans, deposits and other borrowings taken by the company and interest paid thereon may be examined in detail along with the details of assets deployed.

(x) In case there is more than one domestic producer, the weighted averages of non-injurious price of individual domestic producers are to be considered. The respective share of domestic production of the subject goods may be taken as basis for computation of weighted average non-injurious price for the domestic industry as a whole.]

CUSTOMS TARIFF (IDENTIFICATION,ASSESSMENT AND COLLECTION

D

OF COUNTERVAILING DUTY ON

SUBSIDIZED ARTICLES AND FORDETERMINATION OF INJURY) RULES, 1995

CUSTOMS TARIFF (IDENTIFICATION, ASSESSMENT AND COLLECTION OF COUNTERVAILING DUTY ON SUBSIDIZEDARTICLES AND FOR DETERMINATION OF INJURY) RULES, 1995

[Notification No. 1/95-Cus. (N.T.), dated 1-1-1995 as amended]

In exercise of the powers conferred by sub-section (7) of section 9 and sub-section (2) of section 9B of the Customs Tariff Act, 1975 (51 of 1975) and in supersession of the Customs Tariff (Identification, Assessment and Collection of Duty or Additional Duty on Bounty-fed Articles and for Determination of Injury) Rules, 1985, except as respect things done or omitted to be done before such supersession, the Central Government hereby makes the following rules, namely :-

Rule 1. Short title and commencement. -

(1) The Rule may be called Customs Tariff (Identification, Assessment and Collection of Countervailing Duty on Subsidised Articles and for Determination of Injury) Rules, 1995.

(2) They shall come into force on the 1st day of January, 1995

Rule 2. Definitions. -

In these rules, unless the context otherwise requires, -

(a) "Act" means the Customs Tariff Act,1975 (51 of 1975);

(b) "domestic industry" [71][means the domestic producers as a whole engaged in the manufacture of the like article or those whose collective output of the said article constitutes a major proportion of the total domestic production of that article, except when such producers are related to the exporters or importers of the alleged subsidised article, or like article from other countries or are themselves importers thereof] [72][, the term "domestic industry" may be interpreted as referring to the rest of the producers]:

[71] Substituted by Notification No. 10/2020-Cus. (N.T.), dated 2-2-2020.
[72] Inserted (w.e.f. 2-2-2021) by Notification No. 11/2021-Cus. (N.T.), dated 1-2-2021.

Provided that in exceptional circumstances referred to in sub-rule (3) of rule 13, the domestic industry in relation to the article in question shall be deemed to comprise two or more competitive markets and the producers within each of such market be deemed as a separate industry if, -

(i) the producers within such market sell all or almost all of their production of the article in question in that market, and

(ii) the demand in the market is not in any substantial degree supplied by producers of the said article located elsewhere in the territory;

[73] **[Explanation. -** For the purposes of this clause, producers shall be deemed to be related to exporters or importers only if, -

(a) one of them directly or indirectly controls the other; or

(b) both of them are directly or indirectly controlled by a third person; or

(c) together they directly or indirectly control a third person subject to the condition that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producers to behave differently from non-related producers.

Note: For the purpose of this Explanation, a producer shall be deemed to control another producer when the former is legally or operationally in a position to exercise restraint or direction over the latter.]

(c) "interested party" includes -

(i) an exporter or foreign producer or the importer of an article subject to investigation for being subsidised or a trade or business association a majority of the members of which are producers, exporters or importers of such an article; and

(ii) a producer of the like article in India or a trade and business association a majority of the members of which produce the like article in India;

[73] Inserted by Notification No. 10/2020-Cus. (N.T.), dated 2-2-2020.

[74][(ca) "like article" means an article which is identical or alike in all respects to the article under investigation or in the absence of such an article, another article which although not alike in all respects, has characteristics closely resembling those of the article under investigation;

(cb) "period of investigation" means the period during which the existence of subsidisation is examined.]

(d) "provisional duty" means a countervailing duty imposed under sub-section (2) of [75][section 9] of the Act;

(e) "specified country" means a country or territory is a member of the Word Trade Organisation and which includes the country or territory with which the Government of India has an agreement for giving it the most favoured nation treatment;

(f) all words and expressions used in these rules, but not defined, shall have the meaning respectively assigned to them in the Act.

Rule 3. Appointment of designated authority. -

(1) The Central Government may, by notification in the Official Gazette, appoint a person not below the rank of a Joint Secretary to the Government of India or such other person as that Government may think fit as the designated authority for purposes of these rules.

(2) The Central Government may provide to the designated authority the services of such other persons and such other facilities as it deems fit.

Rule 4. Duties of the designated authority. -

It shall be the duty of the designated authority in accordance with these rules -

(a) to investigate the existence, degree and effect of any subsidy in relation to the import of an article;

[74] Inserted by Notification No. 10/2020-Cus. (N.T.), dated 2-2-2020.
[75] Substituted by Notification No. 10/2020-Cus. (N.T.), dated 2-2-2020.

(b) to identify the article liable for countervailing duty;

(c) to submit its findings, provisional or otherwise to the Central Government as to -

(i) the nature and amount of subsidy in relation to an article under investigation.

(ii) the injury or threat of injury to an industry established in India or material retardation to the establishment of an industry in India consequent upon the import of such articles from the specified countries.

(d) to recommend the amount of countervailing duty, which if levied would be adequate to remove the injury to the domestic industry and the date of commencement of such duty; and

(e) to review the need for continuance of countervailing duty.

Rule 5. Decision as to country of origin. -

In cases where articles are not imported directly from the country of origin but are imported from an intermediate country, the provisions of these rules shall be fully applicable and any such transaction shall, for the purpose of these rules be regarded as having taken place between the country of origin and the country of importation.

Rule 6. Initiation of investigation. -

(1) Except as provided in sub-rule (4) the designated authority shall initiate an investigation to determine the existence, degree and effect of alleged subsidy only upon receipt of a written application by or on behalf of the domestic industry.

(2) An application under sub-rule (1) shall be in the form as may be specified by the designated authority in this behalf and the application shall be supported by evidence of -

(a) subsidy and, if possible, its amount,

(b) injury where applicable, and

(c) where applicable, a causal link between such subsidized imports and alleged injury.

(3) The designated authority shall not initiate an investigation pursuant to an application made under sub-rule (1) unless -

(a) it determines, on the basis of an examination of the degree of support for, or opposition to the application expressed by domestic producers of the like article, that the application has been made by or on behalf of the domestic industry:

Provided that no investigation shall be initiated if domestic producers expressly supporting the application account for less than twenty-five per cent of the total production of the like product by the domestic industry, and

(b) it examines the accuracy and adequacy of the evidence provided in the application and satisfies itself that there is sufficient evidence regarding -

(i) subsidy,

(ii) injury, where applicable; and

(iii) where applicable, a causal link between such subsidized imports and the alleged injury, to justify the initiation of an investigation.

Explanation. - For the purpose of this rule, the application shall be considered to have been made "by or on behalf of domestic industry" if it is supported by those domestic producers whose collective output constitutes more than fifty per cent of the total production of the like article produced by that portion of the domestic industry expressing either support for or opposition as the case may be, to the application.

(4) Notwithstanding anything contained in sub-rule (1), the designated authority may initiate an investigation suo motu, if it is satisfied from the information received from the [76][Principal Commissioner of Customs or Commissioner of Customs, as the case may be,] appointed under the Customs Act, 1962 (52 of 1962) or any other source that sufficient evidence exists as to the existence of the circumstances referred to in sub-clause (b) of sub-rule (3).

[76] Substituted (w.e.f. 2-2-2021) by Notification No. 11/2021-Cus. (N.T.), dated 1-2-2021.

(5) The designated authority shall notify the government of the exporting country before proceeding to initiate an investigation.

[77][(6) The Designating authority shall avoid any publicising of the application for the initiation of an investigation, unless a decision has been made to initiate an investigation.

Explanation. - For the purpose of these rules, the period of investigation shall, -

(i) not be more than six months old as on the date of initiation of investigation;

(ii) be for a period of twelve months and for the reasons to be recorded in writing the designated authority may consider a minimum of six months or maximum of eighteen months.]

[78][Rule 6A. Consultation. -

(1) As soon as an application under rule 6 is accepted, and in any event before the initiation of any investigation, the Government of the exporting country, the products of which may be subject to investigation, shall be invited for consultations to clarify the situation for the matters referred to in rule 6 so as to arrive at a mutually agreed solution.

(2) The Government of the exporting country, shall be afforded a reasonable opportunity to continue consultations, to clarify the factual situation so as to arrive at a mutually agreed solution, throughout the period of investigation.]

Rule 7. Principles governing investigations. -

(1) The designated authority shall, after it has decided to initiate investigation to determine the existence, degree and effect of any alleged subsidization of any article, issue a public notice notifying its decision. Public notice regarding initiation of investigation shall, inter alia, contain adequate information on the following:

(i) the name of the exporting countries and the article involved;

[77] Inserted by Notification No. 10/2020-Cus. (N.T.), dated 2-2-2020.
[78] Inserted by Notification No. 10/2020-Cus. (N.T.), dated 2-2-2020.

(ii) the date of initiation of the investigation;

(iii) a description of the subsidy practice or practices to be investigated;

(iv) a summary of the factors on which the allegation of injury is based;

(v) the address to which representations by interested countries and interested parties should be directed; and

(vi) the time-limits allowed to interested countries and interested parties for making their views known.

(2) A copy of the public notice shall be forwarded by the designated authority to the known exporters of the article alleged to have been subsidized, the government of the exporting country concerned and other interested parties.

(3) The designated authority shall also provide a copy of the application referred to in sub-rule (1) of rule 6 to -

(i) the known exporters or the concerned trade association where the number of exporters is large, and

(ii) the government of the exporting country:

Provided that the designated authority shall also make available a copy of the application, upon request in writing, to any other interested party.

(4) The designated authority may issue a notice calling for any information in such form as may be specified by it from the exporters, foreign producers and governments of interested countries and such information shall be furnished by such persons in writing within thirty days from the date of receipt of the notice or within such extended period as the designated authority may allow on sufficient cause being shown.

Explanation. - For the purpose of this sub-rule the public notice and other documents shall be deemed to have been received one week from the date on which these documents were sent by the

designated authority or transmitted to the appropriate diplomatic representative of the exporting country.

(5) The designated authority shall also provide opportunity to the industrial users of the article under investigation, and to representative consumer organisations in cases where the article is commonly sold at retail level, to furnish information which is relevant to the investigation regarding subsidization and where applicable injury and causality.

(6) The designated authority may allow an interested country or an interested party or its representative to present information relevant to the investigation orally also, but such oral information shall be taken into consideration only when it is subsequently reproduced in writing.

(7) The designated authority shall make available the evidence presented by one party to other interested parties participating in the investigation.

(8) In a case where an interested party refuses access to, or otherwise does not provide necessary information within a reasonable period, or significantly impedes the investigation, the designated authority may record its findings on the basis of facts available to it and make such recommendations to the Central Government as it deems fit under such circumstances.

Rule 8. Confidential information. -

(1) Notwithstanding anything contained in sub-rule (1), (2), (3) and (7) of rule 7, sub-rule (2) of rule 14, sub-rule (4) of rule 17 and sub-rule (3) of rule 19, copies of applications received under sub-rule (1) of rule 6 or any other information provided to the designated authority on a confidential basis by any party in the course of investigation, shall, upon the designated authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed to any other party without specific authorisation of the party providing such information.

(2) The designated authority may require the parties providing information on confidential basis to furnish non-confidential summary thereof in sufficient details to permit a reasonable understanding of the substance of the confidential information and if, in the opinion of a party providing such information, such information is not susceptible of summary, such party may submit to the designated authority a statement of reasons why summarisation is not possible.

(3) Notwithstanding anything contained in sub-rule (2), if the designated authority, is satisfied that the request for confidentiality is not warranted or the supplier of the information is either unwilling to make the information public or to authorise its disclosure in generalised or summary form, it may disregard such information.

Rule 9. Accuracy of the information. -

Except in cases referred to in sub-rule (8) of rule 7 the designated authority shall during the course of investigation satisfy itself as to the accuracy of the information supplied by the interested parties upon which its findings are based.

Rule 10. Investigation in the territory of other specified countries. -

(1) The designated authority may carry out investigations in the territories of other countries, in order to verify the information provided or to obtain further details:

Provided that the designated authority notifies to such country in advance and such country does not object to such investigation.

(2) The designated authority may also carry out investigations at the premises of any commercial organisation and may examine its records if such organisation agrees and if the country in whose territory the said commercial organisation is situated, is notified and has not raised any objection for the conduct of such investigation.

Rule 11. Nature of subsidy. -

(1) The designated authority while determining the subsidy shall ascertain as to whether the subsidy under investigation -

[79][(a) relates to export performance including those illustrated in Annexure III to these rules, or]

(b) relates to the use of domestic goods over imported goods in the export article, or

[79] Substituted by Notification No. 24/2006-Cus. (N.T.), dated 01-03-2006.

[80][(c) has been conferred on a limited number of persons or enterprises or industries or designated geographical regions, engaged in manufacturing, producing and exporting the article.]

[81][* * * *]

Explanation.- (1) For the purposes of sub-clause (i) of clause (c) the term "subsidy for research activity" means assistance for research activities conducted by commercial organisations or by higher education or research establishments on a contract basis with the commercial organisations if the assistance covers not more than seventy five per cent of the costs of industrial research or fifty per cent of the costs of pre-competitive development activity and provided that such assistance is limited exclusively to -

(i) costs of personnel (researchers, technicians and other supporting staff employed exclusively in the research activity);

(ii) costs of instruments, equipment, land and buildings used exclusively and permanently (except when disposed of on a commercial basis) for the research activity;

(iii) costs of consultancy and equivalent services used exclusively for the research activity, including bought in research, technical knowledge, patents, etc.;

(iv) additional overhead costs incurred directly as a result of the research activity; and

(v) other running costs (such as those of materials, supplies and the like), incurred directly as a result of the research activity.

(2) For the purposes of sub-clause (ii) of clause (c), the term "subsidy for assistance to disadvantaged regions" means assistance to disadvantaged regions within the territory of the exporting country given pursuant to a general framework of regional development and such subsidy has not been conferred on limited number of enterprises within the eligible region:

Provided that -

[80] Substituted by Notification No. 10/2020-Cus. (N.T.), dated 2-2-2020.
[81] Omitted by Notification No. 24/2006-Cus. (N.T.), dated 01-03-2006.

(a) each disadvantaged region must be a clearly designated contiguous geographical area with a definable economic and administrative identity;

(b) the region is considered as disadvantaged on the basis of neutral and objective criteria, indicating that the region's difficulties arise out of more than temporary circumstances; such criteria must be clearly spelled out in law, regulation, or other official document, so as to be capable of verification;

(c) the criteria shall include a measurement of economic development which shall be based on at least one of the following factors -

(i) one of either income per capita or household income per capita, or Gross Domestic Product per capita, which must not be above eighty five per cent of the average for the territory concerned;

(ii) unemployment rate, which must be at least one hundred and ten per cent of the average for the territory concerned, as measured over a three-year period; such measurement, however, may be a composite one and may include other factors.

(3) For the purposes of sub-clause (iii) of clause (c), "subsidy for assistance to promote adaptation of existing facilities to new environmental requirements" means assistance to promote adaptation of existing facilities to new environmental requirements imposed by law and/or regulations which result in greater constraints and financial burden on commercial organizations:

Provided that the assistance -

(i) is a one-time non-recurring measure; and

(ii) is limited to twenty per cent of the cost of adaptation; and

(iii) does not cover the cost of replacing and operating the assisted investment, which must be fully borne by commercial organizations; and

(iv) is directly linked to and proportionate to a commercial organisation's planned reduction of nuisances and pollution, and does not cover any manufacturing cost savings which may be achieved; and

(v) is available to all firms which can adopt the new equipment and/or production processes.

(3) The designated authority while determining the subsidy of a kind as referred to in sub-clause (c) to sub-rule (1) shall take into account, inter alia the principles laid down in Annexure II to these rules.

[82]**[Rule 12. Calculation of the amount of the countervailable subsidy**

(1) For the purposes of these rules, the amount of countervailable subsidies, shall be calculated in terms of the benefit conferred on the recipient which is found to exist during the investigation period for subsidization

(2) As regards the calculation of benefit to the recipient, the following factors shall apply, namely: -

(a) government provision of equity capital shall not be considered to confer a benefit, unless the investment 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 or export;

(b) a loan by a government shall not be considered to confer a benefit, unless there is a difference between the amount that the firm receiving the loan pays on the government loan and the amount that the firm would pay for a comparable commercial loan which the firm could actually obtain from the market and in that event the benefit shall be the difference between these two amounts;

(c) a loan guarantee by a government shall not be considered to confer a benefit, unless there is a difference between the amount that the firm receiving the guarantee pays on a loan guaranteed by the government and the amount that the firm would pay for a comparable commercial loan in the absence of the government guarantee and in such case the benefit shall be the difference between these two amounts, adjusted for any differences in fees;

(d) the provision of goods or services or purchase of goods by a government shall not be considered to confer a benefit, unless the provision is made for less than adequate remuneration

[82] Substituted by Notification No. 24/2006-Cus. (N.T.), dated 01-03-2006.

or the purchase is made for more than adequate remuneration; whereas, the adequacy of remuneration shall be determined in relation to prevailing market conditions for the product or service in question in the country of provision or purchase (including price, quality, availability, marketability, transportation and other conditions of purchase or sale).

(3) The amount of the countervailable subsidies shall be determined per unit of the subsidised product exported to India and while establishing this amount the following elements may be deducted from the total subsidy :

(a) any application fee, or other costs necessarily incurred in order to qualify for, or to obtain, the subsidy;

(b) export taxes, duties or other charges levied on the export of the product to India specifically intended to offset the subsidy and in cases where an interested party claims a deduction, he must prove that the claim is justified.

(4) Where the subsidy is not granted by reference to the quantities manufactured, produced, exported or transported, the amount of countervailable subsidy shall be determined 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 for subsidisation.

(5) 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 and the amount so calculated which is attributable to the investigation period, including that which derives from fixed assets acquired before this period, shall be allocated as described in sub-rule (4) and, where the assets are non-depreciating, the subsidy shall be valued as an interest-free loan, and be treated in accordance with clause (b) of sub-rule 2 (b) above.

(6) 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 sub-rule (4), unless special circumstances justify its attribution over a different period.

(7) The designated authority while calculating the amount of subsidy in countervailing duty investigation shall take into account, inter-alia, the guidelines laid down in Annexure IV to these rules.]

Rule 13. Determination of injury. -

(1) In the case of imports from specified countries, the designated authority shall give a further finding that the import of such article into India causes or threatens material injury to any industry established in India, or materially retards the establishment of an industry in India.

(2) Except when a finding of injury is made under sub-rule (3), the designated authority shall determine the injury, threat of injury, material retardation to the establishment of an industry and the causal link between the subsidised import and the injury, taking into account inter alia, the principle laid down in Annexure I to the rule.

(3) The designated authority may, in exceptional cases, give a finding as to the existence of injury even where a substantial portion of the domestic industry is not injured if -

(i) there is a concentration of subsidised imports into an isolated market, and

(ii) the subsidised imports are causing injury to the producers of almost all of the production within such market.

Rule 14. Preliminary findings. -

(1) The designated authority shall proceed expeditiously with the conduct of the investigation and shall, in appropriate cases, record a preliminary finding regarding existence of a subsidy and its nature and in respect of imports from specified countries, it shall also record its preliminary finding regarding injury to the domestic industry and such finding shall contain sufficiently detailed explanation for the preliminary determination on the existence of a subsidy and injury and shall refer to the matter of fact and law which have led to arguments being accepted or rejected. Such finding shall contain -

(i) the names of the suppliers or, when this is impracticable, the supplying countries involved;

(ii) a description of the product which is sufficient for customs purposes;

(iii) the amount of subsidy established and the basis on which the existence of a subsidy has been determined;

(iv) considerations relevant to the injury determination; and

(v) the main reasons leading to the determination.

(2) The designated authority shall issue a public notice recording its preliminary findings.

Rule 15. Levy of provisional duty. -

The Central Government may, in accordance with the provisions of sub-section (2) of section 9 of the Act, impose a provisional duty on the basis of the preliminary findings recorded by the designated authority:

Provided that no such duty shall be imposed before the expiry of sixty days from the date of issue of the public notice by the designated authority regarding its decision to initiate investigations:

Provided further that such duty shall remain in force for a period not exceeding four months.

Rule 16. Termination of investigation. -

(1) The designated authority shall, by issue of a public notice terminate an investigation immediately if -

(a) it receives a request in writing for doing so from or on behalf of the domestic industry affected, at whose instance the investigation was initiated;

(b) it is satisfied in the course of an investigation, that there is no sufficient evidence either for subsidisation or, where applicable, injury to justify continuation of the investigation;

(c) it determines that the amount of subsidy is less than one per cent ad valorem or in the case of a product originating from a developing country the amount of subsidy is less than two per cent.

(d) it determines that the volume of the subsidized imports, actual or potential or injury where applicable, is negligible or in the case of a product originating in a developing country the

volume of the subsidized imports represents less than four per cent of the total imports of the like product into India, unless imports from developing countries whose individual shares of total imports represent less than four per cent collectively account for more than nine per cent of the total imports of the like product into India.

Rule 17. Suspension or termination of investigation on acceptance of price undertaking. -

(1) The designated authority may suspend or terminate an investigation, if -

(a) the government of the exporting country -

(i) furnishes an undertaking that it would withdraw the subsidy.

(ii) in case of specified countries, undertakes to limit the quantum of subsidy within reasonable limit, or to take other suitable measures to neutralise the effect of such subsidy, provided that the designated authority is satisfied that the injurious effect of the subsidy is eliminated, or

(b) in case of specified countries the exporters concerned agree to revise their prices so that injurious effect of subsidy is eliminated and the designated authority is satisfied that the injurious effect of the subsidy is eliminated:

Provided that increase in price as a result of this clause is not higher than what is necessary to eliminate the amount of subsidy:

Provided further that the designated authority shall complete the investigation and record its finding, if the Central Government so desires or the government of the exporting country so decides.

(2) No undertaking as regards price increase under sub-rule (1) shall be accepted unless the designated authority had made preliminary determination of subsidization and the injury:

Provided that an undertaking from an exporter shall be accepted only when the designated authority has also obtained the consent of the exporting country.

(3) The designated authority, may also not accept undertakings offered by any country or any exporter, if it considers the acceptance of such undertaking as impracticable or as unacceptable for any other reason.

(4) The designated authority shall intimate the acceptance of an undertaking and suspension or termination of investigation to the Central Government and also issue a public notice in this regard. The public notice shall, contain inter alia, the non-confidential part of the undertaking.

(5) In cases where an undertaking has been accepted by the designated authority the Central Government may not impose a duty under sub-section (2) of section 9 of the Act for such a period the undertaking acceptable to the designated authority remains valid.

(6) Where the designated authority has accepted any undertaking under sub-rule (1), it may require the government of the exporting country, or the exporter from whom such undertaking has been accepted to provide from time to time information relevant to the fulfilment of the undertaking and to permit verification of relevant data:

[83] **[Provided** that the designated authority may obtain from the producer or importer information periodically to monitor the undertaking and take steps for onsite verification of the same, if required:

Provided further that in case of any violation of any undertaking, the designated authority shall, as soon as possible, inform the Central Government of the violation of the undertaking and recommend immediate application of provisional measure using the best information available and in cases of violation, definitive duties may be levied in accordance with these rules on product entered for consumption not more than ninety days before the application of such provisional measures but no such retroactive assessment shall apply to imports entered before the violation of the undertaking.]

(7) The designated authority shall suo motu or on the basis of any request received from exporters or importers of the article in question or any other interested person review from time to time the need for the continuance of any undertaking given earlier.

[83] Substituted by Notification No. 10/2020-Cus. (N.T.), dated 2-2-2020.

Rule 18. Disclosure of information. -

The designated authority, shall, before giving its final findings, inform all interested parties and interested countries of the essential facts under consideration which form the basis of its decision and permit the interested parties to defend their interest.

Rule 19. Final findings. -

(1) The designated authority shall, within one year from the date of initiation of an investigation determine as to whether or not the article under investigation is being subsidized and submit to the Central Government its final finding, as to -

(a) (i) the nature of subsidy being granted in respect of the article under investigation and the quantum of such subsidy;

(ii) whether imports of such articles into India in the case of imports from specified countries, cause or threaten material injury to an industry established in India or materially retards the establishment of any industry in India and a causal link between the subsidized imports and such injury; and

(iii) whether a retrospective levy is called for and if so, the reasons therefor and the date of commencement of such levy.

(b) its recommendation as to the amount of duty which if levied, would be adequate to remove the injury to the domestic industry:

Provided that the Central Government may in circumstances of exceptional nature extend further the aforesaid period of one year by six months:

Provided further that in those cases where the designated authority has suspended the investigation on the acceptance of a price undertaking as provided in rule 17 and subsequently resumes the same on violation of the terms of the said undertaking, the period for which investigation was kept under suspension shall not be taken into account while calculating the said period of one year.

(2) The final finding if affirmative, shall contain all information on the matter of facts and law and reasons which have led to the conclusion and shall also contain information regarding -

(i) the names of the suppliers, or, when this is impractical, the supplying countries involved;

(ii) a description of the product which is sufficient for customs purposes;

(iii) the amount of subsidy established and the basis on which the existence of a subsidy has been determined;

(iv) considerations relevant to the injury determination; and

(v) the main reasons leading to the determination.

(3) The designated authority shall issue a public notice regarding its final findings.

Rule 20. Levy of duty. -

(1) The Central Government may, within three months of the date of publication of the final findings by the designated authority under rule 19, impose, by notification in the Official Gazette, upon importation into India of the article covered under the final finding, a countervailing duty not exceeding the amount of subsidy as determined by the designated authority under rule 19:

Provided that in case of imports from specified countries the amount of duty shall not exceed the amount which has been found adequate to remove the injury to the domestic industry.

(2) Notwithstanding anything contained in sub-rule (1) where a domestic industry has been interpreted according to the proviso to clause (b) of rule 2, a countervailing duty shall be levied only after the exporters have been given opportunity to cease exporting at subsidized prices to the area concerned or otherwise give an undertaking pursuant to rule 17 and such undertaking has not been promptly given and in such cases duty cannot be levied only on the product of specified producers which supply the area in question.

(3) If the final finding of the designated authority is negative, that is contrary to the prima facie evidence on whose basis the investigation was initiated, the Central Government shall within forty

five days of the publication of final findings by the designated authority under rule 19, withdraw the provisional duty, imposed if any.

Rule 21. Imposition of duty on non-discriminatory basis. -

Any countervailing duty imposed under rule 15 or 20 shall be on a non-discriminatory basis and applicable to all imports of such article, if found to be subsidised and where applicable, causing injury except in the case of imports from those sources from which undertakings in terms of rule 17 have been accepted.

Rule 22. Date of commencement of duty. -

(1) The countervailing duty levied under rules 15 and 20 shall take effect from the date of publication of the notification in the Official Gazette.

(2) Notwithstanding anything contained in sub-rule (1) -

(a) where a provisional duty has been levied and where the designated authority has recorded a finding of injury or where the designated authority recorded a finding of threat of injury and a further finding that the subsidised imports, in the absence of provisional duty would have led to injury, the countervailing duty may be imposed from the date of imposition of provisional duty:

(b) in the circumstances referred to in sub-section (4) of section 9 of the Act, the countervailing duty may be levied retrospectively from the date commencing ninety days prior to the imposition of provisional duty:

Provided that in case of violation of an undertaking referred to in sub-rule (6) of rule 17, no duty shall be levied retrospectively on imports which have entered for home consumption before violation of such terms of the undertaking.

[84] **[Provided** further that notwithstanding anything contained in the foregoing proviso, in case of violation of such undertaking, the provisional duty shall be deemed to have been levied

[84] Inserted by Notification No. 10/2020-Cus. (N.T.), dated 2-2-2020.

from the date of violation of the undertaking or such date as the Central Government may specify in each case.]

Rule 23. Refund of duty. -

(1) If the countervailing duty imposed by the Central Government on the basis of the final findings of the investigation conducted by the designated authority is higher than the provisional duty already imposed and collected the differential shall not be collected from importer.

(2) If the countervailing duty fixed after the conclusions of the investigation is lower than the provisional duty already imposed and collected, the differential shall be refunded to the importer.

(3) If the provisional duty imposed by the Central Government is withdrawn in accordance with the provisions of sub-rule (3) of rule 20, the provisional duty already imposed and collected, if any shall be refunded to the importer.

[85]23A. Subsidy margin for exporters not originally investigated: -

(1) If a product is subject to countervailing duties, the designated authority shall carry out a periodical review for the purpose of determining individual subsidy margins for any exporters or producers in the exporting country in question who have not exported the product to India during the period of investigation, provided that these exporters or producers show that they are not related to any of the exporters or producers in the exporting country who are subject to the countervailing duties on the product.

(2) The Central Government shall not levy countervailing duties under sub-section (1) of section 9 of the Act on imports from such exporters or producers during the period of review as referred to in sub-rule (1):

Provided that the Central Government may resort to provisional assessment and may ask a guarantee from the importer, if the designated authority so recommends, and if such a review results in a determination of subsidy in respect of such products or exporters, it may levy duty in such cases retrospectively from the date of the initiation of the review.

[85] Inserted (24-7-2024) by Notification No. 51/2024-Cus. (N.T.), dated 23-7-2024.

(3) The countervailing duty already imposed for co-operative un-sampled exporters or producers may also be extended to such exporters or producers who were not originally investigated.

[86]**[Rule 24. Review. -**

(1) Any countervailing duty imposed under section 9 of the Act shall remain in force so long as and to the extent necessary, to counteract subsidisation, which is causing injury.

(2) The designated authority shall review the need for continued imposition of the countervailing duty, where warranted on its own initiative or upon request by any interested party who submits necessary information substantiating the need for such review, and a reasonable period of time has elapsed since the imposition of the definitive countervailing duty and upon such review, the designated authority shall recommend to the Central Government for its withdrawal, when it comes to a conclusion that the injury to the domestic industry is not likely to continue or recur, if the said countervailing duty is removed or varied and is therefore no longer warranted.

(3) Any definitive countervailing duty levied under the Act shall be effective for a period not exceeding five years from the date of its imposition. The designated authority may upon coming to a conclusion, on a review initiated before that period either on its 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 the expiry of that period, that the expiry of the said countervailing duty is likely to lead to continuation or recurrence of subsidisation and injury to the domestic industry, make recommendation for extending the period of such imposition in accordance with the provision of section 9 of the Act.

(4) Any review initiated under sub-rule (1) shall be concluded within a period not exceeding twelve months from the date of initiation of such review:

[87]**[Provided** that notwithstanding anything contained in rule 19, such review shall be completed at least three months prior to expiry of the countervailing duty under review]

[86] Substituted by Notification No. 10/2020-Cus. (N.T.), dated 2-2-2020.
[87] Inserted (w.e.f. 1-7-2021) by Notification No. 11/2021-Cus. (N.T.), dated 1-2-2021.

[88][(5) Subject to sub-rule (4), the provisions of rules 7,8, 9,10,11,12,13,18,19,20,21 and 22 shall apply mutatis mutandis apply in case of review:]

Rule 25. Circumvention of countervailing duties. -

(1) Circumvention shall be considered as a change in the pattern of trade between individual companies in any other country, subject to measures and India, as a result of practice, process or work for which there is insufficient cause or economic justification other than the imposition of the duty, and where there is evidence of injury or that the remedial effects of the duty are being undermined in terms of prices or quantities or both of the like product, and that the imported like product or parts thereof or both still benefit from the subsidy as determined in original or previous determination.

(2) The practice, process or work referred to in the sub-rule (1) includes, inter alia, -

(a) where an article subject to countervailing duty is imported into India from any country including the country of origin or country of export notified for the purposes of levy of countervailing duty, in an unassembled, unfinished or incomplete form and is assembled, finished or completed in India or in any other country, such assembly, finishing or completion shall be considered to circumvent the countervailing in force if,

(i) the operation started or increased after, or just prior to, the countervailing investigations and the parts and components are imported from the country of origin or country of export notified for purposes of levy of countervailing duty; and

(ii) the value consequent to assembly, finishing or completion operation is less than thirty-five percent of the cost of assembled, finished or complete article.

Explanation I. - 'Value' means the cost of assembled, complete or finished article less value of imported parts or components.

Explanation II. - For the purposes of calculating the 'value', expenses on account of payments relating to intellectual property rights, royalty, technical know- how fees and consultancy charges, shall not be taken into account.

[88] Substituted (w.e.f. 2-2-2021) by Notification No. 11/2021-Cus. (N.T.), dated 1-2-2021.

(b) where an article subject to countervailing duty is imported into India from country of origin or country of export notified for the levy of countervailing duty after being subjected to any process involving alteration of the description, name or composition of an article, such alteration shall be considered to circumvent the countervailing duty in force if the alteration of the description or name or composition of the article subject to countervailing duty results in the article being altered in form or appearance even in minor forms regardless of the variation of tariff classification, if any;

(c) where an article subject to countervailing duty is imported into India through any exporter or producer or country not subject to countervailing duty, such exports shall be considered to circumvent the countervailing duty in force if the exporters or producers notified for the levy of countervailing duty change their trade practice, pattern of trade or channels of sales of the article in order to have their products exported to India through any exporter or producer or country not subject to countervailing duty;

(d) any other manner where the countervailing duty so imposed is rendered ineffective.

Rule 26. Initiation of investigation to determine circumvention. -

(1) Except as provided herein below, the designated authority may initiate an investigation to determine the existence and effect of any alleged circumvention of the countervailing duty levied under section 9 of the Act, upon receipt of a written application by or on behalf of the domestic industry.

(2) The application shall, inter-alia, contain sufficient evidence as regards the existence of the circumstances to justify initiation of an anti-circumvention investigation.

(3) Notwithstanding anything contained in sub-rule (1), the designated authority may initiate an investigation on its own initiative if it is satisfied from the information received from the Commissioner of Customs appointed under the Customs Act, 1962 (52 of 1962) or any other source that sufficient evidence exists as to the existence of the circumstances pointing to circumvention of countervailing duty in force.

(4) The designated authority may initiate an investigation to determine the existence and effect of any alleged circumvention of the countervailing duty in force:

Provided that the designated authority shall notify the Government of the exporting country before proceeding to initiate such an investigation.

[89][(4A) The Central Government may, on recommendation of the designated authority, resort to provisional assessment of the imports of the article alleged to be circumventing a countervailing duty in force and may ask a guarantee from the importer, till the time a decision under sub-rule (3) of rule 27 is taken by the Central Government.]

(5) The provisions regarding evidence and procedure provided under rule 7 shall apply mutatis mutandis to any investigation carried out under this rule.

(6) Any such investigation shall be concluded within twelve months and in no case more than eighteen months of the date of initiation of investigation for reasons to be recorded in writing by the designated authority.

Rule 27. Determination of circumvention. -

(1) The designated authority, upon determination that circumvention of countervailing duty exists, may recommend imposition of existing countervailing duty to imports of articles found to be circumventing an existing countervailing duty or to imports of article originating in or exported from countries other than those which are already notified for the purpose of levy of the countervailing duty and such levy may apply retrospectively from the date of initiation of the investigation under rule 26.

(2) The designated authority shall issue a public notice recording its findings.

(3) The Central Government may, pursuant to the recommendations made by the designated authority, extend the countervailing duty to imports of article including imports of such article from the date of initiation of the investigation under rule 26 or such date as may be recommended by the designated authority.

Rule 28. Review of circumvention. -

[89] Inserted by Notification No. 11/2021-Cus. (N.T.), dated 1-2-2021.

(1) The designated authority may, where warranted, review the need for the continued imposition of the countervailing duty on circumventing product or against the circumventing country as applicable, either on its own initiative or, upon request by any interested party which submits necessary information substantiating the need for the review provided that a reasonable period of time has elapsed since the imposition of the measures, and upon such review make recommendations to the Central Government.

(2) Any review initiated under sub-rule (1) shall be concluded within a period not exceeding twelve months from the date of initiation of such review.]

[90][**Provided** that such review shall be completed at least three months prior to expiry of the duty under review.]

[91]**[Rule 29. Anti-absorption review. -**

(1) A countervailing duty imposed under section 9 of the Act may be considered to be absorbed where export prices of an article from the exporting country or countries decrease post imposition of the countervailing duty without any significant change in resale price of such article in India imported from the exporting country or countries.

(2) Where an article subject to countervailing duty is imported into India at such price or under such condition which is considered as absorption of the existing countervailing duty, and such duty is thereby rendered or maybe rendered ineffective, the designated authority may, after conducting review, recommend modification in the form or basis of the countervailing duty, or the quantum of countervailing duty, or both, after reassessing the subsidy margin and injury margin and appropriate changes or adjustments in previously determined benefit from subsidy and injury, if necessary, in accordance with the provisions of rule 12 may be done.

(3) The domestic industry or any other interested party shall file the application seeking initiation of anti-absorption investigation normally within two years from the date of imposition of definitive countervailing duty:

[90] Inserted (w.e.f. 1-7-2021) by Notification No. 11/2021-Cus. (N.T.), dated 1-2-2021

[91] Inserted by Notification No. 83/2021-Cus. (N.T.), dated 27-10-2021.

Provided that in view of special circumstances in a given case, for reasons to be recorded in writing, the authority may accept an application for such initiation after expiry of the said period of two years.

Provided further that no such application shall be accepted in cases with less than twelve months period remaining for the countervailing duty to expire]

[92]**Rule 30. Initiation of investigation to determine absorption: -**

(1) Except as provided herein below, the designated authority may initiate an investigation to determine the existence and effect of any alleged absorption of the countervailing duty levied under section 9 of the Act, upon receipt of a written application by or on behalf of the domestic industry or by any other interested party.

(2) The application shall, inter-alia, contain sufficient evidence as regards the existence of circumstances referred in sub-rule (1) pf rule 25 to justify initiation of an anti-absorption investigation.

(3) Notwithstanding anything contained in sub-rule (1), the designated authority may initiate an investigation suo motu if it is satisfied from the information received from the Principal Commissioner of Customs or the Commissioner of Customs appointed under the Customs Act, 1962 (52 of 1962) or any other source, that sufficient evidence exists as to the existence of the circumstances pointing to absorption of countervailing duty in force.

(4) The designated authority may initiate an investigation to determine the existence and effect of any alleged absorption of the countervailing duty in force:

Provided that the designated authority shall notify the Government of the exporting country before proceeding to initiate such an investigation.

(5) The Central Government may, on recommendation of the designated authority, resort to provisional assessment of the imports of the article alleged to be absorbing the countervailing duty in force and may ask a guarantee from the importer, till the time a decision under sub-rule (3) of

[92] Inserted by Notification No. 83/2021-Cus. (N.T.), dated 27-10-2021.

rule 27 is taken by the Central Government.

(6) The provisions regarding evidence and procedures under rule 7 shall apply mutatis mutandis to any investigation carried out under this rule and the review shall be limited only to re-computation of subsidy and injury margin due to the reason that existence of injury and causality has already been determined in the original investigation.

(7) Any such investigation shall be concluded within six months from the date of initiation of the investigation:

Provided that in special circumstances, for reasons to be recorded in writing, the Central Government may extend the said period for another three months.

[93]**31. Determination of Absorption: -**

(1) The designated authority, upon determination that absorption of countervailing duty exists, may recommend modification of the form or basis of the duty, or the quantum of countervailing duty, or both, to imports of articles found to be absorbing an existing countervailing duty and such modification may apply retrospectively from the date of initiation of the investigation under rule 26.

(2) The designated authority shall issue a public notice recording its findings.

(3) The Central Government may, pursuant to the recommendations made by the designated authority, modify the form or basis of the countervailing duty, or the quantum of countervailing duty, or both, applicable to imports of such article, from the date of initiation of the investigation under rule 26 or such date as may be recommended by the designated authority.

[93] Inserted by Notification No. 83/2021, dated 27-10-2021.

ANNEXURE I

PRINCIPLES GOVERNING THE DETERMINATION OF INJURY

The designated authority shall take into account *inter alia*, the following principles while determining injury :-

1. (1) A determination of injury for purposes of rule 13 shall be based on positive evidence and involve an objective examination of both (a) the volume of the subsidized imports and the effect of the subsidized imports on prices in the domestic market for like products and (b) the consequent impact of these imports on the domestic producers of such products.

(2) With regard to the volume of the subsidized imports, the designated authority shall inter alia consider whether there has been a significant increase in subsidized imports, either in absolute terms or relative to production or consumption in India.

(3) With regard to the effect of the subsidized import on prices, the designated authority shall, consider whether there has been a significant price undercutting by the subsidized imports as compared with the price of a like article in India, or whether the affect of such imports is otherwise to depress prices to a significant degree or to prevent price increases, which otherwise would have occurred, to a significant degree.

(4) Where imports of a product from more than one country are simultaneously subject to countervailing duty investigations, the designated authority may cumulatively assess the effect of such imports only if it determines that (a) the amount of subsidization established in relation to the imports from each country is more than one per cent ad valorem and the volume of imports from each country is not negligible and (b) a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between the imported products and the like

domestic product.

(5) The designated authority while examining the impact of the subsidized imports on the domestic industry shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in output, sales, market share, profits, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital investments and, in the case of agriculture, whether there has been an increased burden on government support programmes.

2. (1) It must be demonstrated that the subsidized imports are, through the effectsof subsidies, causing injury. The demonstration of a causal relationship between the subsidized imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the designated authority. The designated authority shall also examine any known factors other than the subsidized imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the subsidized imports. Factors which may be relevant in this respect include, inter alia, the volumes and prices on non-subsidized imports of the product in question, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.

(2) 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.

3. 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 which 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 designated authority shall consider, inter alia, such factors as :

(i) nature of the subsidy or subsidies in question and the trade effects likely to arise therefrom;

(ii) a significant rate of increase of subsidized imports into the domestic market indicating the likelihood of substantially increased importation;

(iii) sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased subsidized exports to Indian market, taking into account the availability of other export markets to absorb any additional exports;

(iv) whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and

(v) inventories of the product being investigated.

ANNEXURE II

PRINCIPLES FOR DETERMINATION OF SUBSIDY WHICH HAS BEEN CONFERRED ON A LIMITED NUMBER OF PERSONS AS REFERRED TO IN RULE 11

1. The designated authority in order to determine as to whether a subsidy has been conferred on a limited number of persons engaged in the manufacture or production of an article, shall take the following principles into consideration

(a) whether the granting authority or the legislation pursuant to which the granting authority operates, explicitly limits access to a subsidy to certain enterprises. However, where the granting authority, 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, such subsidy shall not be considered to have been conferred on a limited number of persons engaged in the manufacture or production of an article, provided that the eligibility is automatic and such criteria or conditions are strictly adhered to and such criteria and conditions have been clearly spelt out in the law, regulation or other official document of the granting country or territory and are capable of verification.

Explanation: For the purposes of the above para objective criteria or conditions mean criteria or condition which are neutral, which do not favour certain enterprises over others, and which are economic in nature and horizontal in application, such as number of employees or size of enterprises.

(b) Notwithstanding the determination that a subsidy is not being granted to a limited number of enterprises in terms of the provisions contained in para (a) above, if the designated authority has reason to believe that the subsidy has in fact been conferred to a limited number of enterprises, it may consider other factors like (1) use of a subsidy programme by a limited number of certain enterprises or predominant use by certain

enterprises (2) granting of disproportionately large amounts of subsidy to certain enterprises and (3) manner in which discretion has been exercised by the granting authority in decision to grant a subsidy, for determination of subsidy. The designated authority, in applying this clause, shall take into account, the extent of diversification of economic activities within the jurisdiction of the granting authority, as well as the length of the time during which the subsidy programme has been in operation.

(c) A subsidy which is limited to certain persons engaged in the manufacture or production of an article located within a designated geographical region within the jurisdiction of the granting authority shall be considered to have been granting to a limited number of persons engaged in the manufacture or production.

ANNEXURE III

PART- 1

ILLUSTRATIVE LIST OF EXPORT SUBSIDIES

(a) The provision by governments of direct subsidies to a firm or an industry contingent upon export performance.

(b) Currency retention schemes or any similar practices which involve a bonus on exports.

(c) Internal transport and freight charges on export shipments, provided or mandated by governments, on terms more favourable than for domestic shipments.

(d) The provision by governments or their agencies either directly or indirectly through government-mandated schemes, of imported or domestic products or services for use in the production of exported goods, on terms or conditions more favourable than for provision of like or directly competitive products or services for use in the production of goods for domestic consumption, if (in the case of products) such terms or conditions are more favourable than those commercially available on world markets to their exporters.

Explanation: The term "commercially available" means that the choice between domestic and imported products is unrestricted and depends only on commercial considerations.

(e) The full or partial exemption remission, or deferral specifically related to exports, of direct taxes or social welfare charges paid or payable by industrial or commercial enterprises.

Explanation: For the purpose of this paragraph:

(i) the term "direct taxes" shall mean taxes on wages, profits, interests, rents,

royalties, and all other forms of income, and taxes on the ownership of real property;

(ii) the term "import charges" shall mean tariffs, duties, and other fiscal charges not elsewhere enumerated in this note that are levied on imports;

(iii) the term "indirect taxes" shall mean sales, excise, turnover, value added, franchise, stamp, transfer, inventory and equipment taxes, border taxes and all taxes other than direct taxes and import charges;

(iv) "Prior-stage" indirect taxes are those levied on goods or services used directly or indirectly in making the product;

(v) "Cumulative" indirect taxes are multi-stage taxes levied where there is no mechanism for subsequent crediting of the tax if the goods or services subject to tax at one stage of production are used in a succeeding stage of production;

(vi) "Remission" of taxes includes the refund or rebate of taxes;

(vii) "Remission or drawback" includes the full or partial exemption or deferral of import charges.

(f) The allowance of special deductions directly related to exports or export performance, over and above those granted in respect to production for domestic consumption, in the calculation of the base on which direct taxes are charged.

(g) The exemption or remission, in respect of the production and distribution of exported products, of indirect taxes in excess of those levied in respect of the production and distribution of like products when sold for domestic consumption.

(h) The exemption, remission or deferral of prior-stage cumulative indirect taxes on goods or services used in the production of exported products in excess of the exemption, remission or deferral of like prior-stage cumulative indirect taxes on goods or services used in the production of like products when sold for domestic consumption; provided, however, that prior-stage cumulative indirect taxes may be exempted, remitted or deferred on exported products even when

not exempted, remitted or deferred on like products when sold for domestic consumption, if the prior-stage cumulative indirect taxes are levied on inputs that are consumed in the production of the exported product (making normal allowance for waste) and the item shall be interpreted in accordance with the guidelines on consumption of inputs in the production process contained in Part -2 of this Annexure. This paragraph does not apply to value-added tax systems and border-tax adjustmentin lieu thereof; the problem of the excessive remission of value-added taxes is exclusively covered by paragraph (g).

(i) The remission or drawback of import charges in excess of those levied on imported inputs that are consumed in the production of the exported product (making normal allowance for waste); provided, however, that in particular cases a firm may use a quantity of home market inputs equal to, and having the same quality and characteristics as, the imported inputs as a substitute for them in order to benefit from this provision if the import and the corresponding export operations both occur within a reasonable time period, not to exceed two years and the item shall be interpreted in accordance with the guidelines on consumption of inputs in the production process contained in Part -2 ofthis Annexure and the guidelines in the determination of substitution drawback systems as export subsidies contained in Part -3 of this Annexure.

(j) The provision by governments (or special institutions controlled by governments) of export credit guarantee or insurance programmes, of insurance or guarantee programmes against increases in the cost of exported products or of exchange risk programmes, at premium rates which are inadequate to cover the long-term operating costs and losses of the programmes.

(k) The grant by governments (or special institutions controlled by or acting under the authority of governments) of export credits at rates below those which they actually have to pay for the funds so employed (or would have to pay if they borrowed on international capital markets in order to obtain funds of the same maturity and other credit terms and denominated in the same currency as the export credit), or the payment by them of all or part of the costs incurred by

exporters or financial institutions in obtaining credits, in so far as they are used to secure a material advantage in the field of export credit terms.

Provided, that if a country is a party to an international undertaking on official export credits to which at least twelve original World Trade organisation Members are parties as of 1 January 1979 (or a successor undertaking which has been adopted by those original Members), or if in practice a country applies the interest rates provisions of the relevant undertaking, an export credit practice which is in conformity with those provisions shall not be considered an export subsidy prohibited by these rules.

(l) Any other charge on the public account constituting an export subsidy in the sense of Article XVI of GATT 1994.

PART-2

GUIDELINES ON CONSUMPTION OF INPUTS IN THE PRODUCTION PROCESS

I

1. Indirect tax rebate schemes can allow for exemption, remission or deferral of prior-stage cumulative indirect taxes levied on inputs that are consumed in the production of the exported product (making normal allowance for waste). Similarly, drawback schemes can allow for the remission or drawback of import charges levied on inputs that are consumed in the production of the exported product (making normal allowance for waste).

2. The Illustrative List of Export Subsidies in Part 1 of Annexure III of these rules makes reference to the term "inputs that are consumed in the production of the exported product" in paragraphs (h) and (i). Pursuant to paragraph (h), indirect tax rebate schemes can constitute an export subsidy to the extent that they result in exemption, remission or deferral of prior-stage cumulative indirect taxes in excess of the amount of such taxes actually levied on inputs that are consumed in the production of the exported product. Pursuant to paragraph (i), drawback schemes can constitute an export subsidy to the extent that they result in a remission or drawback of import charges in excess of those actually levied on inputs that are consumed in the production of the exported product. Both paragraphs stipulate that normal allowance for waste must be made in findings regarding consumption of inputs in the production of the exported product.

II

1. Inputs consumed in the production process are inputs physically incorporated, energy, fuels and oil used in the production process and catalysts which are consumed in the course of their use to obtain the exported product. In examining whether inputs are consumed in the production of the exported product, as part of a countervailing duty investigation pursuant to these rules, the designated

authority should proceed on the following basis, namely:- Where it is alleged that an indirect tax rebate scheme, or a drawback scheme, conveys a subsidy by reason of over-rebate or excess drawback of indirect taxes or import charges on inputs consumed in the production of the exported product, the designated authority should first determine whether the government of the exporting country has in place and applies a system or procedure to confirm which inputs are consumedin the production of the exported product and in what amounts. Where such a system or procedure is determined to be applied, the designated authority should then examine the system or procedure to see whether it is reasonable, effective for the purpose intended, and based on generally accepted commercial practices in the country of export. The designated authority may it necessary if he considers carry out certain practical testsin order to verify information or to satisfy themselves that the system or procedure is being effectively applied.

(1) Where there is no such system or procedure, where it is not reasonable, or where it is instituted and considered reasonable but is found not to be applied or not to be applied effectively, a further examination by the exporting country based on the actual inputs involved would need to be carried out in the context of determining whether an excess payment occurred. If the designated authority considers it necessary, a further examination would be carried out in accordance with sub-paragraph 1 above.

2. The designated authority should treat inputs as physically incorporated if such inputs are used in the production process and are physically present in the product exported. An input need not be present in the final product in the same form in which it entered the production process.

3. In determining the amount of a particular input that is consumed in the production of the exported product, a "normal allowance for waste" should be taken into account, and such waste should be treated as consumed in the production of the exported product. The term "waste" refers to that portion of a given input

which does not serve an independent function in the production process, is not consumed in the production of the exported product (for reasons such as inefficiencies) and is not recovered, used or sold by the same manufacturer.

4. The designated authority's determination of whether the claimed allowance for waste is "normal" should take into account the production process, the average experience of the industry in the country of export, and other technical factors, as appropriate. The designated authority should bear in mind that an important question is whether the authorities in the exporting country have reasonably calculated the amount of waste, when such an amount is intended to be included in the tax or duty rebate or remission.

PART-3

GUIDELINES IN THE DETERMINATION OF SUBSTITUTION DRAWBACK SYSTEMS AS EXPORT SUBSIDIES

I

Drawback systems can allow for the refund or drawback of import charges on inputs which are consumed in the production process of another product and where the export of this latter product contains domestic inputs having the same quality and characteristics as those substituted for the imported inputs. Pursuant to paragraph (i) of the Illustrative List of Export Subsidies in Part-1 of Annexure III substitution drawback systems can constitute an export subsidy to the extent that they result in an excess drawback of the import charges levied initially on the imported inputs for which drawback is being claimed.

II

1. In examining any substitution drawback system as part of a countervailing duty investigation pursuant to these rules, the designated authority should proceed on the following basis, namely:-

   (i) Paragraph (i) of the Illustrative List of Export Subsidies of Part -1 of Annexure III stipulates that home market inputs may be substituted for imported inputs in the production of a product for export provided such inputs are equal in quantity to, and have the same quality and characteristics as, the imported inputs being substituted. The existence of a verification system or procedure is important because it enables the government of the exporting country to ensure and demonstrate that the quantity of inputs for which drawback is claimed does not exceed the quantity of similar products exported, in whatever form, and that there is not drawback of import charges in excess of those originally levied on the imported inputs in question.

   (ii) Where it is alleged that a substitution drawback system conveys a subsidy,

the designated authority should first proceed to determine whether the government of the exporting country has in place and applies a verification system or procedure. Where such a system or procedure is determined to be applied, the designated authority should then examine the verification procedures to see whether they are reasonable, effective for the purpose intended, and based on generally accepted commercial practices in the country of export. To the extent that the procedures are determined to meet this test and are effectively applied, no subsidy should be presumed to exist. The designated authority may, if he considers necessary, carry out certain practical tests in order to verify information or to satisfy themselves that the verification procedures are being effectively applied.

(iii) Where there are no verification procedures, where they are not reasonable, or where such procedures are instituted and considered reasonable but are found not to be actually applied or not applied effectively, there may be a subsidy. In such cases a further examination by the exporting country based on the actual transactions involved would need to be carried out to determine whether an excess payment occurred. If the investigating authorities deemed it necessary, a further examination would be carried out in accordance with sub-paragraph (ii) above of Part 3 of this Annexure.

(iv) The existence of a substitution drawback provision under which exporters are allowed to select particular import shipments on which drawback is claimed should not of itself be considered to convey a subsidy.

(v) An excess drawback of import charges in the sense of paragraph (i) would be deemed to exist where governments paid interest on any monies refunded under their drawback schemes, to the extent of the interest actually paid or payable.

ANNEXURE IV

GUIDELINES FOR THE CALCULATION OF THE AMOUNT OF SUBSIDY IN COUNTERVAILING DUTY INVESTIGATIONS

A. CALCULATION OF SUBSIDY PER UNIT/AD VALOREM

The calculation of the benefit shall reflect the amount of subsidy found to exist during the investigation period and not simply the face value of the amount at the time it is transferred to the recipient or foregone by the government. Thus, the face value of the amount of the subsidy should be transformed into the value prevailing during the investigation period through the application of the normal commercial interest rate. The objective of the calculation should be to arrive at the amount of subsidy per unit of production during the investigation period. In the case of consumer products, such as television sets, the appropriate unit would be each individual item. If bulk products, such as fertilizers or chemicals, are involved, it would be appropriate to calculate the subsidy, that is to say, per tonne, or other appropriate unit of measurement. The per unit subsidy can be converted into an ad valorem rate by expressing the per unit subsidy as a percentage of export price. This may be used to establish whether the subsidy amount is de minimis, since this is expressed ad valorem (1 % for imports from developed countries; 2 % for developing countries). In certain circumstances, it may also be considered to be appropriate to express the countervailing duty on an ad valorem basis.

B. CALCULATION OF CERTAIN TYPES OF SUBSIDY

(a) Grants

In the case of a grant (or equivalent) where none of the money is repaid, the value of the subsidy should be the amount of the grant corrected for any differences between the point in time of its receipt and the investigation period, i.e. the period in which the production or sales are allocated. Therefore, if the grant is expensed during the investigation period, (that is,

its amount is entirely allocated to production or sales during this period), the interest that would have accrued during that period should normally be added. If however, the grant is allocated over a longer period than the investigation period, the interest may be added as described in section C (a)(ii).Any lump sum of revenue transferred or foregone (e.g. income tax or duty exemption, rebates, money saved from preferential provision of goods and services or gained from excessive prices for the purchase of goods) should be considered as being equivalent to a grant.

(i) Direct transfer of funds

The amount of subsidy should be the amount received by the company concerned (a subsidy to cover operating losses would fall into this category).

(ii) Tax exemptions

The amount of subsidy should be the amount of tax that would have been payable by the recipient company at the standard applicable tax rate during the investigation period.

(iii) Tax reductions

The amount of subsidy should be the difference between the amount of tax actually paid by the recipient company during the investigation period and the amount that would have been paid at the normal rate of tax. (The same method should be applied to all other exemptions and reduction of obligation, e.g. import duties, social security contributions, redundancy payments)

(iv) Accelerated depreciation

Accelerated depreciation of assets under a government agreed programme should be considered as a tax reduction. The amount of subsidy should be the difference between the amount of tax that would have been paid during the investigation period under the normal depreciation schedule

for the assets concerned, and the amount actually paid under accelerated depreciation. To the extent that the accelerated depreciation results in a tax saving for the company concerned during the investigation period, there is a benefit.

(v) Interest rate subsidies

In the case of an interest rate subsidy, the amount of subsidy should be the amount of interest saved by the recipient company during the investigation period.

(b) Loans

(1) Basic methodology

(i) In the case of a loan from the government (where repayment does take place) the subsidy should be the difference between the amount of interest paid on the government loan and the interest normally payable on a comparable commercial loan during the investigation period.

(ii) A comparable commercial loan would normally be a loan of a similar amount with a similar repayment period obtainable by the recipient from a representative bank operating on the domestic market.

(iii) In this regard, the commercial interest rate should preferably be established on the basis of the rate actually paid by the company concerned on comparable loans from banks. If this is not possible, the investigation should consider the interest paid on comparable loans to companies in a similar financial situation in the same sector of the economy, or, if information on such loans is not available, to any comparable loan made to companies in a similar financial situation in any sector of the economy.

(iv) If there are no comparable commercial lending practices on the domestic market of the exporting country, the interest rate on a commercial loan may be estimated with reference to indicators of the economic situation prevailing at the time, (notably the inflation rate) and the situation of the company concerned.

(v) If all or part of a loan is forgiven or defaulted on, the amount not re-paid should be treated as a grant depending on whether there was a guarantee.

(2) Specific cases

(i) It should be noted that tax deferrals, or the deferral of any other financial obligation, should be considered as interest-free loans and the amount of subsidy calculated as above.

(ii) In the case of reimbursable grants, these should also be considered as interest free loans until they are reimbursed. If they are not reimbursed, in whole or in part, they should be considered as grants rather than interest-free loans from the date on which non-reimbursement is established. From this date, the normal grant methodology should apply. In particular, if the grant is to be allocated over time, such allocation would start on the established date of non-reimbursement. The amount of subsidy should be the amount of the grant, minus any repayments.

(iii) The same approach would apply to contingent-liability loans. To the extent that such loans are given at a preferential rate of interest,the subsidy should be calculated as in paragraph (i). However, if it were to be determined that the loan would not be repaid, it should be treated as a grant from the date on which non-repayment was established. The amount of subsidy should be the amount of the loan, less any repayments.

(c) Loan guarantees

(i) In general, a loan guarantee, by eliminating to some extent the risk of default by the borrower to the lender, will normally enable a firm to borrow more cheaply than would otherwise be the case. If the government provides the guarantee, the fact that loans are obtained at a lower interest rate than would otherwise be the case does not mean there is a subsidy, provided that the guarantee is financed on a commercial basis, since the financing of such a viable guarantee by the company would be assumed to offset any benefit of a preferential interest rate.

(ii) In this situation, it is considered that there is no benefit to the recipient if the fee which it pays to the guarantee programme is sufficient to enable the programme to operate on a commercial basis, i.e. to cover all its costs and to earn a reasonable profit margin. In such a situation, it is presumed that the fee covers the riskelement involved in obtaining a lower interest rate. If the guarantee programme is viable during the investigation period as a whole and the recipient has paid the appropriate fee, there is no financial contribution from the government and therefore no subsidy, even if the recipient involved were to default on its loans during the period. If the scheme is not viable, the benefit to the recipient should be the difference between the fees actually paid and the fees which should have been paid to make the programme viable, or the difference between the amount the firm pays on the guaranteed loan and the amount that it would pay for a comparable commercial loan in the absence of the government guarantee, whichever is the lower.

(iii) In the case of ad hoc guarantees (i.e. not part of a programme), it should first be ascertained whether the fees paid correspond to those charged to other companies in a similar position which benefit from

viable loan guarantee programmes. If so, there would normally be no subsidy; if not, the method explained in (ii) above would apply.

(iv) If no fees are paid by the recipient, the amount of subsidy should be the difference between the amount the firm pays on the guaranteed loan and the amount that it would pay for a comparable commercial loan in the absence of the government guarantee.

(v) The same calculation principles would apply to credit guarantees, i.e., where the recipient is guaranteed against credit defaults by its customers.

(d) Provision of goods and services by the government Principle

(i) The amount of subsidy as regards the provision of goods or services by the government should be the difference between the price paid by firms for the goods or service, and adequate remuneration for the product or service in relation to prevailing market conditions, ifthe price paid to the government is less than this amount. Adequate remuneration should normally be determined in the light of prevailing market conditions on the domestic market of the exporting country, and the calculation of the subsidy amount must reflect only that part of the purchases of goods or services which are used directly inthe production or sale of the like product during the investigation period.

Comparison with private suppliers

(ii) As a first step, it must be established whether the same goods or services involved are provided both by the government and by private operators. If this is the case, the price charged by the government body would normally constitute a benefit to the extent that it is below the lowest price available from one of the private operators to the company involved for a comparable purchase.The amount of subsidy should be the difference between these two

prices. If the company involved has not made comparable purchases from private operators, details should be obtained of the price paid by comparable companies in the same sector of the economy or, if such data is not available, in the economy as a whole and the amount of subsidy should be calculated as above.

Government monopoly suppliers

(iii) If, however, the government is the monopoly supplier of the goods or services involved, they are considered to be provided for less than adequate remuneration if certain enterprises or sectors benefit from preferential prices. The amount of subsidy should be the difference between the preferential price and the normal price.

If the goods and services in question are widely used in the economy, a subsidy will only be specific or conferred on a limited number of persons if there is evidence of preferential pricing to a particular firm or sector. It may be that per unit prices charged vary accordingto neutral and objective criteria, for example large consumers pay less per unit than small ones, as sometimes happens in the provisionof gas and electricity. In such situations, the fact that certain enterprises benefit from more favourable prices than others would not mean that the provision in this case was necessarily made for less than adequate remuneration, provided that the pricing structure in question was generally applied throughout the whole economy, without any preferential prices being given to specific sectors or firms. The amount of subsidy should in principle be the difference between the preferential price and the normal price charged to an equivalent company, according to the normal structure.

(iv) However, if the normal price is insufficient to cover the supplier's average total costs plus a reasonable profit margin (based on sector averages), the amount of subsidy should be the difference between

the preferential price and the price which would be required to cover the above costs and profit.

(v) If the government is the monopoly supplier of the goods or services with a specific use, e.g. television tubes, the question of preferential pricing does not arise, and the amount of subsidy should be the difference between the price paid by the firm involved and the price required to cover the supplier's costs and profit margin.

(e) Purchase of goods by government

(i) In a situation where private operators purchase the kind of goods in question as well as the government body, the amount of subsidy should be the extent to which the price paid for the like product by the government exceeds the highest price offered for a comparable purchase of the same goods by the private sector.

(ii) If the company involved has not made comparable sales to private operators, details should be obtained of the price paid by private operators to comparable companies in the same sector of the economy, or, if such data is not available, in the economy as a whole. In such a case, the amount of subsidy should be calculated as above.

(iii) If the government has a monopoly for the purchase of the goods in question, the amount of subsidy as regards the purchase of goods by the government should be the extent to which the price paid for the goods exceeds adequate remuneration. Adequate remuneration in this situation is the average costs incurred by the firm selling the product during the investigation period, plus a reasonable amount of profit, which will have to be determined on a case-to-case basis.

The amount of subsidy should be the difference between the price paid by the government and adequate remuneration as defined above.

(f) Government provision of equity capital

(i) Government provision of equity capital should 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 exporting country concerned.

(ii) Therefore, the provision of equity capital does not of itself confer a benefit. The criterion should be whether a private investor would have put money into the company in the same situation in which the government provided equity. On the basis of this principle, the matter has to be dealt with on a case-to-case basis.

(iii) If the government buys shares in a company and pays above the normal market price for these shares (taking account of any other factors which may have influenced a private investor), the amount of subsidy should be the difference between the two prices.

(iv) As a general rule, in cases where there is no market in freely-traded shares, the government's realistic expectation of a return on the price paid for equity should be considered. In this regard, the existence of an independent study demonstrating that the firm involved is a reasonable investment should be considered the best evidence; if this is not present, the onus should be on the government to demonstrate on what basis it can justify its expectation of a reasonable return on investment.

(v) If there is no market price and the equity injection is made as part of an ongoing programme of such investments by the government, close attention should be paid not just to the analysis of the firm in question, but to the overall record of the programme over the last few years. If the records show that the programme has earned a reasonable rate of return for the government, there should be a

presumption that the government is acting according to the usual investment practice of private investors with regard to the case in question. If the programme has not generated a reasonable return, the onus should be put on the government to demonstrate on what basis it can justify its expectation of a reasonable return on investment.

(vi) The existence of a subsidy should be determined by the information available to the parties at the time the equity injection is made. Thus, if an investigation considers an equity injection that was madeseveral years before, the fact that the company has performed less well than expected should not mean that a subsidy exists, provided that the expectation of a reasonable return was justified in the light of the facts know at the time of the provision of equity.

On the other hand, a subsidy might exists even if a reasonable return has been achieved, if at the equity injection the prospect of such a return was so uncertain that no private party would have made the investment.

(vii) In cases where there is no market price for the equity and there is a subsidy and a benefit, i.e., the government has not acted according to the usual investment practice of private investors, all or part of the equity provided must be considered as a grant. A decision to consider all of the equity a grant should be made only in extreme cases where it is determined that the government had no intention of receiving any return on its investment and was in effect giving a disguised grant to the firm in question. A decision on what portion of the equity to treat as a grant would depend on how near the government has come to meeting the private investor standard. This determination should be made on a case-to-case basis.

(g) Forgiveness of government-held debt

Forgiveness of debt held by government or government-owned banks relieves a company of its repayment obligations and should therefore be treated as a grant.

If the subsidy is to be allocated, the allocation period should begin at the time of the forgiveness of the debt. The amount of subsidy should be the outstanding amount of the debt forgiveness (including any interest accrued).

C. INVESTIGATION PERIOD FOR SUBSIDY - CALCULATION OF EXPENSE VERSUS ALLOCATION

The amount of subsidy should be established during an investigation period, which should normally be the most recent financial year of the beneficiary enterprise. Although any other period of six months prior to initiation may be used, it is preferable to use the most recent financial year, since this will enable all appropriate data to be verified on the basis of audited accounts. As many subsidies have effects for a number of years, subsidies granted before the investigation period should also be investigated in order to determine what portion of such subsidy is attributable to the investigation period.

(i) If the subsidy is granted on a per unit basis, for example, an export rebate granted per unit of product, the per unit calculation normally consists of taking the weighted-average value of the rebate over the investigation period;

(ii) Other kinds of subsidy are not readily expressed on a per unit basis, but involve a global sum of money which has to be allocated to each unit of product as appropriate. Two exercises may have to be carried out, in this respect:

- Attribution to the investigation period of a portion of those subsidies granted before the investigation period but whose effects extend over a number of years.

- Allocation of the subsidy amount attributed to the investigation period per unit of the like product. In this case, the appropriate denominator for such allocation has to be selected.

(a) Attribution of a subsidy amount to the investigation period

(i) Many types of subsidy, e.g. tax incentives and preferential loans are recurring and the effect is felt immediately after granting. Thus, the amount granted to the beneficiary can be expensed inthe investigation period. The expensed amount should normally be increased by the annual commercial interest rate, to reflect the full benefit to the recipient, on the assumption that the beneficiary would have had to borrow the money at the beginning of the period and repay it at the end.

(ii) For non-recurring subsidies, which can be linked to the acquisition of fixed assets, the total value of the subsidy should be spread over the normal life of the assets. Therefore the amount of subsidy from, for example, a grant (for which it is assumed that it is used by the beneficiary to improve its competitiveness in the long term, and thus to purchase product assets of one kind or another), can be spread over the normal period used in the industry involved for the depreciation of assets. This should normally be done using the straight-line-method. For example, if the normal depreciation period was five years, 20 % of the value of the grant should be allocated to the investigation period.

The approach of allocating over time means that non-recurring subsidies granted several years before the investigation period may still be countervailed provided that they still have an effect during the investigation period. This kind of allocation is equivalent to a series of annual grants, each having en equal amount. In order to determine the benefit to the recipient, the appropriate annual commercial interest rate should be added to each grant, to reflect the benefit of not having to borrow the money on the open market. In addition, in order to reflect the full benefit to the recipient of having a lump sum of money at its disposal from the beginning of the allocation period, the amount of subsidy should be increased by

the average amount of interest which the recipient would expect to earn on the non-depreciated amount of total grant over the whole period of allocation.

(iii) As an exception to (ii), non-recurring subsidies which amount to less than 1 % ad valorem may normally be considered to be expensed, even if they are linked to the purchase of fixed assets.

(iv) In the case of recurring subsidies linked to the acquisition of fixed assets, e.g. import duty exemptions on machinery, which date back to before the investigation period, the benefits accruing from previous years within the depreciation period should be taken into account and the appropriate amount attributed to the investigation period.

(v) In addition, recurring subsidies granted in large, concentrated amounts prior to the investigation period, may in certain circumstances be allocated over time if it is determined that they are likely to be linked to the purchase of fixed assets and still confer a benefit during the investigation period.

(vi) In the case of subsidies expensed as in paragraphs (i) and (iii) no subsidies granted before the investigation period should be taken into account. For subsidies allocated over time, as in (ii), (iv), and (v), subsidies granted prior to the investigation period must be considered.

(b) Appropriate denominator for allocation of subsidy amount

Once the subsidy amount to be attributed to the investigation period has been established, the per unit amount may be arrived at by allocating it over the appropriate denominator, consisting of the volume of sales or exports of a product concerned.

(i) As regards export subsidies the appropriate denominator for allocation should be the export volume during the investigation period, since such subsidies benefit only exports;

(ii) For non-export subsidies the total sales (domestic plus export) should normally be used as the denominator, since such subsidies benefit both domestic and export sales.

(iii) If the benefit of a subsidy is limited to a particular product, the denominator should reflect only sales of that product. If this is not the case, the denominator should be the recipient's total sales.

D. DEDUCTION FROM AMOUNT OF SUBSIDY

1. Only the following may be deducted from the amount of subsidy:

(i) Any application fee, or other costs necessarily incurred in order to qualify for, or to obtain, the subsidy

It is up to the exporter in the country concerned to claim a deduction; in the absence of such a claim accompanied by verifiable proof, no deduction should be granted. The only fees or costs that may normally be deducted are those paid directly to the government in the investigation period. It must be shown that such payment is compulsory in order to receive the subsidy. Neitherthe payments made to private parties, e.g., lawyers, accountants, incurred in applying for subsidies, nor the voluntary contributions the governments, for example donations, are not deductible.

(ii) Export taxes, duties or other charges levied on the export of a product to India specifically intended to offset the subsidy

Such claims for deductions should only be accepted if the charges involved were levied during the investigation period, and it is established that they continue to be levied at the time when definitive measures are recommended.

2. No other deductions can normally be made from the amount of subsidy. No allowance can be made for any tax effects of subsidies or for any other economic or time value effect beyond that which is specified in this communication.

CUSTOMS TARIFF (IDENTIFICATIONAND ASSESSMENT OF SAFEGUARD DUTIES) RULES, 1997

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CUSTOMS TARIFF (IDENTIFICATION AND ASSESSMENT OF SAFEGUARD DUTIES) RULES, 1997

[Notification No. 35/97-Cus. (N.T.), dated 29-7-1997 as amended by Notification No. 12/2021-Cus.(N.T.), dated 1st February 2021]

In exercise of the powers conferred by sub-section (5) of section 8B of the Customs Tariff Act, 1975 (51 of 1975) the Central Government hereby makes the following rules, namely: -

Rule 1. Short title and commencement. -

(i) These rules may be called the Customs Tariff (Identification and Assessment of Safeguard [94][Measures]) Rules, 1997.

(ii) They shall come into force on the date of their publication in the Official gazette.

Rule 2. Definitions. -

In these rules, unless the context otherwise requires, -

(a) "Act" means the Customs Tariff Act, 1975 (51 of 1975);

(b) "Critical circumstances" means circumstances in which there is clear evidence that imports have taken place in such increased quantities and under such circumstances as to cause or threaten to cause serious injury to the domestic industry and delay in imposition of provisional safeguard [95][measure] would cause irreparable damage to the domestic industry;

(c) "increased quantity" includes increase in imports whether in absolute terms or relative to domestic production;

[94] Substituted by Notification No. 12/2021-Cus.(N.T.), Rule 2 (w.e.f. 02.02.2021).
[95] Substituted by Notification No. 12/2021-Cus.(N.T.), Rule 3(a) (w.e.f. 02.02.2021).

(d) "Interested Party" includes -

(i) any exporter or foreign producer or the importer of an article subjected to investigation for purposes of imposition of safeguard [96][measure] or a trade or business association, majority of the members of which are producers, exporter or importers of such an article;

(ii) the government of the exporting country; and

(iii) a producer of the like article or directly competitive article in India or a trade or business association, a majority of members of which produce or trade the like article or directly competitive article in India;

(e) "like article" means an article which is identical or alike in all respects to the article under investigation;

[97][(f) "provisional measure" means provisional safeguard measure imposed under sub- section (5) of section 8B of the Act;]

[98][(fa) "safeguard measure" means safeguard duty, or a tariff rate quota or such other measures imposed under sub-section (1) of section 8B of the Act;]

(g) "Specified Country" means a country or territory which is a member of the World Trade Organisation and includes the country or territory with which the Government of India has an agreement for giving it the most favoured nation treatment;

[99][(ga) "WTO" means the World Trade Organisation;]

(h) all words and expressions used and not defined in these rules shall have the meanings respectively assigned to them in the Act.

Rule 3. Appointment of Director General ([100][Trade Remedies]). -

[96] Substituted by Notification No. 12/2021-Cus.(N.T.), Rule 3(b) (w.e.f. 02.02.2021).
[97] Substituted by Notification No. 12/2021-Cus.(N.T.), Rule 3(c) (w.e.f. 02.02.2021).
[98] Inserted by Notification No. 12/2021-Cus.(N.T.), Rule 3(d) (w.e.f. 02.02.2021).
[99] Inserted by Notification No. 12/2021-Cus.(N.T.), Rule 3(e) (w.e.f. 02.02.2021).
[100] Inserted by Notification No. 12/2021-Cus.(N.T.), Rule 4 (w.e.f. 02.02.2021).

(1) The Central Government may, by notification in the official Gazette appoint an officer not below the rank of a Joint Secretary to the Government of India or such other officer as it may think fit as the Director General ([101]**[Trade Remedies]**) hereinafter referred to as the Director General for the purposes of these rules.

(2) The Central Government may provide to the Director General the services of such other persons and such other facilities as it deems fit.

Rule 4. Duties of the Director General. -

Subject to the provisions of these rules, it shall be the duty of the Director General -

(1) to investigate the existence of "serious injury" or "threat of serious injury" to domestic industry as a consequence of increased import of an article into India;

(2) to identify the article liable for safeguard [102][measure];

(3) to submit his findings, provisional or otherwise to the Central Government as to the "serious injury" or "threat of serious injury" to domestic industry consequent upon increased import of an article from the specified country;

(4) to recommend, -

(i) the amount of duty which if levied would be adequate to remove the injury or threat of injury to the domestic industry;

(ii) the duration of levy of safeguard [103][measure] and where the period so recommended is more than a year, to recommend progressive liberalisation adequate to facilitate [104][] adjustment.

(5) to review the need for continuance of safeguard [105][measure].

[101] Inserted by Notification No. 12/2021-Cus.(N.T.), Rule 4 (w.e.f. 02.02.2021).
[102] Substituted by Notification No. 12/2021-Cus.(N.T.), Rule 5(a) (w.e.f. 02.02.2021).
[103] Substituted by Notification No. 12/2021-Cus.(N.T.), Rule 5(b)(i) (w.e.f. 02.02.2021).
[104] Omitted by Notification No. 12/2021-Cus.(N.T.), Rule 5(b)(ii) (w.e.f. 02.02.2021).
[105] Substituted by Notification No. 12/2021-Cus.(N.T.), Rule 5(c) (w.e.f. 02.02.2021).

Rule 5. Initiation of Investigation. -

(1) Except as provided in sub-rule (4) the Director General shall, on receipt of a written application by or on behalf of the domestic producer of like article or directly competitive article, initiate an investigation to determine the existence of "serious injury" or "threat of serious injury" to the domestic industry, caused by the import of an article in such increased quantities, absolute or relative to domestic production.

(2) An application under sub-rule (1) shall be in the form as may be specified by the Director General in this behalf and such application shall be supported by, -

(a) evidence of, -

(i) increased imports;

(ii) serious injury or threat of serious injury to the domestic industry;

(iii) a causal link between imports and the alleged serious injury or threat of serious injury; and

(b) a statement on the efforts being taken, or planned to be taken, or both, to make a [106][] adjustment to import competition.

(3) The Director General shall not initiate an investigation pursuant to an application made under sub-rule (1) unless he examines the accuracy and adequacy of the evidence provided in the application and satisfies himself that there is sufficient evidence regarding -

(a) increased imports;

(b) serious injury or threat of serious injury; and

(c) a causal link between increased imports and alleged injury or threat of serious injury.

[106] Omitted by Notification No. 12/2021-Cus.(N.T.), Rule 6(i) (w.e.f. 02.02.2021).

(4) Notwithstanding anything contained in sub-rule (1), the Director General may initiate an investigation *suo motu* if he is satisfied with the information received from any [107][Principle Commissioner of Customs or Commissioner of Customs] appointed under the Customs Act, 1962 (52 of 1962) or any other source that sufficient evidence exists as referred to in clause (a), clause (b) and clause (c) of sub-rule (3).

Rule 6. Principles Governing Investigations. -

(1) The Director General shall, after he has decided to initiate investigation to determine the serious injury or threat of serious injury to domestic industry, consequent upon the increased import of an article into India, issue a public notice notifying his decision thereto. The public notice shall *inter alia* , contain adequate information on the following, namely :-

[108][(i) the name of the exporting countries, article involved and volume of imports.]

(ii) the date of initiation of the investigation;

(iii) a summary statement of the facts on which the allegation of serious injury or threat of serious injury is based;

(iv) reasons for initiation of investigation.

(v) the address to which representations by interested parties should be directed; and

(vi) the time-limits allowed to interested parties for making their views known.

(2) A copy of the public notice shall be forwarded by the Director General to the Central Government in the Ministry of Commerce and other Ministries concerned, known exporters of the article the increased import of which has been alleged to cause or threaten to cause serious injury to the domestic industry, the governments of the exporting countries concerned and other interested parties.

[107] Substituted by Notification No. 12/2021-Cus.(N.T.), Rule 6(ii) (w.e.f. 02.02.2021).
[108] Substituted by Notification No. 12/2021-Cus.(N.T.), Rule 7 (w.e.f. 02.02.2021).

(3) The Director General shall also provide a copy of the application referred to in sub-rule (1) of rule 5 to -

(i) the known exporters, or the concerned trade association;

(ii) the governments of the exporting countries; and

(iii) the Central Government in the Ministry of Commerce;

Provided that the Director General shall also make available a copy of the application, upon request in writing, to any other interested party.

(4) The Director General may issue a notice calling for any information in such form as may be specified by him from the exporters, foreign producers and governments of interested countries and such information shall be furnished by such persons and governments in writing within thirty days from the date of receipt of the notice or within such extended period as the Director General may allow on sufficient cause being shown.

Explanation. - For the purpose of this rule the public notice and other documents shall be deemed to have been received one week after the date on which these documents were sent by the Director General by registered post or transmitted to the appropriate diplomatic representative of the exporting country.

(5) The Director General shall also provide opportunity to the industrial user of the article under investigation, and to representative consumer organisations in cases where the article is commonly sold at retail level to furnish information which is relevant to the investigation.

(6) The Director General may allow an interested party or its representative to present the information relevant to investigation orally but such oral information shall be taken into consideration by the Director General only when it is subsequently submitted in writing.

(7) The Director General shall make available the evidence presented to him by one interested party to the other interested parties, participating in the investigation.

(8) In case where an interested party refuses access to or otherwise does not provide necessary information within a reasonable period or significantly impedes the investigation, the Director

General may record his findings on the basis of the facts available to him and make such recommendations to the Central Government as he deems fit under such circumstances.

Rule 7. Confidential information. -

(1) Notwithstanding anything contained in sub-rules (1), (3) and (7) of rule 6, sub-rule (2) of rule 9 and sub-rule (5) of rule 11, any information which is by nature confidential or which is provided on a confidential basis shall, upon cause being shown, be treated as such by the Director General and shall not be disclosed without specific authorisation of the party providing such information.

(2) The Director General may require the parties providing information on confidential basis to furnish non-confidential summary thereof and if, in the opinion of the party providing such information, such information cannot be summarised, such party may submit to the Director General a statement of reasons why summarisation is not possible.

(3) Notwithstanding anything contained in sub-rule (2), if the Director General is satisfied that the request for confidentiality is not warranted or the supplier of the information is unwilling either to make the information public or to authorise its disclosure in a generalised or summary form, he may disregard such information unless it is demonstrated to his satisfaction from appropriate sources that such information is correct.

[109]**[8. Determination of serious injury or threat of serious injury.**

The Director General shall determine serious injury or threat of serious injury to the domestic industry taking into account the following principles, namely: -

(i) in the investigation to determine whether increased imports have caused or threatening to cause serious injury to the domestic industry, the Director General shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry, in particular, the rate and amount of the increase in imports of the article concerned in absolute and relative terms, the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilisation, profits and losses, and employment;

[109] Substituted by Notification No. 12/2021-Cus.(N.T.), Rule 8 (w.e.f. 02.02.2021).

(ii) the determination referred to in clause (i) shall not be made unless the investigation demonstrates, on the basis of objective evidence, the existence of the causal link between increased imports of the article concerned and serious injury or threat thereof and when factors other than increased imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports and in such cases, the Director General may refer the complaint to the authority for antidumping or countervailing duty investigations, as appropriate.]

Rule 9. Preliminary findings. -

(1) The Director General shall proceed expeditiously with the conduct of the investigation and in critical circumstances, he may record a preliminary findings regarding serious injury or threat of serious injury.

(2) The Director General shall issue a public notice regarding his preliminary findings.

(3) The Director General shall send a copy of the public notice to the Central Government in the Ministry of Commerce and in the Ministry of Finance.

Rule 10. Levy of provisional [110][measure]. -

The Central Government may in accordance with the provisions of [111][sub-section (5)] of section 8B of the Act, impose a provisional [112][measure] on the basis of the preliminary findings of the Director General :

Provided that such [113][measure] shall remain in force only for a period not exceeding two hundred days from the date on which it was imposed.

Rule 11. Final findings. -

(1) The Director General shall, within 8 months from the date of initiation of the investigation or within such extended period as the Central Government may allow, determine whether, -

[110] Substituted by Notification No. 12/2021-Cus.(N.T.), Rule 9(i) (w.e.f. 02.02.2021).
[111] Substituted by Notification No. 12/2021-Cus.(N.T.), Rule 9(ii) (w.e.f. 02.02.2021).
[112] Substituted by Notification No. 12/2021-Cus.(N.T.), Rule 9(i) (w.e.f. 02.02.2021).
[113] Substituted by Notification No. 12/2021-Cus.(N.T.), Rule 9(i) (w.e.f. 02.02.2021).

(a) the increased imports of the article under investigation has caused or threatened to cause serious injury to the domestic industry, and

(b) a causal link exists between the increased imports and serious injury or threat of serious injury.

[114][(2) (a) The Director General shall also give recommendations regarding the extent of measure which, if levied, would be adequate to prevent or remedy serious injury and to facilitate adjustment;

(b) the level of tariff rate quota, if imposed as a measure, may be determined having regard to the following conditions, namely:-

(i) maintaining traditional trade flow of the article over the representative period;

(ii) the existing and likely demand supply scenario in the country; and

(iii) any other condition that may be considered relevant:

Provided that the tariff rate quota applied shall not reduce the quantity of imports below the level of the recent period, which shall be the average of imports in the last three years for which statistics are available, unless a different level is deemed necessary to prevent or remedy serious injury;

(c) tariff rate quota may be global or country specific;

(d) specific tariff rate quota may be allocated to countries with substantial interest, considering the proportion of the share of imports of the article concerned into the country during a representative period, and having regard to all relevant factors which may have or are likely to affect the trade in the article;

(e) in a case where the tariff rate quota is country specific, a residual tariff rate quota shall be provided for all other countries and in case the countries with specific tariff rate quota exhaust their specific tariff rate quotas, such countries may use the residual tariff rate quota available;

[114] Substituted by Notification No. 12/2021-Cus.(N.T.), Rule 10(i) (w.e.f. 02.02.2021).

(f) any unused tariff rate quota may be carried forward and added to the tariff rate quota for the subsequent period.]

(3) The Director General shall also make his recommendations regarding the duration of levy of [115][measure] :

Provided that where the period recommended is more than one year, the Director General shall also recommend progressive liberalisation adequate to facilitate [116][] adjustment.

(4) The final findings if affirmative, shall contain all information on the matter of facts and law and reasons which have led to the conclusion.

(5) The Director General shall issue a public notice recording his final findings.

(6) The Director General shall send a copy of the public notice regarding his final findings to the Central Government in the Ministry of Commerce and in the Ministry of Finance.

Rule 12. Levy of [117][measure]. -

(1) The Central Government may, impose by a notification in the Official Gazette, upon importation into India of the product covered under the final finding, a safeguard [118]**[measure]** not exceeding the amount which has been found adequate to prevent or remedy serious injury and to facilitate positive adjustment.

(2) If the final finding of the Director General is negative, that is contrary to the *prima facie* evidence on whose basis the investigation was initiated, the Central Government shall within thirty days of the publication of final findings by the Director General under rule 11, withdraw the provisional [119]**[measure]** imposed, if any.

Rule 13. Imposition of [120][measure] on non-discriminatory basis. -

[115] Substituted by Notification No. 12/2021-Cus.(N.T.), Rule 10(ii) (w.e.f. 02.02.2021)
[116] Omitted by by Notification No. 12/2021-Cus.(N.T.), Rule 10(ii) (w.e.f. 02.02.2021
[117] Substituted by Notification No. 12/2021-Cus.(N.T.), Rule 11 (w.e.f. 02.02.2021)
[118] Substituted by Notification No. 12/2021-Cus.(N.T.), Rule 11 (w.e.f. 02.02.2021)
[119] Substituted by Notification No. 12/2021-Cus.(N.T.), Rule 11 (w.e.f. 02.02.2021)
[120] Substituted by Notification No. 12/2021-Cus.(N.T.), Rule 12(i) (w.e.f. 02.02.2021)

Any safeguard [121]**[measure]** imposed under rule 10 or rule 12 shall be on a non-discriminatory basis and applicable to all imports of such article, irrespective of its source.

[122][provided that no such measure shall be applied on an article originating from a developing country so long as the share of imports of that article from that country does not exceed three per. cent or where the article is originating from more than one developing country, then, so long as the aggregate of the imports from each of such developing countries with less than three per. cent import share taken together, does not exceed nine per. cent of the total import of that article in India]

Rule 14. Date of commencement of [123][measure]. -

(1) The Safeguard [124]**[measure]** levied under rule 10 or rule 12 shall take effect from the date of publication of the notification, in the Official Gazette imposing such [125]**[measure]**.

(2) Notwithstanding anything contained in sub-rule (1), where a provisional [126]**[measure]** has been levied and where the Director General has recorded a finding that increased imports have caused or threaten to cause serious injury to domestic industry, it shall be specified in the notification under sub-rule (1) that such safeguard [127]**[measure]** shall take effect from the date of levy of provisional [128]**[measure]**.

[129]**[Rule 15. Refund of duty. -**

If the safeguard measure imposed as a duty after the conclusion of the investigation is lower than the provisional measure in the form of a duty already imposed and collected, the differential shall be refunded to the importer.]

Rule 16. Duration. -

[121] Substituted by Notification No. 12/2021-Cus.(N.T.), Rule 12(i) (w.e.f. 02.02.2021)
[122] Inserted by Notification No. 12/2021-Cus.(N.T.), Rule 12(ii) (w.e.f. 02.02.2021)
[123] Substituted by Notification No. 12/2021-Cus.(N.T.), Rule 13 (w.e.f. 02.02.2021)
[124] Substituted by Notification No. 12/2021-Cus.(N.T.), Rule 13 (w.e.f. 02.02.2021)
[125] Substituted by Notification No. 12/2021-Cus.(N.T.), Rule 13 (w.e.f. 02.02.2021)
[126] Substituted by Notification No. 12/2021-Cus.(N.T.), Rule 13 (w.e.f. 02.02.2021)
[127] Substituted by Notification No. 12/2021-Cus.(N.T.), Rule 13 (w.e.f. 02.02.2021)
[128] Substituted by Notification No. 12/2021-Cus.(N.T.), Rule 13 (w.e.f. 02.02.2021)
[129] Substituted by Notification No. 12/2021-Cus.(N.T.), Rule 14 (w.e.f. 02.02.2021)

(1) The [130][measure] levied under rule 12 shall be only for such period of time as may be necessary to prevent or remedy serious injury and to facilitate [131][] adjustment.

(2) Notwithstanding anything contained in sub-rule (1) of this rule [132][measure] levied under rule 12 shall, unless revoked earlier, cease to have effect on the expiry of four years from the date of its imposition :

Provided that if the Central Government is of the opinion that the domestic industry has taken measures to adjust to such injury or threat thereof and it is necessary that the safeguard [133][measure] should continue to be imposed, it may extend the period of such imposition :

Provided further that in no case the safeguard [134][measure] shall continue to be imposed beyond a period of ten years from the date on which such duty was first imposed.

Rule 17. Liberalization of [135][measure]. -

If the duration of the [136]**[measure]** levied under rule 12 exceeds one year, the [137][measure] shall be progressively liberalized at regular intervals during the period of its imposition.

Rule 18. Review. -

(1) The Director General shall, from time to time, review the need for continued imposition of the safeguard [138]**[measure]** and shall, if he is satisfied on the basis of information received to him that, -

[130] Substituted by Notification No. 12/2021-Cus.(N.T.), Rule 15(i) (w.e.f. 02.02.2021)
[131] Omitted by Notification No. 12/2021-Cus.(N.T.), Rule 15(ii) (w.e.f. 02.02.2021)
[132] Substituted by Notification No. 12/2021-Cus.(N.T.), Rule 15(i) (w.e.f. 02.02.2021)
[133] Substituted by Notification No. 12/2021-Cus.(N.T.), Rule 15(i) (w.e.f. 02.02.2021)
[134] Substituted by Notification No. 12/2021-Cus.(N.T.), Rule 15(i) (w.e.f. 02.02.2021)
[135] Substituted by Notification No. 12/2021-Cus.(N.T.), Rule 16 (w.e.f. 02.02.2021)
[136] Substituted by Notification No. 12/2021-Cus.(N.T.), Rule 16 (w.e.f. 02.02.2021)
[137] [137] Substituted by Notification No. 12/2021-Cus.(N.T.), Rule 16 (w.e.f. 02.02.2021)
[138] Substituted by Notification No. 12/2021-Cus.(N.T.), Rule 17(i) (w.e.f. 02.02.2021).

(i) safeguard [139]**[measure]** is necessary to prevent or remedy serious injury and there is evidence that the industry is adjusting [140][], it may recommend to the Central Government for the continued imposition of [141]**[measure]**;

(ii) there is no justification for the continued imposition of such [142]**[measure]**, recommend to the Central Government for its withdrawal :

Provided that where the period of imposition of safeguard [143]**[measure]** exceeds three years the Director General shall review the situation not later than the mid-term of such imposition, and, if appropriate, recommend for withdrawal of such safeguard [144]**[measure]** or for the increase of the liberalisation of [145]**[measure]**.

[146][(1A) The Director General may review the usage and implementation of the tariff rate quota for any modification.]

(2) Any review initiated under [147][sub-rule (1A)] shall be concluded within a period not exceeding 8 months from the date of initiation of such review or within such extended period as the Central Government may allow.

(3) The provisions of rules 5, 6, 7 and 11 shall *mutatis mutandis* apply in the case of review.

[148] [Rule 19. Notification and consultation. -

(1) The Central Government shall notify to the WTO of all actions required under the WTO Agreement on Safeguards.

[139] Substituted by Notification No. 12/2021-Cus.(N.T.), Rule 17(i) (w.e.f. 02.02.2021).
[140] Omitted by Notification No. 12/2021-Cus.(N.T.), Rule 17(ii) (w.e.f. 02.02.2021).
[141] Substituted by Notification No. 12/2021-Cus.(N.T.), Rule 17(i) (w.e.f. 02.02.2021).
[142] Substituted by Notification No. 12/2021-Cus.(N.T.), Rule 17(i) (w.e.f. 02.02.2021).
[143] Substituted by Notification No. 12/2021-Cus.(N.T.), Rule 17(i) (w.e.f. 02.02.2021).
[144] Substituted by Notification No. 12/2021-Cus.(N.T.), Rule 17(i) (w.e.f. 02.02.2021).
[145] Substituted by Notification No. 12/2021-Cus.(N.T.), Rule 17(i) (w.e.f. 02.02.2021).
[146] Inserted by Notification No. 12/2021-Cus.(N.T.), Rule 17(iii) (w.e.f. 02.02.2021).
[147] Substituted by Notification No. 12/2021-Cus.(N.T.), Rule 17(iv) (w.e.f. 02.02.2021).
[148] Inserted by Notification No. 12/2021-Cus.(N.T.), Rule 18 (w.e.f. 02.02.2021).

(2) Before imposition of a safeguard measure, an opportunity to hold consultations with the members of the WTO having substantial interest as exporters of the product concerned, shall be provided]

ANNEXURE – [149][Omitted]

[149] Omitted by Notification No. 12/2021-Cus.(N.T.), Rule 19 (w.e.f. 02.02.2021).

SAFEGUARD MEASURES

(QUANTITATIVE RESTRICTIONS)RULES, 2012

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SAFEGUARD MEASURES (QUANTITATIVE RESTRICTIONS) RULES, 2012

G.S.R. 381(E). - In exercise of the powers conferred by sub-section (3) of section 9A of the Foreign Trade (Development and Regulation) Act 1992 (22 of 1992), the Central Government hereby makes the following rules, namely. -

1. Short title and commencement. - (1) These rules may be called the Safeguard Measures (Quantitative Restrictions) Rules, 2012.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. Definitions. - (1) In these rules, unless the context otherwise requires. -

(a) "Act" means the Foreign Trade (Development and Regulation) Act, 1992 (22 of 1992);

(b) "Authorised Officer' means the Authorised Officer designated as such under sub-rule (1) of rule 3;

(c) "increased quantity" includes increase in import whether in absolute terms or relative to domestic production;

(d) "interested party" includes -

(i) an exporter or foreign producer or the importer of goods (which is subject to investigation for purposes of imposition of safeguard quantitative restrictions) or a trade or business association, majority of the members of which are producers, exporters or importers of such goods;

(ii) the Government of the exporting country; and

(iii) a producer of the like goods or directly competitive goods in India or a trade or business association, a majority of members of which produce or trade the like goods or directly competitive goods in India;

(e) "like goods" means goods which is identical or alike in all respects to the goods under investigation, or in the absence of such goods, other goods which has characteristics closely resembling those of the goods under investigation;

(f) "quantitative restrictions' means any specific limit on quantity of goods imposed as a safeguard measure under the Act;

(g) "specified country" means a country or territory which is a member of the World Trade Organization and includes the country or territory with which the Government of India has an agreement for giving it the most favoured nation treatment;

(2) The words and expressions used herein and not defined, but defined in the Act shall have the meanings respectively assigned to them in the Act.

3. Responsibility of Authorised Officer for making enquiry in respect to safeguard quantitative restrictions. - (1) The Central Government shall, by notification in the Official Gazette, designate an officer not below the rank of Additional Director General of Foreign Trade as an Authorised officer for making investigation for the purpose of this rules.

(2) The Authorised Officer shall be responsible for conducting investigation, under subsection (1) of section 9A, for the purpose of imposition of safeguard quantitative restrictions and making necessary recommendation therein to the Central Government.

(3) The Directorate General of Foreign Trade shall provide secretarial support and the services of such other persons and such other facilities as it deems fit.

4. Duties of Authorised Officer. - It shall be the duty of the Authorised Officer-

(a) to investigate the existence of serious injury or threat of serious injury to domestic industry as a consequence of increased import of a goods into India;

(b) to identify the goods liable for quantitative restrictions as a safeguard measure;

(c) to submit its findings, to the Central Government as to the serious injury or threat of serious injury to domestic industry consequent upon increased import of goods into India from the specified country;

(d) to recommend-

(i) the nature and extent of quantitative restrictions which, if imposed, shall be adequate to remove the serious injury or threat of serious injury to the domestic industry; and

(ii) the duration of imposition of safeguard quantitative restrictions and where the period so recommended is more than one year, to recommend progressive liberalisation adequate to facilitate positive adjustment; and

(e) to review the need for continuance of the safeguard quantitative restrictions.

5. Initiation of investigation. - (1) The Authorised Officer shall, on receipt of a written application by or on behalf of the domestic producer of like goods or directly competitive goods, initiate an investigation to determine the existence of serious injury or threat of serious injury to the domestic industry, caused by the import of a goods in such increased quantities, absolute or relative to domestic production.

(2) The application referred to in sub-rule (1) shall be made in Form appended to these rules and be supported with-

(a) the evidence of-

(i) increased imports as a result of unforeseen development;

(ii) serious injury or threat of serious injury to the domestic industry; and

(iii) a causal link between imports and the alleged serious injury or threat of serious injury;

(b) a statement on the efforts being taken, or planned to be taken, or both, to make a positive adjustment to increase in competition due to imports; and

(c) a statement mentioning whether an application for the initiation of a safeguard action on the goods under investigation has also been submitted to the Director General of Safeguards, Department of Revenue.

(3) The Authorised Officer shall not initiate an investigation pursuant to an application made under sub-rule (1), unless, it examines the accuracy and adequacy of the evidence provided in the application and satisfies himself that there is sufficient evidence regarding-

(a) increased imports;

(b) serious injury or threat of serious injury; and

(c) a causal link between increased imports and alleged serious injury or threat of serious

Injury.

(4) Notwithstanding anything contained in sub-rule (1), the Authorised Officer may initiate an investigation *suo moto*, if, it is satisfied with the information received from any source that sufficient evidence exists as referred to in clause (a), clause (b) or clause (c) of sub-rule (3).

6. Principles governing investigations. - (1) The Authorised Officer shall, after it has decided to initiate investigation to determine serious injury or threat of serious injury to domestic industry, consequent upon the increased import of a goods into India, issue a public notice notifying its decision which, *inter alia*, contain information on the following, namely: -

(a) the name of the exporting countries, the goods involved and the volume of import;

(b) the date of initiation of the investigation;

(c) a summary statement of the facts on which the allegation of serious injury or threat of serious injury is based;

(d) reasons for initiation of the investigation;

(e) the address to which representations by interested parties should be directed; and

(f) the time-limits allowed to interested parties for making their views known.

(2) The Authorised Officer shall forward a copy of the public notice to the Central Government in the Ministry of Commerce and Industry and other Ministries concerned, known exporters of the goods, the Governments of the exporting countries concerned and other interested parties.

(3) The Authorised Officer shall also provide a copy of the application referred to in sub-rule (1) of rule 5, to-

(a) the known exporters, or the concerned trade association;

(b) the Governments of the exporting countries; and

(c) the Central Government in the Ministry of Commerce and Industry:

Provided that the Authorised Officer shall also make available a copy of the application, upon request in writing, to any other interested person.

(4) The Authorised Officer may issue a notice calling for any information in such form as may be specified in the notice from the exporters, foreign producers and governments of exporting countries and such information shall be furnished by such persons and governments in writing within thirty days from the date of receipt of the notice or within such extended period as the Authorised Officer may allow on sufficient cause being shown.

Explanation. - For the purpose of this rule, the public notice and other documents shall be deemed to have been received one week after the date on which these documents were put in the course of transmission to the interested parties by the Authorised Officer.

(5) The Authorised Officer shall provide opportunity to the industrial user of the goods under investigation and to representative consumer organisations in cases where the goods is commonly sold at retail level to furnish information which is relevant to the investigation including *inter alia,* their views if imposition of safeguard quantitative restrictions is in public interest or not.

(6) The Authorised Officer may allow an interested party or its representative to present the information relevant to investigation orally but such oral information shall be taken into consideration by the Authorised Officer only when it is subsequently submitted in writing.

(7) The Authorised Officer shall make available the evidence presented to it by one interested party to all other interested parties, participating in the investigation.

(8) In case where an interested party refuses access to or otherwise does not provide necessary information within a reasonable period or significantly impedes the investigation, the Authorised Officer may record its findings on the basis of the facts available and make such recommendations to the Central Government as it deems fit under such circumstances.

7. **Confidential information.** - (1) Notwithstanding anything contained in sub-rules (1), (3) and (7) of rule 6, and sub-rule (5) of rule 9, any information which is by nature confidential or which is provided on a confidential basis shall, upon cause being shown, be treated as such by the Authorised Officer and not be disclosed without specific authorisation of the party providing such information.

(2) The Authorised Officer may require the parties providing information on confidential basis to furnish non confidential summary thereof and if, in the opinion of the party providing such information, such information cannot be summarised, such party may submit to the Authorised Officer a statement of reasons why summarisation of such information is not possible.

(3) Notwithstanding anything contained in sub-rule (2), if the Authorised Officer is satisfied that the request for confidentiality is not warranted or the supplier of the information is unwilling either to make the information public or to authorise its disclosure in a generalised or summary form, it may disregard such information unless it is demonstrated to its satisfaction from appropriate sources that such information is correct.

8. Determination of serious injury or threat of serious injury. - The Authorised Officer shall determine serious injury or threat of serious injury to the domestic industry taking into account, *inter alia,* the following principles, namely: -

(a) in the investigation to determine whether increased imports have caused or are threatening to cause serious injury to a domestic industry, the Authorised Officer shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry in particular, the rate and amount of the increase in imports of the goods concerned in absolute and relative terms, the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilisation, profits and losses, and employment; and

(b) the determination referred to in clause (a) shall not be made unless the investigation demonstrates, on the basis of objective evidence, the existence of the causal link between increased imports of the goods concerned and serious injury or threat thereof:

Provided that when factors other than increased imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports and in such cases, the Authorised Officer may refer the complaint to the authority for anti-dumping or countervailing duty investigations, as appropriate.

9. Final findings. - (1) The Authorised Officer shall, within eight months from the date of initiation of the investigation or within such extended period as the Central Government may allow, determine whether, as a result of unforeseen developments the increased

imports of the goods under investigation has caused or threatened to cause serious injury to the domestic industry, and a causal link exists between the incre3sed imports and serious injury or threat of serious injury and recommend -

(i) the extent and nature of quantitative restrictions which, if imposed, would be adequate to prevent or remedy 'serious injury' and to facilitate positive adjustment, as the case may be;

(ii) the extent of quantitative restrictions so that the quantity of imports is not reduced to the quantity of imports below the level of a recent period which shall be the average of import in the last three representative years for which statistics are available and justification if a different level is necessary to prevent or remedy serious injury;

(iii) the quota to be allocated among the supplying countries, and the allocation of shares in the quota for such specified countries which have a substantial interest in supplying the goods;

(iv) the duration of imposition of quantitative restrictions and where the duration of imposition of quantitative restrictions is more than one year, the progressive liberalisation adequate to facilitate positive adjustment.

(2) The final findings if affirmative shall contain all information on the matter of facts and law and reasons which have led to the conclusion.

(3) The Authorised Officer shall issue a public notice recording his final findings.

(4) The Authorised Officer shall send a copy of the public notice regarding his final findings to the Central Government in the Ministry of Commerce and Industry and a copy thereof to the interested parties

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10. Imposition of safeguard quantitative restrictions. - The Central Government may based on the recommendation of the Authorised Officer, by a notification in the Official Gazette, under sub-section (1) of section 9A of the Act, impose upon importation into India of the goods covered under the final determination, a safeguard quantitative restrictions not exceeding the amount or quantity which has been found adequate to prevent or remedy serious injury and to facilitate adjustment.

11. Imposition of safeguard quantitative restrictions on non-discriminatory basis. -

Any safeguard quantitative restrictions imposed on goods under these rules shall be applied on a non-discriminatory basis to all imports of the goods irrespective of its source.

12. Date of commencement of safeguard quantitative restrictions. - The safeguard quantitative restrictions levied under these rules shall take effect from the date of publication of the notification in the Official Gazette imposing such quantitative restrictions.

13. Duration. - (1) The safeguard quantitative restrictions imposed under rule 10 shall be for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment.

(2) Notwithstanding anything contained in sub-rule (1), safeguard quantitative restrictions imposed under rule 10 shall, unless revoked earlier, cease to have effect on the expiry of four years from the date of its imposition:

Provided that if the Central Government is of the opinion that the domestic industry has taken measures to adjust to such serious injury or threat thereof and it is necessary that the safeguard quantitative restrictions should continue to be imposed, to prevent such serious injury or threat and to facilitate adjustments, it may extend the period beyond four years:

Provided further that in no case the safeguard quantitative restrictions shall continue to be imposed beyond a period of ten years form the date on which such restrictions were first imposed.

14. Liberalization of safeguard quantitative restrictions. - If the duration of the safeguard quantitative restrictions imposed under rule 10 exceeds one year, the restriction shall be progressively liberalised at regular intervals during the period of its imposition.

15. Review. - (1) The Authorised Officer shall, from time to time, review the need for continued imposition of the safeguard quantitative restrictions and shall if it is satisfied on the basis of information received that -

(a) safeguard quantitative restrictions is necessary to prevent or remedy serious injury and there is evidence that the industry is adjusting positively, it may recommend to the Central Government for the continued imposition of quantitative restrictions;

(b) there is no justification for the continued imposition of such restriction; recommend to the central Government for its withdrawal:

Provided that where the period of imposition of safeguard quantitative restrictions exceeds three years, the Authorised Officer shall review the situation not later than the midterm of such imposition, and, if appropriate, recommend for withdrawal of such safeguard quantitative restrictions or for the increase of the liberalisation of quantitative restrictions.

(2) Any review initiated under sub-rule (1), shall be concluded within a period not exceeding eight months from the date of initiation of such review or within such extended period as the Central Government may allow.

(3) The provisions of rules 5, 6, 7 and 9 shall, *mutatis mutandis,* apply in the case of review under this rule.

FORM

(See rule 5(2))

Information to be provided by Applicant for Safeguard Investigation

Section 1	General Information
Section 2	Product in respect of which Increase in Imports Noticed
Section 3	Increased Imports
Section 4	Domestic Production
Section 5	Injury
Section 6	Cause of Injury
Section 7	Submissions
Section 8	Annexes

(1): General Information

1. Date of Application

2. Applicant(s) Provide name(s) and address (es) of the applicant(s)

3. Domestic Producers of the like or directly competitive products on whose behalf the application is filed (Give details of all domestic producers who support the application) along with their IEC, where applicable)

4. Information on production accounted for by the domestic producers of the like or directly competitive products (in respect of those domestic producers who support the application).

5. Information on the total domestic production of the product concerned of the like or directly competitive products (in respect of all producers

whether they support the application or not).

(2): Product in respect of which increase in imports alleged

1. Name of the product
2. Description: Provide full description of the product including chemical formula, grade constituent materials / Components, process of manufacture in brief, uses and inter-changeability of various grades, etc.
3. Tariff classification: Provide the classification of the product under the HS classification as well as Indian customs Tariff Classification at 6/8/10 digit level
4. Import Duty: Provide information relating to rates of import duty levied during the past three years. If the product enjoys any concessional or preferential treatment, provide details.
5. Country(ies) of Origin: Provide name(s) of country(ies) where the product has originated (where the country of origin is different then the country of export, the name of the country of origin should also be provided).
6. Provide a list of all known foreign producers, exporters & importers of the imported product, country-wise, together with names and addresses of concerned trade associations and user associations etc.
7. Information on major industrial users, organization of industrial users and representative consumer organisations. (In case the product is commonly sold at retail level).
8. Export Price: Details of export price of the imported Product exporter / country-wise and the basis thereof (provide the f.o.b. / c.i.f. price at which the goods enter into India).

(3): Increased Imports

1. Provide full and detailed information regarding the imports of the said product in terms of quantity and value year wise for the last three years (or longer).

2. Provide break up of (1) above country wise in absolute terms as well as a percentage of the total imports of the said product.

3. Provide full and detailed information on the share of the imported products and the share of the domestic production of the like product and the directly competitive products in the total domestic consumption for the last three years (or longer) both in terms of quantity and value.

4. Provide information on factors that may be attributing to increased imports.

(4): Domestic Production

1. Details of the like product end directly competitive products produced by the domestic producers. Information similar to II above i.e.

   i. Name

   ii. Description

   iii. Tariff classification both under the Central Excise Tariff as well as under the Customs Tariff.

   iv. Details of domestic producers

2. Names and addresses of all known domestic producers and concerned trade associations and users associations etc.

3. Details of production accounted for by each of the producers at 2 above.

4. Details of total domestic production.

5. Installed capacity, capacity utilization and fall in capacity utilization etc.

(5): Injury or Threat of Injury

1. Impact of increased imports on Domestic Industry: Detailed information on how the increased imports are causing serious injury or threat of serious injury to the domestic industry. This should, inter alia, include information on

a. Sale volumes, total domestic consumption and how the market share of domestic production has been affected.

b. Price undercutting / price depression / prevention of rise in prices. Information on costs of production and how the increased imports have affected the prices of domestic production needs to be provided.

c. Any significant idling of production facilities in the industry including data indicating plant closure or fall in normal production capacity utilization.

d. Loss of employment

e. Financial situation

Full information on the financial situation of the domestic industry including information on decline in sales, growing inventory, downward trend in production, profits, productivity or increasing unemployment needs to be provided.

2. Other Factors of Injury: Provide details of any other factors that may be attributing to the injury to the domestic industry and an explanation that injury caused by these other factors is not attributed to injury caused by increased imports. (Information on injury caused due to dumping or subsidization, if any, needs to be specifically provided here. Also mention if any application for anti-dumping or countervailing duty investigation has been filed).

(6): Cause of Injury

Please provide an analysis of data presented above bringing out a nexus between the increased imports, either actual or relative to domestic production, and the

injury or threat of injury caused to the domestic industry and the basis for a request for initiation of safeguards investigation under Safeguard Measures (Quantitative Restrictions) Rules, 2012.

(7) Submission

a. A statement describing the measure requested including: • Nature and quantum of safeguard quantitative restriction requested.

- Purpose of seeking the relief and how such objective will be achieved.
- Duration for which imposition of safeguard quantitative restriction is requested and the reasons therefore.

b. If the safeguard measures are requested to be imposed for more than one year, details on efforts being taken and planned to be taken or both to make a positive adjustment to import competition with details of progressive liberalization adequate to facilitate positive adjustment of the industry.

Section 8: Annexes

All supporting information can be provided as annexes to the application. (The main information must be provided at the appropriate places. The details of the information can be provided in annexes).

AGREEMENT ON IMPLEMENTATION OF ARTICLE VI OF THE GENERAL AGREEMENTON TARIFFS AND TRADE, 1994

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AGREEMENT ON IMPLEMENTATION OF ARTICLE VIOF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994

Members hereby agree as follows:

PART I

Article 1
Principles

An antidumping measure shall be applied only under the circumstances provided for in Article VI of GATT 1994 and pursuant to investigations initiated and conducted in accordance with the provisions of this Agreement. The following provisions govern the application of Article VI of GATT 1994 in so far as action is taken under antidumping legislation or regulations.

Article 2
Determination of Dumping

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

2.2 When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation or the low volume of the sales in the domestic market of the exporting country, such sales do not permit a proper comparison, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to an appropriate third country, provided that this price

is representative, or with the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits.

2.2.1 Sales of the like product in the domestic market of the exporting country or sales to a third country at prices below per unit (fixed and variable) costs of production plus administrative, selling and general costs may be treated as not being in the ordinary course of trade by reason of price and may be disregarded in determining normal value only if the authorities determine that such sales are made within an extended period of time in substantial quantities and are at prices which do not provide for the recovery of all costs within a reasonable period of time. If prices which are below per unit costs at the time of sale are above weighted average per unit costs for the period of investigation, such prices shall be considered to provide for recovery of costs within a reasonable period of time.

2.2.1.1 For the purpose of paragraph 2, costs shall normally be calculated on the basis of records kept by the exporter or producer under investigation, provided that such records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the product under consideration. Authorities shall consider all available evidence on the proper allocation of costs, including that which ismade available by the exporter or producer in the course of the investigation provided that such allocations have been historically utilized by the exporter or producer, in particular in relation to establishing appropriate amortization and depreciation periods and allowances for capital expenditures and other development costs. Unless already reflected in the cost allocations under this subparagraph, costs shall be adjusted appropriately for those nonrecurring items of cost which benefit future and/or current production, or for circumstances

in which costs during the period of investigation are affected by start-up operations.

2.2.2 For the purpose of paragraph 2, the amounts for administrative, selling and general costs and for profits shall be based on actual data pertaining to production and sales in the ordinary course of trade of the like product by the exporter or producer under investigation. When such amounts cannot be determined on this basis, the amounts may be determined on the basis of:

(i) the actual amounts incurred and realized by the exporter or producer in question in respect of production and sales in the domestic market of the country of origin of the same general category of products;

(ii) the weighted average of the actual amounts incurred and realized by other exporters or producers subject to investigation in respect of production and sales of the like product in the domestic market of the country of origin;

(iii) any other reasonable method, provided that the amount for profit so established shall not exceed the profit normally realized by other exporters or producers on sales of products of the same general category in the domestic market of the country of origin.

2.3 In cases where there is no export price or where it appears to the authorities concerned that the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported products are first resold to an independent buyer, or if the products are not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as the authorities may determine.

2.4 A fair comparison shall be made between the export price and the normal value. This comparison shall be made at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and termsof sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are also demonstrated to affect price comparability.In the cases referred to in paragraph 3, allowances for costs, including duties and taxes, incurred between importation and resale, and for profits accruing, should also be made. If in these cases price comparability has been affected, the authorities shall establish the normal value at a level of trade equivalent to the level of trade of the constructed export price, or shall make due allowance as warranted under this paragraph. The authorities shall indicate to the parties in question what information is necessary to ensure a fair comparison and shallnot impose an unreasonable burden of proof on those parties.

2.4.1 When the comparison under paragraph 4 requires a conversion of currencies, such conversion should be made using the rate of exchange on the date of sale, provided that when a sale of foreign currency on forward markets is directly linked to the export sale involved, the rate of exchange in the forward sale shall be used. Fluctuations in exchange rates shall be ignored and in an investigation the authorities shall allow exporters at least 60 days to have adjusted their export prices to reflect sustained movements in exchange rates during the period of investigation.

2.4.2 Subject to the provisions governing fair comparison in paragraph 4, the existence of margins of dumping during the investigation phase shall normally be established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions or by a comparison of normal value and export prices on a transaction to transaction basis. A normal value established on a weighted average basis may be compared to prices of individual export transactions if the authorities find a pattern of export prices which differ

significantly among different purchasers, regions or time periods, and if an explanation is provided as to why such differences cannot be taken into account appropriately by the use of a weighted average to weighted average or transaction to transaction comparison.

2.5 In the case where products are not imported directly from the country of origin but are exported to the importing Member from an intermediate country, the price at which the products are sold from the country of export to the importing Member shall normally be compared with the comparable price in the country of export. However, comparison may be made with the price in the country of origin, if, for example, the products are merely transshipped through the country of export, or such products are not produced in the country of export, or there is no comparable price for them in the country of export.

2.6 Throughout this Agreement the term "like product" ("produit similaire") shall be interpreted to mean 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.

2.7 This Article is without prejudice to the second Supplementary Provision to paragraph 1 of Article VI in Annex I to GATT 1994.

Article 3
Determination of Injury

3.1 A determination of injury for purposes of Article VI of GATT 1994 shall be based on positive evidence and involve an objective examination of both *(a)* the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products, and *(b)* the consequent impact of these imports on domestic producers of such products.

3.2 With regard to the volume of the dumped imports, the investigating authorities shall consider whether there has been a significant increase in dumped imports,

either in absolute terms or relative to production or consumption in the importing Member. With regard to the effect of the dumped imports on prices, the investigating authorities shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product of the importing Member, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. No one or several of these factors can necessarily give decisive guidance.

3.3 Where imports of a product from more than one country are simultaneously subject to antidumping investigations, the investigating authorities may cumulatively assess the effects of such imports only if they determine that *(a)* the margin of dumping established in relation to the imports from each country is more than *de minimis* as defined in paragraph 8 of Article 5 and the volume of imports from each country is not negligible and *(b)* a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between the imported products and the conditions of competition between the imported products and the like domestic product.

3.4 The examination of the impact of the dumped imports on the domestic industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.

3.5 It must be demonstrated that the dumped imports are, through the effects of dumping, as set forth in paragraphs 2 and 4, causing injury within the meaning of this Agreement. The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an

examination of all relevant evidence before the authorities. The authorities shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped imports. Factors which may be relevant in this respect include, *inter alia*, the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.

3.6 The effect of the dumped imports shall be assessed in relation to the domestic production of the like product when available data permit the separate identification of that production on the basis of such criteria as the production process, producers' sales and profits. If such separate identification of that production is not possible, the effects of the dumped 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.

3.7 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 which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent. In making a determination regarding the existence of a threat of material injury, the authorities should consider, *inter alia*, such factors as:

(i) a significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importation;

(ii) sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped exports to the importing Member's market, taking into account the availability of other export markets to absorb any additional exports;

(iii) whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and

(iv) inventories of the product being investigated.

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 dumped exports are imminent and that, unless protective action is taken, material injury would occur.

3.8 With respect to cases where injury is threatened by dumped imports, the application of antidumping measures shall be considered and decided with special care.

Article 4

Definition of Domestic Industry

4.1 For the purposes of this Agreement, 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, except that:

(i) when producers are related to the exporters or importers or are themselves importers of the allegedly dumped product, the term "domestic industry" may be interpreted as referring to the rest of the producers;

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

circumstances, injury may be found to exist even where a major portion of the total domestic industry is not injured, provided there is a concentration of dumped imports into such an isolated market and provided further that the dumped imports are causing injury to the producers of all or almost all of the production within such market.

4.2 When the domestic industry has been interpreted as referring to the producers in a certain area, i.e. a market as defined in paragraph 1(ii), antidumping duties shall be levied only on the products in question consigned for final consumption to that area. When the constitutional law of the importing Member does not permit the levying of antidumping duties on such a basis, the importing Member may levy the antidumping duties without limitation only if *(a)* the exporters shall have been given an opportunity to cease exporting at dumped prices to the area concerned or otherwise give assurances pursuant to Article 8 and adequate assurances in this regard have not been promptly given, and *(b)* such duties cannot be levied only on products of specific producers which supply the area in question.

4.3 Where two or more countries have reached under the provisions of paragraph 8(a) of Article XXIV of GATT 1994 such a level of integration that they have the characteristics of a single, unified market, the industry in the entire area of integration shall be taken to be the domestic industry referred to in paragraph 1.

4.4 The provisions of paragraph 6 of Article 3 shall be applicable to this Article.

Article 5

Initiation and Subsequent Investigation

5.1 Except as provided for in paragraph 6, an investigation to determine the existence, degree and effect of any alleged dumping shall be initiated upon a written application by or on behalf of the domestic industry.

5.2 An application under paragraph 1 shall include evidence of *(a)* dumping, *(b)* injury within the meaning of Article VI of GATT 1994 as interpreted by this Agreement and *(c)* a causal link between the dumped imports and the alleged

injury. Simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient to meet the requirements of this paragraph. The application shall contain such information as is reasonably available to the applicant on the following:

(i) the identity of the applicant and a description of the volume and value of the domestic production of the like product by the applicant. Where a written application is made on behalf of the domestic industry, the application shall identify the industry on behalf of which the application is made by a list of all known domestic producers of the like product (or associations of domestic producers of the like product) and, to the extent possible, a description of the volume and value of domestic production of the like product accounted for by such producers;

(ii) a complete description of the allegedly dumped product, the names of the country or countries of origin or export in question, the identity of each known exporter or foreign producer and a list of known persons importing the product in question;

(iii) information on prices at which the product in question is sold when destined for consumption in the domestic markets of the country or countries of origin or export (or, where appropriate, information on the prices at which the product is sold from the country or countries of origin or export to a third country or countries, or on the constructed value of the product) and information on export prices or, where appropriate, on the prices at which the product is first resold to an independent buyer in the territory of the importing Member;

(iv) information on the evolution of the volume of the allegedly dumped 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, such as those listed in paragraphs 2 and 4 of Article 3.

5.3 The authorities shall examine the accuracy and adequacy of the evidence provided in the application to determine whether there is sufficient evidence to justify the initiation of an investigation.

5.4 An investigation shall not be initiated pursuant to paragraph 1 unless the authorities have determined, on the basis of an examination of the degree of support for, or opposition to, the application expressed by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry. The application shall be considered to have been made "by or on behalf of the domestic industry" if it is supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25 per cent of total production of the like product produced by the domestic industry.

5.5 The authorities shall avoid, unless a decision has been made to initiate an investigation, any publicizing of the application for the initiation of an investigation. However, after receipt of a properly documented application and before proceeding to initiate an investigation, the authorities shall notify the government of the exporting Member concerned.

5.6 If, in special circumstances, the authorities concerned decide to initiate an investigation without having received a written application by or on behalf of a domestic industry for the initiation of such investigation, they shall proceed only if they have sufficient evidence of dumping, injury and a causal link, as described in paragraph 2, to justify the initiation of an investigation.

5.7 The evidence of both dumping and injury shall be considered simultaneously *(a)* in the decision whether or not to initiate an investigation, and *(b)* thereafter, during the course of the investigation, starting on a date not later than the earliest date on which in accordance with the provisions of this Agreement provisional measures may be applied.

5.8 An application under paragraph 1 shall be rejected and an investigation shall be terminated promptly as soon as the authorities concerned are satisfiedthat there is not sufficient evidence of either dumping or of injury to justify proceeding with the case. There shall be immediate termination in cases where the authorities determine that the margin of dumping is *de minimis*, or that the volume of dumped imports, actual or potential, or the injury, is negligible. The margin of dumping shall be considered to be *de minimis* if this margin is less than 2 per cent, expressed as a percentage of the export price. The volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from a particular country is found to account for less than 3 per cent of imports of the like product in the importing Member, unless countries which individually account for less than 3 per cent of the imports of the like product in the importing Member collectively account for more than 7 per cent of imports of the like product in the importing Member.

5.9 An antidumping proceeding shall not hinder the procedures of customs clearance.

5.10 Investigations shall, except in special circumstances, be concluded within one year, and in no case more than 18 months, after their initiation.

Article 6
Evidence

6.1 All interested parties in an antidumping investigation shall be given notice of the information which the authorities require and ample opportunity to present in writing all evidence which they consider relevant in respect of the investigation in question.

6.1.1 Exporters or foreign producers receiving questionnaires used in an antidumping investigation shall be given at least 30 days for reply. Due consideration should be given to any request for an extension of the 30day period and, upon cause shown, such an extension should be granted whenever practicable.

6.1.2 Subject to the requirement to protect confidential information, evidence presented in writing by one interested party shall be made available promptly to other interested parties participating in the investigation.

6.1.3 As soon as an investigation has been initiated, the authorities shall provide the full text of the written application received under paragraph 1 of Article 5 to the known exporters and to the authorities of the exporting Member and shall make it available, upon request, to other interested parties involved. Due regard shall be paid to the requirement for the protection of confidential information, as provided for in paragraph 5.

6.2 Throughout the antidumping investigation all interested parties shall have a full opportunity for the defence of their interests. To this end, the authorities shall, on request, provide opportunities for all interested parties to meet those parties with adverse interests, so that opposing views may be presented and rebuttal arguments offered. Provision of such opportunities must take account of the need to preserve confidentiality and of the convenience to the parties. There shall be no obligation on any party to attend a meeting, and failure to do so shall not be prejudicial to that party's case. Interested parties shall also have the right, on justification, to present other information orally.

6.3 Oral information provided under paragraph 2 shall be taken into account by the authorities only in so far as it is subsequently reproduced in writing and made available to other interested parties, as provided for in subparagraph 1.2.

6.4 The authorities shall whenever practicable provide timely opportunities for all interested parties to see all information that is relevant to the presentation of their cases, that is not confidential as defined in paragraph 5, and that is used by the authorities in an antidumping investigation, and to prepare presentations on the basis of this information.

6.5 Any information which is by nature confidential (for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person

supplying the information or upon a person from whom that person acquired the information), or which is provided on a confidential basis by parties to an investigation shall, upon good cause shown, be treated as such by the authorities. Such information shall not be disclosed without specific permission of the party submitting it.

6.5.1 The authorities shall require interested parties providing confidential information to furnish non confidential summaries thereof. These summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. In exceptional circumstances, such parties may indicate that such information is not susceptible of summary. In such exceptional circumstances, a statement of the reasons why summarization is not possible must be provided.

6.5.2 If the authorities find that a request for confidentiality is not warranted and if the supplier of the information is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the authorities may disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.

6.6 Except in circumstances provided for in paragraph 8, the authorities shall during the course of an investigation satisfy themselves as to the accuracy of the information supplied by interested parties upon which their findings are based.

6.7 In order to verify information provided or to obtain further details, the authorities may carry out investigations in the territory of other Members as required, provided they obtain the agreement of the firms concerned and notify the representatives of the government of the Member in question, and unless that Member objects to the investigation. The procedures described in Annex I shall apply to investigations carried out in the territory of other Members. Subject to the requirement to protect confidential information, the authorities shall make the results of any such investigations available, or shall provide

disclosure thereof pursuant to paragraph 9, to the firms to which they pertain and may make such results available to the applicants.

6.8 In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available. The provisions of Annex II shall be observed in the application of this paragraph.

6.9 The authorities shall, before a final determination is made, inform all interested parties of the essential facts under consideration which form the basis for the decision whether to apply definitive measures. Such disclosure should take place in sufficient time for the parties to defend their interests.

6.10 The authorities shall, as a rule, determine an individual margin of dumping for each known exporter or producer concerned of the product under investigation. In cases where the number of exporters, producers, importers or types of products involved is so large as to make such a determination impracticable, the authorities may limit their examination either to a reasonable number of interested parties or products by using samples which are statistically valid on the basis of information available to the authorities at the time of the selection, or to the largest percentage of the volume of the exports from the country in question which can reasonably be investigated.

6.10.1 Any selection of exporters, producers, importers or types of products made under this paragraph shall preferably be chosen in consultation with and with the consent of the exporters, producers or importers concerned.

6.10.2 In cases where the authorities have limited their examination, as provided for in this paragraph, they shall nevertheless determine an individual margin of dumping for any exporter or producer not initially selected who submits the necessary information in time for that information to be considered during the course of the investigation, except where the number of exporters or producers is so large that individual examinations would be

unduly burdensome to the authorities and prevent the timely completion of the investigation. Voluntary responses shall not be discouraged.

6.11 For the purposes of this Agreement, "interested parties" shall include:

(i) an exporter or foreign producer or the importer of a product subject to investigation, or a trade or business association a majority of the members of which are producers, exporters or importers of such product;

(ii) the government of the exporting Member; and

(iii) a producer of the like product in the importing Member or a trade and business association a majority of the members of which produce the like product in the territory of the importing Member.

This list shall not preclude Members from allowing domestic or foreign parties other than those mentioned above to be included as interested parties.

6.12 The authorities shall provide opportunities for industrial users of the product under investigation, and for representative consumer organizations in cases where the product is commonly sold at the retail level, to provide information which is relevant to the investigation regarding dumping, injury and causality.

6.13 The authorities shall take due account of any difficulties experienced by interested parties, in particular small companies, in supplying information requested, and shall provide any assistance practicable.

6.14 The procedures set out above are not intended to prevent the authorities of a Member 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 this Agreement.

Article 7
Provisional Measures

7.1 Provisional measures may be applied only if:

(i) an investigation has been initiated in accordance with the provisions of Article 5, a public notice has been given to that effect and interested parties have been given adequate opportunities to submit information and make comments;

(ii) a preliminary affirmative determination has been made of dumping and consequent injury to a domestic industry; and

(iii) the authorities concerned judge such measures necessary to prevent injury being caused during the investigation.

7.2 Provisional measures may take the form of a provisional duty or, preferably, a security by cash deposit or bond equal to the amount of the antidumping duty provisionally estimated, being not greater than the provisionally estimated margin of dumping. Withholding of appraisement is an appropriate provisional measure, provided that the normal duty and the estimated amount of the antidumping duty be indicated and as long as the withholding of appraisement is subject to the same conditions as other provisional measures.

7.3 Provisional measures shall not be applied sooner than 60 days from the date of initiation of the investigation.

7.4 The application of provisional measures shall be limited to as short a period as possible, not exceeding four months or, on decision of the authorities concerned, upon request by exporters representing a significant percentage of the trade involved, to a period not exceeding six months. When authorities, in the course of an investigation, examine whether a duty lower than the margin of dumping would be sufficient to remove injury, these periods may be six and nine months, respectively.

7.5 The relevant provisions of Article 9 shall be followed in the application of provisional measures.

Article 8
Price Undertakings

8.1 Proceedings may be suspended or terminated without the imposition of provisional measures or antidumping duties upon receipt of satisfactory voluntary undertakings from any exporter to revise its prices or to cease exports to the area in question at dumped prices so that the authorities are satisfied that the injurious effect of the dumping is eliminated. Price increases under such undertakings shall not be higher than necessary to eliminate the marginof dumping. It is desirable that the price increases be less than the marginof dumping if such increases would be adequate to remove the injury to the domestic industry.

8.2 Price undertakings shall not be sought or accepted from exporters unless the authorities of the importing Member have made a preliminary affirmative determination of dumping and injury caused by such dumping.

8.3 Undertakings offered need not be accepted if the authorities consider their acceptance impractical, for example, if the number of actual or potential exporters is too great, or for other reasons, including reasons of general policy. Should the case arise and where practicable, the authorities shall provide to the exporter the reasons which have led them to consider acceptance of an undertaking as inappropriate, and shall, to the extent possible, give the exporter an opportunity to make comments thereon.

8.4 If an undertaking is accepted, the investigation of dumping and injury shall nevertheless be completed if the exporter so desires or the authorities so decide. In such a case, if a negative determination of dumping or injury is made, the undertaking shall automatically lapse, except in cases where such a determination is due in large part to the existence of a price undertaking.In such cases, the authorities may require that an undertaking be maintained for a reasonable period consistent with the provisions of this Agreement. Inthe event that an affirmative determination of dumping and injury is made, the

undertaking shall continue consistent with its terms and the provisions of this Agreement.

8.5 Price undertakings may be suggested by the authorities of the importing Member, but no exporter shall be forced to enter into such undertakings. 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 dumped imports continue.

8.6 Authorities of an importing Member may require any exporter from whom an undertaking has been accepted to provide periodically information relevant to the fulfilment of such an undertaking and to permit verification of pertinent data. In case of violation of an undertaking, the authorities of the importing Member may take, under this Agreement in conformity with its provisions, expeditious actions which may constitute immediate application of provisional measures using the best information available. In such cases, definitive duties may be levied in accordance with this Agreement on products entered for consumption not more than 90 days before the application of such provisional measures, except that any such retroactive assessment shall not apply to imports entered before the violation of the undertaking.

Article 9

Imposition and Collection of Anti Dumping Duties

9.1 The decision whether or not to impose an antidumping duty in cases where all requirements for the imposition have been fulfilled, and the decision whether the amount of the antidumping duty to be imposed shall be the full margin of dumping or less, are decisions to be made by the authorities of the importing Member. It is desirable that the imposition be permissive in the territory of all Members, and that the duty be less than the margin if such lesser duty would be adequate to remove the injury to the domestic industry.

9.2 When an antidumping duty is imposed in respect of any product, such antidumping duty shall be collected in the appropriate amounts in each case, on a non-discriminatory basis on imports of such product from all sources found to be dumped and causing injury, except as to imports from those sourcesfrom which price undertakings under the terms of this Agreement have been accepted. The authorities shall name the supplier or suppliers of the product concerned. If, however, several suppliers from the same country are involved, and it is impracticable to name all these suppliers, the authorities may name the supplying country concerned. If several suppliers from more than one country are involved, the authorities may name either all the suppliers involved, or, if this is impracticable, all the supplying countries involved.

9.3 The amount of the antidumping duty shall not exceed the margin of dumping as established under Article 2.

9.3.1 When the amount of the antidumping duty is assessed on a retrospective basis, the determination of the final liability for payment of antidumping duties shall take place as soon as possible, normally within 12 months, and in no case more than 18 months, after the date on which a request for a final assessment of the amount of the antidumping duty has been made. Any refund shall be made promptly and normally in not more than 90 days following the determination of final liability made pursuant to this subparagraph. In any case, where a refund is not made within 90 days, the authorities shall provide an explanation if so requested.

9.3.2 When the amount of the antidumping duty is assessed on a prospective basis, provision shall be made for a prompt refund, upon request, of any duty paid in excess of the margin of dumping. A refund of any such duty paid in excess of the actual margin of dumping shall normally take place within 12 months, and in no case more than 18 months, after the date on which a request for a refund, duly supported by evidence, has been made by an importer of the product subject to the antidumping duty. The refund

authorized should normally be made within 90 days of the above-noted decision.

9.3.3 In determining whether and to what extent a reimbursement should be made when the export price is constructed in accordance with paragraph 3 of Article 2, authorities should take account of any change in normal value, any change in costs incurred between importation and resale, and any movement in the resale price which is duly reflected in subsequent selling prices, and should calculate the export price with no deduction for the amount of antidumping duties paid when conclusive evidence of the above is provided.

9.4 When the authorities have limited their examination in accordance with the second sentence of paragraph 10 of Article 6, any antidumping duty applied to imports from exporters or producers not included in the examination shall not exceed:

(i) the weighted average margin of dumping established with respect to the selected exporters or producers or,

(ii) where the liability for payment of antidumping duties is calculated on the basis of a prospective normal value, the difference between the weighted average normal value of the selected exporters or producers and the export prices of exporters or producers not individually examined,

provided that the authorities shall disregard for the purpose of this paragraph any zero and *de minimis* margins and margins established under the circumstances referred to in paragraph 8 of Article 6. The authorities shall apply individual duties or normal values to imports from any exporter or producer not included in the examination who has provided the necessary information during the course of the investigation, as provided for in subparagraph 10.2 of Article 6.

9.5 If a product is subject to antidumping duties in an importing Member, the authorities shall promptly carry out a review for the purpose of determining

individual margins of dumping for any exporters or producers in the exporting country in question who have not exported the product to the importing Member during the period of investigation, provided that these exporters or producers can show that they are not related to any of the exporters or producers in the exporting country who are subject to the antidumping duties on the product. Such a review shall be initiated and carried out on an accelerated basis, compared to normal duty assessment and review proceedings in the importing Member. No antidumping duties shall be levied on imports from such exporters or producers while the review is being carried out. The authorities may, however, withhold appraisement and/or request guarantees to ensure that, should such a review result in a determination of dumping in respect of such producers or exporters, antidumping duties can be levied retroactively to the date of the initiation of the review.

Article 10
Retroactivity

10.1 Provisional measures and antidumping duties shall only be applied to products which enter for consumption after the time when the decision taken under paragraph 1 of Article 7 and paragraph 1 of Article 9, respectively, enters into force, subject to the exceptions set out in this Article.

10.2 Where a final determination of injury (but not of a threat thereof or of a material retardation of the establishment of an industry) is made or, in the case of a final determination of a threat of injury, where the effect of the dumped imports would, in the absence of the provisional measures, have led to a determination of injury, antidumping duties may be levied retroactively for the period for which provisional measures, if any, have been applied.

10.3 If the definitive antidumping duty is higher than the provisional duty paid or payable, or the amount estimated for the purpose of the security, the difference shall not be collected. If the definitive duty is lower than the provisional duty

paid or payable, or the amount estimated for the purpose of the security, the difference shall be reimbursed or the duty recalculated, as the case may be.

10.4 Except as provided in paragraph 2, where a determination of threat of injury or material retardation is made (but no injury has yet occurred) a definitive antidumping duty may be imposed only from the date of the determination of threat of injury or material retardation, and any cash deposit made during the period of the application of provisional measures shall be refunded and any bonds released in an expeditious manner.

10.5 Where a final determination is negative, any cash deposit made during the period of the application of provisional measures shall be refunded and any bonds released in an expeditious manner.

10.6 A definitive antidumping duty may be levied on products which were entered for consumption not more than 90 days prior to the date of application of provisional measures, when the authorities determine for the dumped product in question that:

(i) there is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practises dumping andthat such dumping would cause injury, and

(ii) the injury is caused by massive dumped imports of a product in a relatively short time which in light of the timing and the volume of the dumped imports and other circumstances (such as a rapid build-up of inventories of the imported product) is likely to seriously undermine the remedial effect of the definitive antidumping duty to be applied, provided that the importers concerned have been given an opportunity to comment.

10.7 The authorities may, after initiating an investigation, take such measures as the withholding of appraisement or assessment as may be necessary to collect antidumping duties retroactively, as provided for in paragraph 6, once they have sufficient evidence that the conditions set forth in that paragraph are satisfied.

10.8 No duties shall be levied retroactively pursuant to paragraph 6 on products entered for consumption prior to the date of initiation of the investigation.

Article 11

Duration and Review of Anti Dumping Duties and Price Undertakings

11.1 An antidumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury.

11.2 The authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive antidumping duty, upon request by any interested party which submits positive information substantiating the need for a review. Interested parties shall have the right to request the authorities to examine whether the continued imposition of the duty is necessary to offset dumping, whether the injury would be likely to continue or recur if the duty were removed or varied, or both. If, as a result of the review under this paragraph, the authorities determine that the antidumping duty is no longer warranted, it shall be terminated immediately.

11.3 Notwithstanding the provisions of paragraphs 1 and 2, any definitive antidumping duty shall be terminated on a date not later than five years from its imposition (or from the date of the most recent review under paragraph 2if that review has covered both dumping and injury, or under this paragraph), unless the authorities determine, in 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 expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury. The duty may remain in force pending the outcome of such a review.

11.4 The provisions of Article 6 regarding evidence and procedure shall apply to any review carried out under this Article. Any such review shall be carried out

expeditiously and shall normally be concluded within 12 months of the date of initiation of the review.

11.5 The provisions of this Article shall apply *mutatis mutandis* to price undertakings accepted under Article 8.

Article 12

Public Notice and Explanation of Determinations

12.1 When the authorities are satisfied that there is sufficient evidence to justify the initiation of an antidumping investigation pursuant to Article 5, the Member or Members the products of which are subject to such investigation and other interested parties known to the investigating authorities to have an interest therein shall be notified and a public notice shall be given.

12.1.1 A public notice of the initiation of an investigation shall contain, or otherwise make available through a separate report, adequate information on the following:

(i) the name of the exporting country or countries and the product involved;

(ii) the date of initiation of the investigation;

(iii) the basis on which dumping is alleged in the application;

(iv) a summary of the factors on which the allegation of injury is based;

(v) the address to which representations by interested parties should be directed;

(vi) the time limits allowed to interested parties for making their views known.

12.2 Public notice shall be given of any preliminary or final determination, whether

affirmative or negative, of any decision to accept an undertaking pursuant to Article 8, of the termination of such an undertaking, and of the termination ofa definitive antidumping duty. Each such notice shall set forth, or otherwise make available through a separate report, in sufficient detail the findings and conclusions reached on all issues of fact and law considered material by the investigating authorities. All such notices and reports shall be forwarded to theMember or Members the products of which are subject to such determination orundertaking and to other interested parties known to have an interest therein.

12.2.1 A public notice of the imposition of provisional measures shall set forth, or otherwise make available through a separate report, sufficiently detailed explanations for the preliminary determinations on dumping and injury and shall refer to the matters of fact and law which have led to arguments being accepted or rejected. Such a notice or report shall, due regard being paid to the requirement for the protection of confidential information, contain in particular:

(i) the names of the suppliers, or when this is impracticable, the supplying countries involved;

(ii) a description of the product which is sufficient for customs purposes;

(iii) the margins of dumping established and a full explanation of the reasons for the methodology used in the establishment and comparison of the export price and the normal value under Article 2;

(iv) considerations relevant to the injury determination as set out in Article 3;

(v) the main reasons leading to the determination.

12.2.2 A public notice of conclusion or suspension of an investigation in the case of an affirmative determination providing for the imposition of a definitive duty or the acceptance of a price undertaking shall contain, or otherwise make available through a separate report, all relevant information on the matters of fact and law and reasons which have led to the imposition of

final measures or the acceptance of a price undertaking, due regard being paid to the requirement for the protection of confidential information. In particular, the notice or report shall contain the information described in subparagraph 2.1, as well as the reasons for the acceptance or rejection of relevant arguments or claims made by the exporters and importers, and the basis for any decision made under subparagraph 10.2 of Article 6.

12.2.3 A public notice of the termination or suspension of an investigation following the acceptance of an undertaking pursuant to Article 8 shall include, or otherwise make available through a separate report, the non-confidential part of this undertaking.

12.3 The provisions of this Article shall apply *mutatis mutandis* to the initiation and completion of reviews pursuant to Article 11 and to decisions under Article 10 to apply duties retroactively.

Article 13
Judicial Review

Each Member whose national legislation contains provisions on antidumping measures shall maintain judicial, arbitral or administrative tribunals or procedures for the purpose, *inter alia*, of the prompt review of administrative actions relating tofinal determinations and reviews of determinations within the meaning of Article 11.Such tribunals or procedures shall be independent of the authorities responsible for the determination or review in question.

Article 14

Anti Dumping Action on Behalf of a Third Country

14.1 An application for antidumping action on behalf of a third country shall be made by the authorities of the third country requesting action.

14.2 Such an application shall be supported by price information to show that the imports are being dumped and by detailed information to show that the alleged

dumping is causing injury to the domestic industry concerned in the third country. The government of the third country shall afford all assistance to the authorities of the importing country to obtain any further information which the latter may require.

14.3 In considering such an application, the authorities of the importing country shall consider the effects of the alleged dumping on the industry concerned as a whole in the third country; that is to say, the injury shall not be assessed in relation only to the effect of the alleged dumping on the industry's exports to the importing country or even on the industry's total exports.

14.4 The decision whether or not to proceed with a case shall rest with the importing country. If the importing country decides that it is prepared to take action, the initiation of the approach to the Council for Trade in Goods seeking its approval for such action shall rest with the importing country.

Article 15

Developing Country Members

It is recognized that special regard must be given by developed country Members to the special situation of developing country Members when considering the application of antidumping measures under this Agreement. Possibilities of constructive remedies provided for by this Agreement shall be explored before applying antidumping duties where they would affect the essential interests of developing country Members.

PART II

Article 16

Committee on Anti Dumping Practices

16.1 There is hereby established a Committee on Anti Dumping Practices (referred to in this Agreement as the "Committee") composed of representatives from each

of the Members. The Committee shall elect its own Chairman and shall meet not less than twice a year and otherwise as envisaged by relevant provisions of this Agreement at the request of any Member. The Committee shall carry out responsibilities as assigned to it under this Agreement or by the Members and it shall afford Members the opportunity of consulting on any matters relating to the operation of the Agreement or the furtherance of its objectives. The WTO Secretariat shall act as the secretariat to the Committee.

16.2 The Committee may set up subsidiary bodies as appropriate.

16.3 In carrying out their functions, the Committee and any subsidiary bodies may consult with and seek information from any source they deem appropriate. However, before the Committee or a subsidiary body seeks such information from a source within the jurisdiction of a Member, it shall inform the Member involved. It shall obtain the consent of the Member and any firm to be consulted.

16.4 Members shall report without delay to the Committee all preliminary or final antidumping actions taken. Such reports shall be available in the Secretariat for inspection by other Members. Members shall also submit, on a semi-annual basis, reports of any antidumping actions taken within the preceding six months. The semi-annual reports shall be submitted on an agreed standard form.

16.5 Each Member shall notify the Committee *(a)* which of its authorities are competent to initiate and conduct investigations referred to in Article 5 and *(b)* its domestic procedures governing the initiation and conduct of such investigations.

Article 17
Consultation and Dispute Settlement

17.1 Except as otherwise provided herein, the Dispute Settlement Understanding is applicable to consultations and the settlement of disputes under this Agreement.

17.2 Each Member shall afford sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, representations made by

another Member with respect to any matter affecting the operation of this Agreement.

17.3 If any Member considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the achievement of any objective is being impeded, by another Member or Members, it may, with a view to reaching a mutually satisfactory resolution of the matter, request in writing consultations with the Member or Members in question. Each Member shall afford sympathetic consideration to any request from another Member for consultation.

17.4 If the Member that requested consultations considers that the consultations pursuant to paragraph 3 have failed to achieve a mutually agreed solution, and if final action has been taken by the administering authorities of the importing Member to levy definitive antidumping duties or to accept price undertakings, it may refer the matter to the Dispute Settlement Body ("DSB"). When a provisional measure has a significant impact and the Member that requested consultations considers that the measure was taken contrary to the provisions of paragraph 1 of Article 7, that Member may also refer such matter to the DSB.

17.5 The DSB shall, at the request of the complaining party, establish a panel to examine the matter based upon:

(i) a written statement of the Member making the request indicating how a benefit accruing to it, directly or indirectly, under this Agreement has been nullified or impaired, or that the achieving of the objectives of the Agreement is being impeded, and

(ii) the facts made available in conformity with appropriate domestic procedures to the authorities of the importing Member.

17.6 In examining the matter referred to in paragraph 5:

(i) in its assessment of the facts of the matter, the panel shall determine whether the authorities' establishment of the facts was proper and whether their

evaluation of those facts was unbiased and objective. If the establishment of the facts was proper and the evaluation was unbiased and objective, even though the panel might have reached a different conclusion, the evaluation shall not be overturned;

(ii) the panel shall interpret the relevant provisions of the Agreement in accordance with customary rules of interpretation of public international law. Where the panel finds that a relevant provision of the Agreement admits of more than one permissible interpretation, the panel shall find the authorities' measure to be in conformity with the Agreement if it restsupon one of those permissible interpretations.

17.7 Confidential information provided to the panel shall not be disclosed without formal authorization from the person, body or authority providing such information. Where such information is requested from the panel but release of such information by the panel is not authorized, a non-confidential summary of the information, authorized by the person, body or authority providing the information, shall be provided.

PART III

Article 18
Final Provisions

18.1 No specific action against dumping of exports from another Member can be taken except in accordance with the provisions of GATT 1994, as interpreted by this Agreement.

18.2 Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Members.

18.3 Subject to subparagraphs 3.1 and 3.2, the provisions of this Agreement shall apply to investigations, and reviews of existing measures, initiated pursuant to applications which have been made on or after the date of entry into force for a Member of the WTO Agreement.

18.3.1 With respect to the calculation of margins of dumping in refund procedures under paragraph 3 of Article 9, the rules used in the most recent determination or review of dumping shall apply.

18.3.2 For the purposes of paragraph 3 of Article 11, existing antidumping measures shall be deemed to be imposed on a date not later than the date of entry into force for a Member of the WTO Agreement, except in cases in which the domestic legislation of a Member in force on that date already included a clause of the type provided for in that paragraph.

18.4 Each Member shall take all necessary steps, of a general or particular character, to ensure, not later than the date of entry into force of the WTO Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of this Agreement as they may apply for the Member in question.

18.5 Each Member shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.

18.6 The Committee shall review annually the implementation and operation of this Agreement taking into account the objectives thereof. The Committee shall inform annually the Council for Trade in Goods of developments during the period covered by such reviews.

18.7 The Annexes to this Agreement constitute an integral part thereof.

ANNEX I

PROCEDURES FOR ONTHESPOT INVESTIGATIONS PURSUANT TO PARAGRAPH 7 OF ARTICLE 6

1. Upon initiation of an investigation, the authorities of the exporting Member and the firms known to be concerned should be informed of the intention to carry out on the spot investigations.

2. If in exceptional circumstances it is intended to include nongovernmental experts in the investigating team, the firms and the authorities of the exporting Member should be so informed. Such nongovernmental experts should be subject to effective sanctions for breach of confidentiality requirements.

3. It should be standard practice to obtain explicit agreement of the firms concerned in the exporting Member before the visit is finally scheduled.

4. As soon as the agreement of the firms concerned has been obtained, the investigating authorities should notify the authorities of the exporting Member of the names and addresses of the firms to be visited and the dates agreed.

5. Sufficient advance notice should be given to the firms in question before the visit is made.

6. Visits to explain the questionnaire should only be made at the request of an exporting firm. Such a visit may only be made if *(a)* the authorities of the importing Member notify the representatives of the Member in question and *(b)* the latter do not object to the visit.

7. As the main purpose of the on-the-spot investigation is to verify information provided or to obtain further details, it should be carried out after the response to the questionnaire has been received unless the firm agrees to the contrary and the government of the exporting Member is informed by the investigating authorities of the anticipated visit and does not object to it; further, it should be standard practice prior to the visit to advise the firms concerned of the general

nature of the information to be verified and of any further information which needs to be provided, though this should not preclude requests to be made on the spot for further details to be provided in the light of information obtained.

8. Enquiries or questions put by the authorities or firms of the exporting Members and essential to a successful on the spot investigation should, whenever possible, be answered before the visit is made.

ANNEX II

BEST INFORMATION AVAILABLE IN TERMS OF PARAGRAPH 8 OF ARTICLE 6

1. As soon as possible after the initiation of the investigation, the investigating authorities should specify in detail the information required from any interested party, and the manner in which that information should be structured by the interested party in its response. The authorities should also ensure that the party is aware that if information is not supplied within a reasonable time,the authorities will be free to make determinations on the basis of the facts available, including those contained in the application for the initiation of the investigation by the domestic industry.

2. The authorities may also request that an interested party provide its response in a particular medium (e.g. computer tape) or computer language. Where such a request is made, the authorities should consider the reasonable ability of the interested party to respond in the preferred medium or computer language, and should not request the party to use for its response a computer system other than that used by the party. The authority should not maintain a request for a computerized response if the interested party does not maintain computerized accounts and if presenting the response as requested would result in an unreasonable extra burden on the interested party, e.g. it would entail unreasonable additional cost and trouble. The authorities should not maintain a request for a response in a particular medium or computer language if the interested party does not maintain its computerized accounts in such medium or computer language and if presenting the response as requested would result in an unreasonable extra burden on the interested party, e.g. it would entail unreasonable additional cost and trouble.

3. All information which is verifiable, which is appropriately submitted so that it can be used in the investigation without undue difficulties, which is supplied in a timely fashion, and, where applicable, which is supplied in a medium or computer language requested by the authorities, should be taken into account

when determinations are made. If a party does not respond in the preferred medium or computer language but the authorities find that the circumstances set out in paragraph 2 have been satisfied, the failure to respond in the preferred medium or computer language should not be considered to significantly impede the investigation.

4. Where the authorities do not have the ability to process information if provided in a particular medium (e.g. computer tape), the information should be supplied in the form of written material or any other form acceptable to the authorities.

5. Even though the information provided may not be ideal in all respects, this should not justify the authorities from disregarding it, provided the interested party has acted to the best of its ability.

6. If evidence or information is not accepted, the supplying party should be informed forthwith of the reasons therefor, and should have an opportunity to provide further explanations within a reasonable period, due account being taken of the time-limits of the investigation. If the explanations are considered by the authorities as not being satisfactory, the reasons for the rejection of such evidence or information should be given in any published determinations.

7. If the authorities have to base their findings, including those with respect to normal value, on information from a secondary source, including the information supplied in the application for the initiation of the investigation, they should do so with special circumspection. In such cases, the authorities should, where practicable, check the information from other independent sources at their disposal, such as published price lists, official import statistics and customs returns, and from the information obtained from other interested parties during the investigation. It is clear, however, that if an interested party does not cooperate and thus relevant information is being withheld from the authorities, this situation could lead to a result which is less favourable to the party than if the party did cooperate.

AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES

Members hereby *agree* as follows:

PART I: GENERAL PROVISIONS

Article 1

Definition of a Subsidy

1.1 For the purpose of this Agreement, a subsidy shall be deemed to exist if:

(a)(1) there is a financial contribution by a government or any public body within the territory of a Member (referred to in this Agreement as "government"), i.e. where:

(i) a government practice involves a direct transfer of funds (e.g. grants, loans, and equity infusion), potential direct transfers of funds or liabilities (e.g. loan guarantees);

(ii) government revenue that is otherwise due is foregone or not collected (e.g. fiscal incentives such as tax credits) [1];

(iii) a government provides goods or services other than general infrastructure, or purchases goods;

(iv) a government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions illustrated in (i) to (iii) above which would normally be vested in the government and the practice, in no real sense, differs from practices normally followed by governments;

or

[1] In accordance with the provisions of Article XVI of GATT 1994 (Note to Article XVI) and the provisions of Annexes I through III of this Agreement, 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.

(a)(2) there is any form of income or price support in the sense of Article XVI of GATT 1994;

and

(b) a benefit is thereby conferred.

1.2 A subsidy as defined in paragraph 1 shall be subject to the provisions of Part II or shall be subject to the provisions of Part III or V only if such a subsidy is specific in accordance with the provisions of Article 2.

Article 2

Specificity

2.1 In order to determine whether a subsidy, as defined in paragraph 1 of Article 1, is specific to an enterprise or industry or group of enterprises or industries (referred to in this Agreement as "certain enterprises") within the jurisdiction of the granting authority, the following principles shall apply:

(a) Where the granting authority, or the legislation pursuant to which the granting authority operates, explicitly limits access to a subsidy to certain enterprises, such subsidy shall be specific.

(b) Where the granting authority, or the legislation pursuant to which the granting authority operates, establishes objective criteria or conditions[2] 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 law, regulation, or other official document, so as to be capable of verification.

(c) If, notwithstanding any appearance of non-specificity resulting from the application of the principles laid down in subparagraphs (a) and (b),

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2 Objective criteria or conditions, as used herein, mean criteria or conditions which are neutral, which do not favour certain enterprises over others, and which are economic in nature and horizontal in application, such asnumber of employees or size of enterprise.

there are reasons to believe that the subsidy may in fact be specific, other factors may be considered. Such factors are: use of a subsidy programme by a limited number of certain enterprises, predominant use 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.[3] In applying this subparagraph, account shall be taken of the extent of diversification of economic activities within the jurisdiction of the granting authority, as well as of the length of time during which the subsidy programme has been in operation.

2.2 A subsidy which is limited to certain enterprises located within a designated geographical region within the jurisdiction of the granting authority shall be specific. It is understood that the setting or change of generally applicable tax rates by all levels of government entitled to do so shall not be deemed to be a specific subsidy for the purposes of this Agreement.

2.3 Any subsidy falling under the provisions of Article 3 shall be deemed to be specific.

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

3 In this regard, in particular, information on the frequency with which applications for a subsidy are refused orapproved and the reasons for such decisions shall be considered.

PART II: PROHIBITED SUBSIDIES

Article 3

Prohibition

3.1 Except as provided in the Agreement on Agriculture, the following subsidies, within the meaning of Article 1, shall be prohibited:

(a) subsidies contingent, in law or in fact[4], whether solely or as one of several other conditions, upon export performance, including those illustrated in Annex I[5];

(b) subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods.

3.2 A Member shall neither grant nor maintain subsidies referred to in paragraph 1.

Article 4
Remedies

4.1 Whenever a Member has reason to believe that a prohibited subsidy is being granted or maintained by another Member, such Member may request consultations with such other Member.

4.2 A request for consultations under paragraph 1 shall include a statement of available evidence with regard to the existence and nature of the subsidy in question.

4.3 Upon request for consultations under paragraph 1, the Member believed to be granting or maintaining the subsidy in question shall enter into such consultations

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4 This standard is met when the facts demonstrate that the granting of a subsidy, without having been made legally contingent upon export performance, is in fact tied

to actual or anticipated exportation or export earnings. The mere fact that a subsidy is granted to enterprises which export shall not for that reason alone be considered to be an export subsidy within the meaning of this provision.

5 Measures referred to in Annex I as not constituting export subsidies shall not be prohibited under this or any other provision of this Agreement.

as quickly as possible. The purpose of the consultations shall be to clarify the facts of the situation and to arrive at a mutually agreed solution.

4.4 If no mutually agreed solution has been reached within 30 days[6] of the request for consultations, any Member party to such consultations may refer the matter to the Dispute Settlement Body ("DSB") for the immediate establishment of a panel, unless the DSB decides by consensus not to establish a panel.

4.5 Upon its establishment, the panel may request the assistance of the Permanent Group of Experts[7] (referred to in this Agreement as the "PGE") with regard to whether the measure in question is a prohibited subsidy. If so requested, the PGE shall immediately review the evidence with regard to the existence and nature of the measure in question and shall provide an opportunity for the Member applying or maintaining the measure to demonstrate that the measure in question is not a prohibited subsidy. The PGE shall report its conclusions to the panel within a time-limit determined by the panel. The PGE's conclusions on the issue of whether or not the measure in question is a prohibited subsidy shall be accepted by the panel without modification.

4.6 The panel shall submit its final report to the parties to the dispute. The report shall be circulated to all Members within 90 days of the date of the composition and the establishment of the panel's terms of reference.

4.7 If the measure in question is found to be a prohibited subsidy, the panel shall recommend that the subsidizing Member withdraw the subsidy without delay. In this regard, the panel shall specify in its recommendation the time-period within which the measure must be withdrawn.

4.8 Within 30 days of the issuance of the panel's report to all Members, the report shall be adopted by the DSB unless one of the parties to the dispute formally notifies the DSB of its decision to appeal or the DSB decides by consensus not

to adopt the report.

6 Any time-periods mentioned in this Article may be extended by mutual agreement.

7 As established in Article 24.

4.9 Where a panel report is appealed, the Appellate Body shall issue its decision within 30 days from the date when the party to the dispute formally notifies its intention to appeal. When the Appellate Body considers that it cannot provide its report within 30 days, it shall inform the DSB in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. In no case shall the proceedings exceed 60 days. The appellate report shall be adopted by the DSB and unconditionally accepted by the parties to the dispute unless the DSB decides by consensus not to adopt the appellate report within 20 days following its issuance to the Members.[8]

4.10 In the event the recommendation of the DSB is not followed within the time-period specified by the panel, which shall commence from the date of adoption of the panel's report or the Appellate Body's report, the DSB shall grant authorization to the complaining Member to take appropriate[9] countermeasures, unless the DSB decides by consensus to reject the request.

4.11 In the event a party to the dispute requests arbitration under paragraph 6 of Article 22 of the Dispute Settlement Understanding ("DSU"), the arbitrator shall determine whether the countermeasures are appropriate.[10]

4.12 For purposes of disputes conducted pursuant to this Article, except for time-periods specifically prescribed in this Article, time-periods applicable under the DSU for the conduct of such disputes shall be half the time prescribedtherein.

8 If a meeting of the DSB is not scheduled during this period, such a meeting shall be held for this purpose.

9 This expression is not meant to allow countermeasures that are disproportionate in light of the fact that thesubsidies dealt with under these provisions are prohibited.

10 This expression is not meant to allow countermeasures that are disproportionate in light of the fact that thesubsidies dealt with under these provisions are prohibited.

PART III: ACTIONABLE SUBSIDIES

Article 5
Adverse Effects

No Member should cause, through the use of any subsidy referred to in paragraphs 1 and 2 of Article 1, adverse effects to the interests of other Members, i.e.:

(a) injury to the domestic industry of another Member[11];

(b) nullification or impairment of benefits accruing directly or indirectly to other Members under GATT 1994 in particular the benefits of concessions bound under Article II of GATT 1994[12];

(c) serious prejudice to the interests of another Member.[13]

This Article does not apply to subsidies maintained on agricultural products as provided in Article 13 of the Agreement on Agriculture.

Article 6
Serious Prejudice

6.1 Serious prejudice in the sense of paragraph (c) of Article 5 shall be deemed to exist in the case of:

(a) the total ad valorem subsidization[14] of a product exceeding 5 per cent[15];

(b) subsidies to cover operating losses sustained by an industry;

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11 The term "injury to the domestic industry" is used here in the same sense as it is used in Part V.

12 The term "nullification or impairment" is used in this Agreement in the same sense as it is used in the relevant provisions of GATT 1994, and the existence of such nullification or impairment shall be established in accordance with the practice of

application of these provisions.

13 The term "serious prejudice to the interests of another Member" is used in this Agreement in the same sense as it is used in paragraph 1 of Article XVI of GATT 1994, and includes threat of serious prejudice.

14 The total ad valorem subsidization shall be calculated in accordance with the provisions of Annex IV.

15 Since it is anticipated that civil aircraft will be subject to specific multilateral rules, the threshold in this subparagraph does not apply to civil aircraft.

(c) subsidies to cover operating losses sustained by an enterprise, otherthan one-time measures which are non-recurrent and cannot be repeated for that enterprise and which are given merely to provide time for the development of long-term solutions and to avoid acute social problems;

(d) direct forgiveness of debt, i.e. forgiveness of government-held debt, and grants to cover debt repayment.[16]

6.2 Notwithstanding the provisions of paragraph 1, serious prejudice shall not be found if the subsidizing Member demonstrates that the subsidy in question has not resulted in any of the effects enumerated in paragraph 3.

6.3 Serious prejudice in the sense of paragraph (c) of Article 5 may arise in any case where one or several of the following apply:

(a) the effect of the subsidy is to displace or impede the imports of a like product of another Member into the market of the subsidizing Member;

(b) the effect of the subsidy is to displace or impede the exports of a like product of another Member from a third country market;

(c) the effect of the subsidy is a significant price undercutting by the subsidized product as compared with the price of a like product of another Member in the same market or significant price suppression, price depression or lost sales in the same market;

(d) the effect of the subsidy is an increase in the world market share of the subsidizing Member in a particular subsidized primary product or commodity[17] as compared to the average share it had during the previous

period of three years and this increase follows a consistent trend over a period when subsidies have been granted.

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16 Members recognize that where royalty-based financing for a civil aircraft programme is not being fully repaid due to the level of actual sales falling below the level of forecast sales, this does not in itself constitute serious prejudice for the purposes of this subparagraph.

17 Unless other multilaterally agreed specific rules apply to the trade in the product or commodity in question.

6.4 For the purpose of paragraph 3(b), the displacement or impeding of exports shall include any case in which, subject to the provisions of paragraph 7, it has been demonstrated that there has been a change in relative shares of the market to the disadvantage of the non-subsidized like product (over an appropriately representative period sufficient to demonstrate clear trends in the development of the market for the product concerned, which, in normal circumstances, shall be at least one year). "Change in relative shares of the market" shall include any of the following situations: *(a)* there is an increase in the market share of the subsidized product; *(b)* the market share of the subsidized product remains constant in circumstances in which, in the absence of the subsidy, it would have declined; *(c)* the market share of the subsidized product declines, but at a slower rate than would have been the case in the absence of the subsidy.

6.5 For the purpose of paragraph 3(c), price undercutting shall include any case in which such price undercutting has been demonstrated through a comparison of prices of the subsidized product with prices of a non-subsidized like product supplied to the same market. The comparison shall be made at the same level of trade and at comparable times, due account being taken of any other factor affecting price comparability. However, if such a direct comparison is not possible, the existence of price undercutting may be demonstrated on the basis of export unit values.

6.6 Each Member in the market of which serious prejudice is alleged to have arisen shall, subject to the provisions of paragraph 3 of Annex V, make available to the parties to a dispute arising under Article 7, and to the panel established pursuant

to paragraph 4 of Article 7, all relevant information that can be obtained as to the changes in market shares of the parties to the dispute as well as concerning prices of the products involved.

6.7 Displacement or impediment resulting in serious prejudice shall not arise under paragraph 3 where any of the following circumstances exist[18] during the relevant period:

18 The fact that certain circumstances are referred to in this paragraph does not, in itself, confer upon them any legal status in terms of either GATT 1994 or this Agreement. These circumstances must not be isolated, sporadic or otherwise insignificant.

(a) prohibition or restriction on exports of the like product from the complaining Member or on imports from the complaining Member into the third country market concerned;

(b) decision by an importing government operating a monopoly of trade or state trading in the product concerned to shift, for non-commercial reasons, imports from the complaining Member to another country or countries;

(c) natural disasters, strikes, transport disruptions or other *force majeure* substantially affecting production, qualities, quantities or prices of the product available for export from the complaining Member;

(d) existence of arrangements limiting exports from the complaining Member;

(e) voluntary decrease in the availability for export of the product concerned from the complaining Member (including, *inter alia*, a situation where firms in the complaining Member have been autonomously reallocating exports of this product to new markets);

(f) failure to conform to standards and other regulatory requirements in the importing country.

6.8 In the absence of circumstances referred to in paragraph 7, the existence of serious prejudice should be determined on the basis of the information submitted to or obtained by the panel, including information submitted in accordance with the provisions of Annex V.

6.9 This Article does not apply to subsidies maintained on agricultural products as provided in Article 13 of the Agreement on Agriculture.

Article 7
Remedies

7.1 Except as provided in Article 13 of the Agreement on Agriculture, whenever a Member has reason to believe that any subsidy referred to in Article 1, granted or maintained by another Member, results in injury to its domestic industry, nullification or impairment or serious prejudice, such Member may request consultations with such other Member.

7.2 A request for consultations under paragraph 1 shall include a statement of available evidence with regard to *(a)* the existence and nature of the subsidy in question, and *(b)* the injury caused to the domestic industry, or the nullification or impairment, or serious prejudice[19] caused to the interests of the Member requesting consultations.

7.3 Upon request for consultations under paragraph 1, the Member believed to be granting or maintaining the subsidy practice in question shall enter into such consultations as quickly as possible. The purpose of the consultations shall be to clarify the facts of the situation and to arrive at a mutually agreed solution.

7.4 If consultations do not result in a mutually agreed solution within 60 days[20], any Member party to such consultations may refer the matter to the DSB for the establishment of a panel, unless the DSB decides by consensus not to establish a panel. The composition of the panel and its terms of reference shall be established within 15 days from the date when it is established.

7.5 The panel shall review the matter and shall submit its final report to the parties to the dispute. The report shall be circulated to all Members within 120 days of the date of the composition and establishment of the panel's terms of reference.

7.6 Within 30 days of the issuance of the panel's report to all Members, the report shall be adopted by the DSB[21] unless one of the parties to the dispute formally notifies the DSB of its decision to appeal or the DSB decides by consensus not to adopt the report.

19 In the event that the request relates to a subsidy deemed to result in serious prejudice in terms of paragraph 1 of Article 6, the available evidence of serious prejudice may be limited to the available evidence as to whether the conditions of paragraph 1 of Article 6 have been met or not.

20 Any time-periods mentioned in this Article may be extended by mutual agreement.

21 If a meeting of the DSB is not scheduled during this period, such a meeting shall be held for this purpose.

7.7 Where a panel report is appealed, the Appellate Body shall issue its decision within 60 days from the date when the party to the dispute formally notifies its intention to appeal. When the Appellate Body considers that it cannot provide its report within 60 days, it shall inform the DSB in writing of the reasons for the delay together with an estimate of the period within which it will submit its report. In no case shall the proceedings exceed 90 days. The appellate report shall be adopted by the DSB and unconditionally accepted by the parties to the dispute unless the DSB decides by consensus not to adopt the appellate report within 20 days following its issuance to the Members.[22]

7.8 Where a panel report or an Appellate Body report is adopted in which it is determined that any subsidy has resulted in adverse effects to the interests of another Member within the meaning of Article 5, the Member granting or maintaining such subsidy shall take appropriate steps to remove the adverse effects or shall withdraw the subsidy.

7.9 In the event the Member has not taken appropriate steps to remove the adverse effects of the subsidy or withdraw the subsidy within six months from the date when the DSB adopts the panel report or the Appellate Body report, and in the absence of agreement on compensation, the DSB shall grant authorization to the complaining Member to take countermeasures, commensurate with the degree and nature of the adverse effects determined to exist, unless the DSB decides by consensus to reject the request.

7.10 In the event that a party to the dispute requests arbitration under paragraph 6 of Article 22 of the DSU, the arbitrator shall determine whether the countermeasures

are commensurate with the degree and nature of the adverse effects determined to exist.

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22 If a meeting of the DSB is not scheduled during this period, such a meeting shall be held for this purpose.

PART IV: NON-ACTIONABLE SUBSIDIES

Article 8

Identification of Non-Actionable Subsidies

8.1 The following subsidies shall be considered as non-actionable[23]:

(a) subsidies which are not specific within the meaning of Article 2;

(b) subsidies which are specific within the meaning of Article 2 but which meet all of the conditions provided for in paragraphs 2(a), 2(b) or 2(c) below.

8.2 Notwithstanding the provisions of Parts III and V, the following subsidies shall be non-actionable:

(a) assistance for research activities conducted by firms or by higher education or research establishments on a contract basis with firms if:[24] ,[25] ,[26] the assistance covers[27] not more than 75 per cent of the costs of industrial

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23 It is recognized that government assistance for various purposes is widely provided by Members and that the mere fact that such assistance may not qualify for non-actionable treatment under the provisions of this Article does not in itself restrict the ability of Members to provide such assistance.

24 Since it is anticipated that civil aircraft will be subject to specific multilateral rules, the provisions of this subparagraph do not apply to that product.

25 Not later than 18 months after the date of entry into force of the WTO Agreement, the Committee on Subsidies and Countervailing Measures provided for in Article 24 (referred to in this Agreement as "the Committee") shall review the operation of the provisions of subparagraph 2(a) with a view to making all necessary modifications to improve the operation of these provisions. In its consideration of possible

modifications, the Committee shall carefully review the definitions of the categories set forth in this subparagraph in the light of the experience of Members in the operation of research programmes and the work in other relevant international institutions.

26 The provisions of this Agreement do not apply to fundamental research activities independently conducted by higher education or research establishments. The term "fundamental research" means an enlargement of general scientific and technical knowledge not linked to industrial or commercial objectives.

27 The allowable levels of non-actionable assistance referred to in this subparagraph shall be established by reference to the total eligible costs incurred over the duration of an individual project.

research[28] or 50 per cent of the costs of pre-competitive development activity[29], [30]; and provided that such assistance is limited exclusively to:

(i) costs of personnel (researchers, technicians and other supporting staff employed exclusively in the research activity);

(ii) costs of instruments, equipment, land and buildings used exclusively and permanently (except when disposed of on a commercial basis) for the research activity;

(iii) costs of consultancy and equivalent services used exclusively for the research activity, including bought-in research, technical knowledge, patents, etc.;

(iv) additional overhead costs incurred directly as a result of the research activity;

(v) other running costs (such as those of materials, supplies and the like), incurred directly as a result of the research activity.

(b) assistance to disadvantaged regions within the territory of a Member given pursuant to a general framework of regional development [31] and non-specific (within the meaning of Article 2) within eligible regions provided that:

28 The term "industrial research" means planned search or critical investigation aimed at discovery of new knowledge, with the objective that such knowledge may be useful in developing new products, processes or services, or in bringing about a significant improvement to existing products, processes or services.

29 The term "pre-competitive development activity" means the translation of industrial research findings into a plan, blueprint or design for new, modified or improved products, processes or services whether intended for sale or use, including the creation of a first prototype which would not be capable of commercial use. It may further include the conceptual formulation and design of products, processes or services alternatives and initial demonstration or pilot projects, provided that these same projects cannot be converted or used for industrial application or commercial exploitation. It does not include routine or periodic alterations to existing products,production lines, manufacturing processes, services, and other on-going operations even though those alterations may represent improvements.

30 In the case of programmes which span industrial research and pre-competitive development activity, the allowable level of non-actionable assistance shall not exceed the simple average of the allowable levels of non- actionable assistance applicable to the above two categories, calculated on the basis of all eligible costs as set forth in items (i) to (v) of this subparagraph.

31 A "general framework of regional development" means that regional subsidy programmes are part of an internally consistent and generally applicable regional development policy and that regional development subsidies are not granted in isolated geographical points having no, or virtually no, influence on the development of a region.

(i) each disadvantaged region must be a clearly designated contiguous geographical area with a definable economic and administrative identity;

(ii) the region is considered as disadvantaged on the basis of neutral and objective criteria[32], indicating that the region's difficulties arise out of more than temporary circumstances; such criteria must be clearly spelled out in law, regulation, or other official document, so as to be capable of verification;

(iii) the criteria shall include a measurement of economic development which shall be based on at least one of the following factors:

- one of either income per capita or household income per capita, or GDP per capita, which must not be above 85 per cent of the average for the territory concerned;

- unemployment rate, which must be at least 110 per cent of the average for the territory concerned; as measured over a three-year period; such measurement, however, may be a composite one and may include other factors.

(c) assistance to promote adaptation of existing facilities[33] to new environmental requirements imposed by law and/or regulations which result in greater constraints and financial burden on firms, provided that the assistance:

(i) is a one-time non-recurring measure; and

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32 "Neutral and objective criteria" means criteria which do not favour certain regions beyond what is appropriate for the elimination or reduction of regional disparities within the framework of the regional development policy. In this regard, regional subsidy programmes shall include ceilings on the amount of assistance which can be granted to each subsidized project. Such ceilings must be differentiated according to the different levels of development of assisted regions and must be expressed in terms of investment costs or cost of job creation. Within such ceilings, the distribution of assistance shall be sufficiently broad and even to avoid the predominant use of a subsidy by, or the granting of disproportionately large amounts of subsidy to, certain enterprises as provided for in Article 2.

33 The term "existing facilities" means facilities which have been in operation for at least two years at the time when new environmental requirements are imposed.

(ii) is limited to 20 per cent of the cost of adaptation; and

(iii) does not cover the cost of replacing and operating the assisted investment, which must be fully borne by firms; and

(iv) is directly linked to and proportionate to a firm's planned reduction of nuisances and pollution, and does not cover any manufacturing cost savings which may be achieved; and

(v) is available to all firms which can adopt the new equipment and/or production processes.

8.3 A subsidy programme for which the provisions of paragraph 2 are invoked shall be notified in advance of its implementation to the Committee in accordance with the provisions of Part VII. Any such notification shall be sufficiently precise to enable other Members to evaluate the consistency of the programme with the conditions and criteria provided for in the relevant provisions of paragraph 2. Members shall also provide the Committee with yearly updates of such notifications, in particular by supplying information on global expenditure for each programme, and on any modification of the programme. Other Members shall have the right to request information about individual cases of subsidization under a notified programme.[34]

8.4 Upon request of a Member, the Secretariat shall review a notification made pursuant to paragraph 3 and, where necessary, may require additional information from the subsidizing Member concerning the notified programme under review. The Secretariat shall report its findings to the Committee. The Committee shall, upon request, promptly review the findings of the Secretariat (or, if a review by the Secretariat has not been requested, the notification itself), with a view to determining whether the conditions and criteria laid down in paragraph 2 have not been met. The procedure provided for in this paragraph shall be completed at the latest at the first regular meeting of the Committee following the notification of a subsidy programme, provided that at least two

[34] It is recognized that nothing in this notification provision requires the provision of confidential information, including confidential business information.

months have elapsed between such notification and the regular meeting of the Committee. The review procedure described in this paragraph shall also apply, upon request, to substantial modifications of a programme notified in the yearly updates referred to in paragraph 3.

8.5 Upon the request of a Member, the determination by the Committee referred to in paragraph 4, or a failure by the Committee to make such a determination, as well as the violation, in individual cases, of the conditions set out in a notified programme, shall be submitted to binding arbitration. The arbitration body shall present its conclusions to the Members within 120 days from the date when the matter was referred to the arbitration body. Except as otherwise provided in this paragraph, the DSU shall apply to arbitrations conducted under this paragraph.

Article 9

Consultations and Authorized Remedies

9.1 If, in the course of implementation of a programme referred to in paragraph 2 of Article 8, notwithstanding the fact that the programme is consistent with the criteria laid down in that paragraph, a Member has reasons to believe that this programme has resulted in serious adverse effects to the domestic industry of that Member, such as to cause damage which would be difficult to repair, such Member may request consultations with the Member granting or maintaining the subsidy.

9.2 Upon request for consultations under paragraph 1, the Member granting or maintaining the subsidy programme in question shall enter into such consultations as quickly as possible. The purpose of the consultations shall be to clarify the facts of the situation and to arrive at a mutually acceptable solution.

9.3 If no mutually acceptable solution has been reached in consultations under paragraph 2 within 60 days of the request for such consultations, the requesting Member may refer the matter to the Committee.

9.4 Where a matter is referred to the Committee, the Committee shall immediately review the facts involved and the evidence of the effects referred to in paragraph 1. If the Committee determines that such effects exist, it mayrecommend to the subsidizing Member to modify this programme in such a wayas to remove these effects. The Committee shall present its conclusions within120 days from the date when the matter is referred to it under paragraph 3. In the event the recommendation is not followed within six months, the Committee shall authorize the requesting Member to take appropriate countermeasures commensurate with the nature and degree of the effects determined to exist.

PART V: COUNTERVAILING MEASURES

Article 10

Application of Article VI of GATT 1994[35]

Members shall take all necessary steps to ensure that the imposition of a countervailing duty[36] on any product of the territory of any Member imported into the territory of another Member is in accordance with the provisions of Article VI of GATT 1994 and the terms of this Agreement. Countervailing duties may only be imposed pursuant to investigations initiated[37] and conducted in accordance with the provisions of this Agreement and the Agreement on Agriculture.

Article 11

Initiation and Subsequent Investigation

11.1 Except as provided in paragraph 6, an investigation to determine the existence, degree and effect of any alleged subsidy shall be initiated upon a written application by or on behalf of the domestic industry.

11.2 An application under paragraph 1 shall include sufficient evidence of the existence of *(a)* a subsidy and, if possible, its amount, *(b)* injury within the

meaning of Article VI of GATT 1994 as interpreted by this Agreement, and *(c)* a causal link between the subsidized imports and the alleged injury. Simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient

35 The provisions of Part II or III may be invoked in parallel with the provisions of Part V; however, with regard to the effects of a particular subsidy in the domestic market of the importing Member, only one form of relief (either a countervailing duty, if the requirements of Part V are met, or a countermeasure under Articles 4 or 7) shall be available. The provisions of Parts III and V shall not be invoked regarding measures considered non-actionable in accordance with the provisions of Part IV. However, measures referred to in paragraph 1(a) of Article 8 may be investigated in order to determine whether or not they are specific within the meaning of Article 2. In addition, in the case of a subsidy referred to in paragraph 2 of Article 8 conferred pursuant to a programme which has not been notified in accordance with paragraph 3 of Article 8, the provisions of Part III or V may be invoked, but such subsidy shall be treated as non-actionable if it is found to conform to the standards set forth in paragraph 2 of Article 8.

36 The term "countervailing duty" shall be understood to mean a special duty levied for the purpose of offsetting any subsidy bestowed directly or indirectly upon the manufacture, production or export of any merchandise, as provided for in paragraph 3 of Article VI of GATT 1994.

37 The term "initiated" as used hereinafter means procedural action by which a Member formally commences an investigation as provided in Article 11.

to meet the requirements of this paragraph. The application shall contain such information as is reasonably available to the applicant on the following:

(i) the identity of the applicant and a description of the volume and value of the domestic production of the like product by the applicant. Where a written application is made on behalf of the domestic industry, the application shall identify the industry on behalf of which the application is made by a list of all known domestic producers of the like product (or associations of domestic producers of the like product) and, to the extent possible, a description of the volume and value of domestic production of the like product accounted for by such producers;

(ii) a complete description of the allegedly subsidized product, the names of

the country or countries of origin or export in question, the identity of each known exporter or foreign producer and a list of known persons importing the product in question;

(iii) evidence with regard to the existence, amount and nature of the subsidy in question;

(iv) evidence that alleged injury to a domestic industry is caused by subsidized imports through the effects of the subsidies; this evidence includes 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, such as those listed in paragraphs 2 and 4 of Article 15.

11.3 The authorities shall review the accuracy and adequacy of the evidence provided in the application to determine whether the evidence is sufficient to justify the initiation of an investigation.

11.4 An investigation shall not be initiated pursuant to paragraph 1 unless the authorities have determined, on the basis of an examination of the degree of support for, or opposition to, the application expressed38 by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry.39 The application shall be considered to have been made "by or on behalf of the domestic industry" if it is supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25 per cent of total production of the like product produced by the domestic industry.

11.5 The authorities shall avoid, unless a decision has been made to initiate an investigation, any publicizing of the application for the initiation of an investigation.

11.6 If, in special circumstances, the authorities concerned decide to initiate

an investigation without having received a written application by or on behalf of adomestic industry for the initiation of such investigation, they shall proceed onlyif they have sufficient evidence of the existence of a subsidy, injury and causal link, as described in paragraph 2, to justify the initiation of an investigation.

11.7 The evidence of both subsidy and injury shall be considered simultaneously *(a)* in the decision whether or not to initiate an investigation and *(b)* thereafter, during the course of the investigation, starting on a date not later than the earliest date on which in accordance with the provisions of this Agreement provisional measures may be applied.

11.8 In cases where products are not imported directly from the country of origin but are exported to the importing Member from an intermediate country, the provisions of this Agreement shall be fully applicable and the transaction or

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38 In the case of fragmented industries involving an exceptionally large number of producers, authorities may determine support and opposition by using statistically valid sampling techniques.

39 Members are aware that in the territory of certain Members employees of domestic producers of the like product or representatives of those employees may make or support an application for an investigation under paragraph 1.

transactions shall, for the purposes of this Agreement, be regarded as having taken place between the country of origin and the importing Member.

11.9 An application under paragraph 1 shall be rejected and an investigation shall be terminated promptly as soon as the authorities concerned are 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. For the purpose of this paragraph, the amount of the subsidy shall be considered to be *de minimis* if the subsidy is less than 1 per cent ad valorem.

11.10 An investigation shall not hinder the procedures of customs clearance.

11.11 Investigations shall, except in special circumstances, be concluded within one year, and in no case more than 18 months, after their initiation.

Article 12
Evidence

12.1 Interested Members and all interested parties in a countervailing duty investigation shall be given notice of the information which the authorities require and ample opportunity to present in writing all evidence which they consider relevant in respect of the investigation in question.

12.1.1 Exporters, foreign producers or interested Members receiving questionnaires used in a countervailing duty investigation shall be given at least 30 days for reply.[40] Due consideration should be given to any request for an extension of the 30-day period and, upon cause shown, such an extension should be granted whenever practicable.

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40 As a general rule, the time-limit for exporters shall be counted from the date of receipt of the questionnaire, which for this purpose shall be deemed to have been received one week from the date on which it was sent to the respondent or transmitted to the appropriate diplomatic representatives of the exporting Member or, in the case of a separate customs territory Member of the WTO, an official representative of the exporting territory.

12.1.2 Subject to the requirement to protect confidential information, evidence presented in writing by one interested Member or interested party shall be made available promptly to other interested Members or interested parties participating in the investigation.

12.1.3 As soon as an investigation has been initiated, the authorities shall provide the full text of the written application received under paragraph 1 of Article 11 to the known exporters[41] and to the authorities of the exporting Member and shall make it available, upon request, to other interested parties involved. Due regard shall be paid to the protection of confidential information, as provided for in paragraph 4.

12.2 Interested Members and interested parties also shall have the right, upon justification, to present information orally. Where such information is provided orally, the interested Members and interested parties subsequently shall be required to reduce such submissions to writing. Any decision of the investigating authorities can only be based on such information and arguments as were on the written record of this authority and which were available to interested Members and interested parties participating in the investigation, due account having been given to the need to protect confidential information.

12.3 The authorities shall whenever practicable provide timely opportunities for all interested Members and interested parties to see all information that is relevant to the presentation of their cases, that is not confidential as defined in paragraph 4, and that is used by the authorities in a countervailing duty investigation, and to prepare presentations on the basis of this information.

12.4 Any information which is by nature confidential (for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom the supplier acquired the information), or which is provided on a confidential basis by parties to an

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41 It being understood that where the number of exporters involved is particularly high, the full text of the application should instead be provided only to the authorities of the exporting Member or to the relevant trade association who then should forward copies to the exporters concerned.

investigation shall, upon good cause shown, be treated as such by the authorities. Such information shall not be disclosed without specific permission of the party submitting it.[42]

12.4.1 The authorities shall require interested Members or interested parties providing confidential information to furnish non-confidential summaries thereof. These summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. In exceptional circumstances, such Members or parties may indicate that such information is not susceptible of summary. In such

exceptional circumstances, a statement of the reasons why summarization is not possible must be provided.

12.4.2 If the authorities find that a request for confidentiality is not warranted and if the supplier of the information is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the authorities may disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.[43]

12.5 Except in circumstances provided for in paragraph 7, the authorities shall during the course of an investigation satisfy themselves as to the accuracy of the information supplied by interested Members or interested parties upon which their findings are based.

12.6 The investigating authorities may carry out investigations in the territory of other Members as required, provided that they have notified in good time the Member in question and unless that Member objects to the investigation. Further, the investigating authorities may carry out investigations on the premises of a firm and may examine the records of a firm if *(a)* the firm so agrees and *(b)* the Member in question is notified and does not object. The procedures set forth in

42 Members are aware that in the territory of certain Members disclosure pursuant to a narrowly-drawn protective order may be required.

43 Members agree that requests for confidentiality should not be arbitrarily rejected. Members further agree that the investigating authority may request the waiving of confidentiality only regarding information relevant to the proceedings.

Annex VI shall apply to investigations on the premises of a firm. Subject to the requirement to protect confidential information, the authorities shall make the results of any such investigations available, or shall provide disclosure thereof pursuant to paragraph 8, to the firms to which they pertain and may make such results available to the applicants.

12.7 In cases in which any interested Member or interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available.

12.8 The authorities shall, before a final determination is made, inform all interested Members and interested parties of the essential facts under consideration which form the basis for the decision whether to apply definitive measures. Such disclosure should take place in sufficient time for the parties to defend their interests.

12.9 For the purposes of this Agreement, "interested parties" shall include:

(i) an exporter or foreign producer or the importer of a product subject to investigation, or a trade or business association a majority of the members of which are producers, exporters or importers of such product; and

(ii) a producer of the like product in the importing Member or a trade and business association a majority of the members of which produce the like product in the territory of the importing Member.

This list shall not preclude Members from allowing domestic or foreign parties other than those mentioned above to be included as interested parties.

12.10 The authorities shall provide opportunities for industrial users of the product under investigation, and for representative consumer organizations in cases where the product is commonly sold at the retail level, to provide information

which is relevant to the investigation regarding subsidization, injury and causality.

12.11 The authorities shall take due account of any difficulties experienced by interested parties, in particular small companies, in supplying information requested, and shall provide any assistance practicable.

12.12 The procedures set out above are not intended to prevent the authorities of a Member 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 this Agreement.

Article 13
Consultations

13.1 As soon as possible after an application under Article 11 is accepted, and in any event before the initiation of any investigation, Members the products of which may be subject to such investigation shall be invited for consultations with the aim of clarifying the situation as to the matters referred to in paragraph 2 of Article 11 and arriving at a mutually agreed solution.

13.2 Furthermore, throughout the period of investigation, Members the products of which are the subject of the investigation shall be afforded a reasonable opportunity to continue consultations, with a view to clarifying the factual situation and to arriving at a mutually agreed solution.[44]

13.3 Without prejudice to the obligation to afford reasonable opportunity for consultation, these provisions regarding consultations are not intended to prevent the authorities of a Member from proceeding expeditiously with regard to initiating the investigation, reaching preliminary or final determinations,

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44 It is particularly important, in accordance with the provisions of this paragraph that

no affirmative determination whether preliminary or final be made without reasonable opportunity for consultations having been given. Such consultations may establish the basis for proceeding under the provisions of Part II, III or X.

whether affirmative or negative, or from applying provisional or final measures, in accordance with the provisions of this Agreement.

13.4 The Member which intends to initiate any investigation or is conducting such an investigation shall permit, upon request, the Member or Members the products of which are subject to such investigation access to non-confidential evidence, including the non-confidential summary of confidential data being used for initiating or conducting the investigation.

Article 14

Calculation of the Amount of a Subsidy in Terms of the Benefit to the Recipient

For the purpose of Part V, any method used by the investigating authority to calculate the benefit to the recipient conferred pursuant to paragraph 1 of Article 1 shall be provided for in the national legislation or implementing regulations of the Member concerned and its application to each particular case shall be transparent and adequately explained. Furthermore, any such method shall be consistent with the following guidelines:

(a) government provision of equity capital 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 that Member;

(b) a loan by a government 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 these two amounts;

(c) a loan guarantee by a government 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 and the amount that the firm would pay on a comparable commercial loan absent the government guarantee. In this case the benefit shall be the difference between these two amounts adjusted for any differences in fees;

(d) the provision of goods or services or purchase of goods by a government 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 15
Determination of Injury[45]

15.1 A determination of injury for purposes of Article VI of GATT 1994 shall be based on positive evidence and involve an objective examination of both *(a)* the volume of the subsidized imports and the effect of the subsidized imports on prices in the domestic market for like products[46] and *(b)* the consequent impact of these imports on the domestic producers of such products.

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45 Under this Agreement the term "injury" shall, unless otherwise specified, be taken to mean material injury to adomestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry and shall be interpreted in accordance with the provisions of this Article.

46 Throughout this Agreement the term "like product" ("produit similaire") shall be interpreted to mean 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 thoseof the product under consideration.

15.2 With regard to the volume of the subsidized imports, the investigating authorities shall consider whether there has been a significant increase in subsidized imports, either in absolute terms or relative to production or consumption in the importing Member. With regard to the effect of the subsidized importson prices, the investigating authorities shall consider whether there has been a significant price undercutting by the subsidized imports as compared with the price of a like product of the importing Member, or whether the effect of such imports is otherwise to depress prices to a significant degree or to prevent price increases, which otherwise would have occurred, to a significant degree. No one or several of these factors can necessarily give decisive guidance.

15.3 Where imports of a product from more than one country are simultaneously subject to countervailing duty investigations, the investigating authorities may cumulatively assess the effects of such imports only if they determine that *(a)* the amount of subsidization established in relation to the imports from each country is more than *de minimis* as defined in paragraph 9 of Article 11 and the volume of imports from each country is not negligible and *(b)* a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between the imported products and the conditions of competition between the imported products and the like domestic product.

15.4 The examination of the impact of the subsidized imports on the domestic industry shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in output, sales, market share, profits, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments and, in the case of agriculture, whether there has been an increased burden on government support programmes. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.

15.5 It must be demonstrated that the subsidized imports are, through the effects[47] of subsidies, causing injury within the meaning of this Agreement. The

demonstration of a causal relationship between the subsidized imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the authorities. The authorities shall also examine any known factors other than the subsidized imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the subsidized imports. Factors which may be relevant 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 the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.

15.6 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.

15.7 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 which 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 investigating authorities should consider, *inter alia*, such factors as:

(i) nature of the subsidy or subsidies in question and the trade effects likely to arise therefrom;

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47 As set forth in paragraphs 2 and 4.

(ii) a significant rate of increase of subsidized imports into the domestic market indicating the likelihood of substantially increased importation;

(iii) sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased subsidized exports to the importing Member's market, taking into account the availability of other export markets to absorb any additional exports;

(iv) whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and

(v) inventories of the product being investigated.

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 would occur.

15.8 With respect to cases where injury is threatened by subsidized imports, the application of countervailing measures shall be considered and decided with special care.

Article 16

Definition of Domestic Industry

16.1 For the purposes of this Agreement, the term "domestic industry" shall, except as provided in paragraph 2, 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, except that when producers are related[48] to the exporters

48 For the purpose of this paragraph, producers shall be deemed to be related to exporters or importers only if *(a)* one of them directly or indirectly controls the

other; or *(b)* both of them are directly or indirectly controlled by a third person; or *(c)* together they directly or indirectly control a third person, provided that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producer concernedto behave differently from non-related producers. For the purpose of this paragraph, one shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over or importers or are themselves importers of the allegedly subsidized product or a like product from other countries, the term "domestic industry" may be interpreted as referring to the rest of the producers.

16.2 In exceptional circumstances, the territory of a Member may, for the production in question, be divided into two or more competitive markets and the producers within each market may be regarded as a separate industry if *(a)* the producers within such market sell all or almost all of their production of the product in question in that market, and *(b)* the demand in that market is not to any substantial degree supplied by producers of the product in question located elsewhere in the territory. In such circumstances, injury may be found to exist even where a major portion of the total domestic industry is not injured, provided there is a concentration of subsidized imports into such an isolated market and provided further that the subsidized imports are causing injury to the producers of all or almost all of the production within such market.

16.3 When the domestic industry has been interpreted as referring to the producers in a certain area, i.e. a market as defined in paragraph 2, countervailing duties shall be levied only on the products in question consigned for final consumption to that area. When the constitutional law of the importing Member does not permitthe levying of countervailing duties on such a basis, the importing Member may levy the countervailing duties without limitation only if *(a)* the exporters shall have been given an opportunity to cease exporting at subsidized pricesto the area concerned or otherwise give assurances pursuant to Article 18, and adequate assurances in this regard have not been promptly given, and *(b*) such duties cannot be levied only on products of specific producers which supply the area in question.

16.4 Where two or more countries have reached under the provisions of paragraph 8(a) of Article XXIV of GATT 1994 such a level of integration that they have the

characteristics of a single, unified market, the industry in the entire area of integration shall be taken to be the domestic industry referred to in paragraphs 1 and 2.

the latter.

16.5 The provisions of paragraph 6 of Article 15 shall be applicable to this Article.

Article 17
Provisional Measures

17.1 Provisional measures may be applied only if:

(a) an investigation has been initiated in accordance with the provisions of Article 11, a public notice has been given to that effect and interested Members and interested parties have been given adequate opportunities to submit information and make comments;

(b) a preliminary affirmative determination has been made that a subsidy exists and that there is injury to a domestic industry caused by subsidized imports; and

(c) the authorities concerned judge such measures necessary to prevent injury being caused during the investigation.

17.2 Provisional measures may take the form of provisional countervailing duties guaranteed by cash deposits or bonds equal to the amount of the provisionally calculated amount of subsidization.

17.3 Provisional measures shall not be applied sooner than 60 days from the date of initiation of the investigation.

17.4 The application of provisional measures shall be limited to as short a period as possible, not exceeding four months.

17.5 The relevant provisions of Article 19 shall be followed in the application of provisional measures.

Article 18
Undertakings

18.1 Proceedings may[49] be suspended or terminated without the imposition of provisional measures or countervailing duties upon receipt of satisfactory voluntary undertakings under which:

(a) the government of the exporting Member agrees to eliminate or limit the subsidy or take other measures concerning its effects; or

(b) the exporter agrees to revise its prices so that the investigating authorities are satisfied that the injurious effect of the subsidy is eliminated. Price increases under such undertakings shall not be higher than necessary to eliminate the amount of the subsidy. It is desirable that the price increases be less than the amount of the subsidy if such increases would be adequate to remove the injury to the domestic industry.

18.2 Undertakings shall not be sought or accepted unless the authorities of the importing Member have made a preliminary affirmative determination of subsidization and injury caused by such subsidization and, in case of undertakings from exporters, have obtained the consent of the exporting Member.

18.3 Undertakings offered need not be accepted if the authorities of the importing Member consider their acceptance impractical, for example if the number of actual or potential exporters is too great, or for other reasons, including reasons of general policy. Should the case arise and where practicable, the authorities shall provide to the exporter the reasons which have led them to consider acceptance of an undertaking as inappropriate, and shall, to the extent possible, give the exporter an opportunity to make comments thereon.

18.4 If an undertaking is accepted, the investigation of subsidization and injury shall nevertheless be completed if the exporting Member so desires or the importing Member so decides. In such a case, if a negative determination of subsidization

49 The word "may" shall not be interpreted to allow the simultaneous continuation of proceedings with the implementation of undertakings, except as provided in paragraph 4.

or injury is made, the undertaking shall automatically lapse, except in cases where such a determination is due in large part to the existence of an undertaking. In such cases, the authorities concerned may require that an undertakingbe maintained for a reasonable period consistent with the provisions of this Agreement. In the event that an affirmative determination of subsidization and injury is made, the undertaking shall continue consistent with its terms and the provisions of this Agreement.

18.5 Price undertakings may be suggested by the authorities of the importing Member, but no exporter shall be forced to enter into such undertakings. The fact that governments or 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.

18.6 Authorities of an importing Member may require any government or exporter from whom an undertaking has been accepted to provide periodically information relevant to the fulfilment of such an undertaking, and to permit verification of pertinent data. In case of violation of an undertaking, the authorities of the importing Member may take, under this Agreement in conformity with its provisions, expeditious actions which may constitute immediate application of provisional measures using the best information available. In such cases, definitive duties may be levied in accordance with this Agreement on products entered for consumption not more than 90 days before the application of such provisional measures, except that any such retroactive assessment shall not apply to imports entered before the violation of the undertaking.

Article 19

Imposition and Collection of Countervailing Duties

19.1 If, after reasonable efforts have been made to complete consultations, a Member makes a final determination of the existence and amount of the subsidy and that, through the effects of the subsidy, the subsidized imports are causing injury,

it may impose a countervailing duty in accordance with the provisions of this Article unless the subsidy or subsidies are withdrawn.

19.2 The decision whether or not to impose a countervailing duty in cases where all requirements for the imposition have been fulfilled, and the decision whether the amount of the countervailing duty to be imposed shall be the full amount of the subsidy or less, are decisions to be made by the authorities of the importing Member. It is desirable that the imposition should be permissive in the territory of all Members, that the duty should be less than the total amount of the subsidy if such lesser duty would be adequate to remove the injury to the domestic industry, and that procedures should be established which would allow the authorities concerned to take due account of representations made by domestic interested parties[50] whose interests might be adversely affected by the imposition of a countervailing duty.

19.3 When a countervailing duty is imposed in respect of any product, such countervailing duty shall be levied, in the appropriate amounts in each case, on a non-discriminatory basis on imports of such product from all sources found to be subsidized and causing injury, except as to imports from those sources which have renounced any subsidies in question or from which undertakings under the terms of this Agreement have been accepted. Any exporter whose exports are subject to a definitive countervailing duty but who was not actuallyinvestigated for reasons other than a refusal to cooperate, shall be entitled to anexpedited review in order that the investigating authorities promptly establish an individual countervailing duty rate for that exporter.

19.4 No countervailing duty shall be levied[51] on any imported product in excess of the amount of the subsidy found to exist, calculated in terms of subsidization per unit of the subsidized and exported product.

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50 For the purpose of this paragraph, the term “domestic interested parties” shall include consumers and industrial users of the imported product subject to investigation.

51 As used in this Agreement "levy" shall mean the definitive or final legal assessment or collection of a duty or tax.

Article 20
Retroactivity

20.1 Provisional measures and countervailing duties shall only be applied to products which enter for consumption after the time when the decision under paragraph 1 of Article 17 and paragraph 1 of Article 19, respectively, enters into force, subject to the exceptions set out in this Article.

20.2 Where a final determination of injury (but not of a threat thereof or of a material retardation of the establishment of an industry) is made or, in the case of a final determination of a threat of injury, where the effect of the subsidized imports would, in the absence of the provisional measures, have led to a determination of injury, countervailing duties may be levied retroactively for the period for which provisional measures, if any, have been applied.

20.3 If the definitive countervailing duty is higher than the amount guaranteed by the cash deposit or bond, the difference shall not be collected. If the definitive duty is less than the amount guaranteed by the cash deposit or bond, the excess amount shall be reimbursed or the bond released in an expeditious manner.

20.4 Except as provided in paragraph 2, where a determination of threat of injury or material retardation is made (but no injury has yet occurred) a definitive countervailing duty may be imposed only from the date of the determination of threat of injury or material retardation, and any cash deposit made during the period of the application of provisional measures shall be refunded and any bonds released in an expeditious manner.

20.5 Where a final determination is negative, any cash deposit made during the period of the application of provisional measures shall be refunded and any bonds released in an expeditious manner.

20.6 In critical circumstances where for the subsidized product in question the authorities find that injury which is difficult to repair is caused by massive imports in a relatively short period of a product benefiting from subsidies

paid or bestowed inconsistently with the provisions of GATT 1994 and of this Agreement and where it is deemed necessary, in order to preclude the recurrence of such injury, to assess countervailing duties retroactively on those imports, the definitive countervailing duties may be assessed on imports which were entered for consumption not more than 90 days prior to the date of application of provisional measures.

Article 21

Duration and Review of Countervailing Duties and Undertakings

21.1 A countervailing duty shall remain in force only as long as and to the extent necessary to counteract subsidization which is causing injury.

21.2 The authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive countervailing duty, upon request by any interested party which submits positive information substantiating the need for a review. Interested parties shall have the rightto request the authorities to examine whether the continued imposition of the duty is necessary to offset subsidization, whether the injury would be likely to continue or recur if the duty were removed or varied, or both. If, as a result of the review under this paragraph, the authorities determine that the countervailing duty is no longer warranted, it shall be terminated immediately.

21.3 Notwithstanding the provisions of paragraphs 1 and 2, 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 under paragraph 2 if that review has covered both subsidization and injury, or under this paragraph), unless the authorities determine, in 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 expiry of the duty would be likely to lead to continuation or recurrence of

subsidization and injury.[52] The duty may remain in force pending the outcome of such a review.

21.4 The provisions of Article 12 regarding evidence and procedure shall apply to any review carried out under this Article. Any such review shall be carried out expeditiously and shall normally be concluded within 12 months of the date of initiation of the review.

21.5 The provisions of this Article shall apply *mutatis mutandis* to undertakings accepted under Article 18.

Article 22

Public Notice and Explanation of Determinations

22.1 When the authorities are satisfied that there is sufficient evidence to justify the initiation of an investigation pursuant to Article 11, the Member or Members the products of which are subject to such investigation and other interested parties known to the investigating authorities to have an interest therein shall be notified and a public notice shall be given.

22.2 A public notice of the initiation of an investigation shall contain, or otherwise make available through a separate report[53], adequate information on the following:

(i) the name of the exporting country or countries and the product involved;

(ii) the date of initiation of the investigation;

(iii) a description of the subsidy practice or practices to be investigated;

(iv) a summary of the factors on which the allegation of injury is based;

52 When the amount of the countervailing duty is assessed on a retrospective basis, a finding in the most recent assessment proceeding that no duty is to be levied shall not by itself require the authorities to terminate the definitive duty.

53 Where authorities provide information and explanations under the provisions of this Article in a separate report, they shall ensure that such report is readily available to the public.

(v) the address to which representations by interested Members and interested parties should be directed; and

(vi) the time-limits allowed to interested Members and interested parties for making their views known.

22.3 Public notice shall be given of any preliminary or final determination, whether affirmative or negative, of any decision to accept an undertaking pursuant to Article 18, of the termination of such an undertaking, and of the termination of a definitive countervailing duty. Each such notice shall set forth, or otherwise make available through a separate report, in sufficient detail the findings and conclusions reached on all issues of fact and law considered material by the investigating authorities. All such notices and reports shall be forwarded to the Member or Members the products of which are subject to such determination or undertaking and to other interested parties known to have an interest therein.

22.4 A public notice of the imposition of provisional measures shall set forth, or otherwise make available through a separate report, sufficiently detailed explanations for the preliminary 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 notice or report shall, due regard being paid to the requirement for the protection of confidential information, contain in particular:

(i) the names of the suppliers or, when this is impracticable, the supplying countries involved;

(ii) a description of the product which is sufficient for customs purposes;

(iii) the amount of subsidy established and the basis on which the existence of

a subsidy has been determined;

(iv) considerations relevant to the injury determination as set out in Article 15;

(v) the main reasons leading to the determination.

22.5 A public notice of conclusion or suspension of an investigation in the case of an affirmative determination providing for the imposition of a definitive duty or the acceptance of an undertaking shall contain, or otherwise make available through a separate report, all relevant information on the matters of fact and law and reasons which have led to the imposition of final measures or the acceptance of an undertaking, due regard being paid to the requirement for the protection of confidential information. In particular, the notice or report shall contain the information described in paragraph 4, as well as the reasons for the acceptance or rejection of relevant arguments or claims made by interested Members and by the exporters and importers.

22.6 A public notice of the termination or suspension of an investigation following the acceptance of an undertaking pursuant to Article 18 shall include, or otherwise make available through a separate report, the non-confidential part of this undertaking.

22.7 The provisions of this Article shall apply *mutatis mutandis* to the initiation and completion of reviews pursuant to Article 21 and to decisions under Article 20 to apply duties retroactively.

Article 23
Judicial Review

Each Member whose national legislation contains provisions on countervailing duty measures shall maintain judicial, arbitral or administrative tribunals or procedures for the purpose, *inter alia*, of the prompt review of administrative actions relating to final determinations and reviews of determinations within the meaning of Article 21. Such tribunals or procedures shall be independent of the authorities responsible for the determination or review in question, and shall provide all interested parties who participated in the administrative proceeding and are directly and individually affected by the administrative actions with access to review.

PART VI: INSTITUTIONS

Article 24

Committee on Subsidies and Countervailing Measures and Subsidiary Bodies

24.1 There is hereby established a Committee on Subsidies and Countervailing Measures composed of representatives from each of the Members. The Committee shall elect its own Chairman and shall meet not less than twice a year and otherwise as envisaged by relevant provisions of this Agreement at the request of any Member. The Committee shall carry out responsibilitiesas assigned to it under this Agreement or by the Members and it shall afford Members the opportunity of consulting on any matter relating to the operation of the Agreement or the furtherance of its objectives. The WTO Secretariat shall act as the secretariat to the Committee.

24.2 The Committee may set up subsidiary bodies as appropriate.

24.3 The Committee shall establish a Permanent Group of Experts composed of five independent persons, highly qualified in the fields of subsidies and trade relations. The experts will be elected by the Committee and one of them will be replaced every year. The PGE may be requested to assist a panel, as provided for in paragraph 5 of Article 4. The Committee may also seek an advisory opinion on the existence and nature of any subsidy.

24.4 The PGE may be consulted by any Member and may give advisory opinions on the nature of any subsidy proposed to be introduced or currently maintainedby that Member. Such advisory opinions will be confidential and may not be invoked in proceedings under Article 7.

24.5 In carrying out their functions, the Committee and any subsidiary bodies may consult with and seek information from any source they deem appropriate.

However, before the Committee or a subsidiary body seeks such information from a source within the jurisdiction of a Member, it shall inform the Member involved.

PART VII: NOTIFICATION AND SURVEILLANCE

Article 25

Notifications

25.1 Members agree that, without prejudice to the provisions of paragraph 1 of Article XVI of GATT 1994, their notifications of subsidies shall be submitted not later than 30 June of each year and shall conform to the provisions of paragraphs 2 through 6.

25.2 Members shall notify any subsidy as defined in paragraph 1 of Article 1, which is specific within the meaning of Article 2, granted or maintained within their territories.

25.3 The content of notifications should be sufficiently specific to enable other Members to evaluate the trade effects and to understand the operation of notified subsidy programmes. In this connection, and without prejudice to the contents and form of the questionnaire on subsidies[54], Members shall ensure that their notifications contain the following information:

(i) form of a subsidy (i.e. grant, loan, tax concession, etc.);

(ii) subsidy per unit or, in cases where this is not possible, the total amount or the annual amount budgeted for that subsidy (indicating, if possible, the average subsidy per unit in the previous year);

(iii) policy objective and/or purpose of a subsidy;

(iv) duration of a subsidy and/or any other time-limits attached to it;

(v) statistical data permitting an assessment of the trade effects of a subsidy.

54 The Committee shall establish a Working Party to review the contents and form of the questionnaire ascontained in BISD 9S/193-194.

25.4 Where specific points in paragraph 3 have not been addressed in a notification, an explanation shall be provided in the notification itself.

25.5 If subsidies are granted to specific products or sectors, the notifications should be organized by product or sector.

25.6 Members which consider that there are no measures in their territories requiring notification under paragraph 1 of Article XVI of GATT 1994 and this Agreement shall so inform the Secretariat in writing.

25.7 Members recognize that notification of a measure does not prejudge either its legal status under GATT 1994 and this Agreement, the effects under this Agreement, or the nature of the measure itself.

25.8 Any Member may, at any time, make a written request for information on the nature and extent of any subsidy granted or maintained by another Member (including any subsidy referred to in Part IV), or for an explanation of the reasons for which a specific measure has been considered as not subject to the requirement of notification.

25.9 Members so requested shall provide such information as quickly as possible and in a comprehensive manner, and shall be ready, upon request, to provide additional information to the requesting Member. In particular, they shall provide sufficient details to enable the other Member to assess their compliance with the terms of this Agreement. Any Member which considers that such information has not been provided may bring the matter to the attention of the Committee.

25.10 Any Member which considers that any measure of another Member having the effects of a subsidy has not been notified in accordance with the provisions of paragraph 1 of Article XVI of GATT 1994 and this Article may bring the matter to the attention of such other Member. If the alleged subsidy is not thereafter notified promptly, such Member may itself bring the alleged subsidy in question to the notice of the Committee.

25.11 Members shall report without delay to the Committee all preliminary or final actions taken with respect to countervailing duties. Such reports shall be available in the Secretariat for inspection by other Members. Members shall also submit, on a semi-annual basis, reports on any countervailing duty actions taken within the preceding six months. The semi-annual reports shall be submitted on an agreed standard form.

25.12 Each Member shall notify the Committee *(a)* which of its authorities are competent to initiate and conduct investigations referred to in Article 11 and *(b)* its domestic procedures governing the initiation and conduct of such investigations.

Article 26
Surveillance

26.1 The Committee shall examine new and full notifications submitted under paragraph 1 of Article XVI of GATT 1994 and paragraph 1 of Article 25 of this Agreement at special sessions held every third year. Notifications submitted in the intervening years (updating notifications) shall be examined at each regular meeting of the Committee.

26.2 The Committee shall examine reports submitted under paragraph 11 of Article 25 at each regular meeting of the Committee.

PART VIII: DEVELOPING COUNTRY MEMBERS

Article 27

Special and Differential Treatment of Developing Country Members

27.1 Members recognize that subsidies may play an important role in economic development programmes of developing country Members.

27.2 The prohibition of paragraph 1(a) of Article 3 shall not apply to:

(a) developing country Members referred to in Annex VII.

(b) other developing country Members for a period of eight years from the date of entry into force of the WTO Agreement, subject to compliance with the provisions in paragraph 4.

27.3 The prohibition of paragraph 1(b) of Article 3 shall not apply to developing country Members for a period of five years, and shall not apply to least developed country Members for a period of eight years, from the date of entry into force of the WTO Agreement.

27.4 Any developing country Member referred to in paragraph 2(b) shall phase out its export subsidies within the eight-year period, preferably in a progressive manner. However, a developing country Member shall not increase the level of its export subsidies[55], and shall eliminate them within a period shorter than that provided for in this paragraph when the use of such export subsidies is inconsistent with its development needs. If a developing country Member deems it necessary to apply such subsidies beyond the 8-year period, it shall not later than one year before the expiry of this period enter into consultation with the Committee, which will determine whether an extension of this period is justified, after examining all the relevant economic, financial and development needs of the developing country Member in question. If the Committee determines that the extension is justified, the developing country Member concerned shall

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55 For a developing country Member not granting export subsidies as of the date of entry into force of the WTO Agreement, this paragraph shall apply on the basis of the level of export subsidies granted in 1986.

hold annual consultations with the Committee to determine the necessity of maintaining the subsidies. If no such determination is made by the Committee, the developing country Member shall phase out the remaining export subsidies within two years from the end of the last authorized period.

27.5 A developing country Member which has reached export competitiveness in any given product shall phase out its export subsidies for such product(s) over a period of two years. However, for a developing country Member which is

referred to in Annex VII and which has reached export competitiveness in one or more products, export subsidies on such products shall be gradually phased out over a period of eight years.

27.6 Export competitiveness in a product exists if a developing country Member's exports of that product have reached a share of at least 3.25 per cent in world trade of that product for two consecutive calendar years. Export competitiveness shall exist either *(a)* on the basis of notification by the developing country Member having reached export competitiveness, or *(b)* on the basis of a computation undertaken by the Secretariat at the request of any Member. For the purpose of this paragraph, a product is defined as a section heading of the Harmonized System Nomenclature. The Committee shall review the operation of this provision five years from the date of the entry into force of the WTO Agreement.

27.7 The provisions of Article 4 shall not apply to a developing country Member in the case of export subsidies which are in conformity with the provisions of paragraphs 2 through 5. The relevant provisions in such a case shall be those of Article 7.

27.8 There shall be no presumption in terms of paragraph 1 of Article 6 that a subsidy granted by a developing country Member results in serious prejudice, as defined in this Agreement. Such serious prejudice, where applicable under the terms of paragraph 9, shall be demonstrated by positive evidence, in accordance with the provisions of paragraphs 3 through 8 of Article 6.

27.9 Regarding actionable subsidies granted or maintained by a developing country Member other than those referred to in paragraph 1 of Article 6, action may not be authorized or taken under Article 7 unless nullification or impairment of tariff concessions or other obligations under GATT 1994 is found to exist as a result of such a subsidy, in such a way as to displace or impede imports of a like product of another Member into the market of the subsidizing developing country Member or unless injury to a domestic industry in the market of an importing Member occurs.

27.10 Any countervailing duty investigation of a product originating in a developing country Member shall be terminated as soon as the authorities concerned determine that:

(a) the overall level of subsidies granted upon the product in question does not exceed 2 per cent of its value calculated on a per unit basis; or

(b) the volume of the subsidized imports represents less than 4 per cent of the total imports of the like product in the importing Member, unless imports from developing country Members whose individual shares of total imports represent less than 4 per cent collectively account for more than 9 per cent of the total imports of the like product in the importing Member.

27.11 For those developing country Members within the scope of paragraph 2(b) which have eliminated export subsidies prior to the expiry of the period of eight years from the date of entry into force of the WTO Agreement, and for those developing country Members referred to in Annex VII, the number in paragraph 10(a) shall be 3 per cent rather than 2 per cent. This provision shallapply from the date that the elimination of export subsidies is notified to the Committee, and for so long as export subsidies are not granted by the notifyingdeveloping country Member. This provision shall expire eight years from the date of entry into force of the WTO Agreement.

27.12 The provisions of paragraphs 10 and 11 shall govern any determination of *de minimis* under paragraph 3 of Article 15.

27.13 The provisions of Part III shall not apply to direct forgiveness of debts, subsidies to cover social costs, in whatever form, including relinquishment of government revenue and other transfer of liabilities when such subsidies are granted within and directly linked to a privatization programme of a developing country Member, provided that both such programme and the subsidies involved are granted for a limited period and notified to the Committee and that the programme results in eventual privatization of the enterprise concerned.

27.14 The Committee shall, upon request by an interested Member, undertake a review of a specific export subsidy practice of a developing country Member to examine whether the practice is in conformity with its development needs.

27.15 The Committee shall, upon request by an interested developing country Member, undertake a review of a specific countervailing measure to examine whether it is consistent with the provisions of paragraphs 10 and 11 as applicable to the developing country Member in question.

PART IX: TRANSITIONAL ARRANGEMENTS

Article 28
Existing Programmes

28.1 Subsidy programmes which have been established within the territory of any Member before the date on which such a Member signed the WTO Agreement and which are inconsistent with the provisions of this Agreement shall be:

(a) notified to the Committee not later than 90 days after the date of entry into force of the WTO Agreement for such Member; and

(b) brought into conformity with the provisions of this Agreement within three years of the date of entry into force of the WTO Agreement for such Member and until then shall not be subject to Part II.

28.2 No Member shall extend the scope of any such programme, nor shall such a programme be renewed upon its expiry.

Article 29
Transformation into a Market Economy

29.1 Members in the process of transformation from a centrally-planned into a market, free-enterprise economy may apply programmes and measures necessary for such a transformation.

29.2 For such Members, subsidy programmes falling within the scope of Article 3, and notified according to paragraph 3, shall be phased out or brought into conformity with Article 3 within a period of seven years from the date of entry into force of the WTO Agreement. In such a case, Article 4 shall not apply. In addition during the same period:

(a) Subsidy programmes falling within the scope of paragraph 1(d) of Article 6 shall not be actionable under Article 7;

(b) With respect to other actionable subsidies, the provisions of paragraph 9 of Article 27 shall apply.

29.3 Subsidy programmes falling within the scope of Article 3 shall be notified to the Committee by the earliest practicable date after the date of entry into force of the WTO Agreement. Further notifications of such subsidies may be made up to two years after the date of entry into force of the WTO Agreement.

29.4 In exceptional circumstances Members referred to in paragraph 1 may be given departures from their notified programmes and measures and their time-frame by the Committee if such departures are deemed necessary for the process of transformation.

PART X: DISPUTE SETTLEMENT

Article 30

The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding shall apply to consultations and the settlement of disputes under this Agreement, except as otherwise specifically provided herein.

PART XI: FINAL PROVISIONS

Article 31
Provisional Application

The provisions of paragraph 1 of Article 6 and the provisions of Article 8 and Article 9 shall apply for a period of five years, beginning with the date of entry into force of the WTO Agreement. Not later than 180 days before the end of this period, the Committee shall review the operation of those provisions, with a view to determining whether to extend their application, either as presently drafted or in a modified form, for a further period.

Article 32
Other Final Provisions

32.1 No specific action against a subsidy of another Member can be taken except in accordance with the provisions of GATT 1994, as interpreted by this Agreement.[56]

32.2 Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Members.

32.3 Subject to paragraph 4, the provisions of this Agreement shall apply to investigations, and reviews of existing measures, initiated pursuant to applications which have been made on or after the date of entry into force for a Member of the WTO Agreement.

32.4 For the purposes of paragraph 3 of Article 21, existing countervailing measures shall be deemed to be imposed on a date not later than the date of entry into force for a Member of the WTO Agreement, except in cases in which the domestic legislation of a Member in force at that date already included a clause of the type provided for in that paragraph.

32.5 Each Member shall take all necessary steps, of a general or particular character, to ensure, not later than the date of entry into force of the WTO Agreement for it, the conformity of its laws, regulations and administrative procedures with the provisions of this Agreement as they may apply to the Member in question.

32.6 Each Member shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.

32.7 The Committee shall review annually the implementation and operation of this Agreement, taking into account the objectives thereof. The Committee shall

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56 This paragraph is not intended to preclude action under other relevant provisions of GATT 1994, where appropriate.

inform annually the Council for Trade in Goods of developments during the period covered by such reviews.

32.8 The Annexes to this Agreement constitute an integral part thereof.

ANNEX I

ILLUSTRATIVE LIST OF EXPORT SUBSIDIES

(a) The provision by governments of direct subsidies to a firm or an industry contingent upon export performance.

(b) Currency retention schemes or any similar practices which involve a bonus on exports.

(c) Internal transport and freight charges on export shipments, provided or mandated by governments, on terms more favourable than for domestic shipments.

(d) The provision by governments or their agencies either directly or indirectly through government-mandated schemes, of imported or domestic products or services for use in the production of exported goods, on terms or conditions more favourable than for provision of like or directly competitive products or services for use in the production of goods for domestic consumption, if (in the case of products) such terms or conditions are more favourable than those commercially available[57] on world markets to their exporters.

57 The term "commercially available" means that the choice between domestic and imported products is unrestricted and depends only on commercial considerations.

(e) The full or partial exemption remission, or deferral specifically related to exports, of direct taxes[58] or social welfare charges paid or payable by industrial or commercial enterprises.[59]

(f) The allowance of special deductions directly related to exports or export performance, over and above those granted in respect to production for domestic consumption, in the calculation of the base on which direct taxes are charged.

(g) The exemption or remission, in respect of the production and distribution of exported products, of indirect taxes58 in excess of those levied in respect of the production and distribution of like products when sold for domestic consumption.

(h) The exemption, remission or deferral of prior-stage cumulative indirect taxes58 on goods or services used in the production of exported products in excess of the exemption, remission or deferral of like prior-stage cumulative indirect taxes on goods or services used in the production of like products when sold for domestic consumption; provided, however, that prior-stage cumulative indirect

58 For the purpose of this Agreement:
The term "direct taxes" shall mean taxes on wages, profits, interests, rents, royalties, and all other forms of income, and taxes on the ownership of real property;
The term "import charges" shall mean tariffs, duties, and other fiscal charges not elsewhere enumerated in thisnote that are levied on imports;
The term "indirect taxes" shall mean sales, excise, turnover, value added, franchise, stamp, transfer, inventoryand equipment taxes, border taxes and all taxes other than direct taxes and import charges;
"Prior-stage" indirect taxes are those levied on goods or services used directly or indirectly in making the product;
"Cumulative" indirect taxes are multi-staged taxes levied where there is no mechanism for subsequent crediting of the tax if the goods or services subject to tax at one stage of production are used in a succeeding stage of production;
"Remission" of taxes includes the refund or rebate of taxes;
"Remission or drawback" includes the full or partial exemption or deferral of import

charges.

59 The Members recognize that deferral need not amount to an export subsidy where, for example, appropriate interest charges are collected. The Members reaffirm the principle that prices for goods in transactions between exporting enterprises and foreign buyers under their or under the same control should for tax purposes be the prices which would be charged between independent enterprises acting at arm's length. Any Member may draw the attention of another Member to administrative or other practices which may contravene this principle and which result in a significant saving of direct taxes in export transactions. In such circumstances the Members shall normally attempt to resolve their differences using the facilities of existing bilateral tax treaties or other specific international mechanisms, without prejudice to the rights and obligations of Members under GATT 1994, including the right of consultation created in the preceding sentence.

Paragraph (e) is not intended to limit a Member from taking measures to avoid the double taxation of foreign-source income earned by its enterprises or the enterprises of another Member.

taxes may be exempted, remitted or deferred on exported products even when not exempted, remitted or deferred on like products when sold for domestic consumption, if the prior-stage cumulative indirect taxes are levied on inputs that are consumed in the production of the exported product (making normal allowance for waste).[60] This item shall be interpreted in accordance with the guidelines on consumption of inputs in the production process contained in Annex II.

(i) The remission or drawback of import charges58 in excess of those levied on imported inputs that are consumed in the production of the exported product (making normal allowance for waste); provided, however, that in particular cases a firm may use a quantity of home market inputs equal to, and having the same quality and characteristics as, the imported inputs as a substitute for them in order to benefit from this provision if the import and the correspondingexport operations both occur within a reasonable time period, not to exceed two years. This item shall be interpreted in accordance with the guidelines on consumption of inputs in the production process contained in Annex II andthe guidelines in the determination of substitution drawback systems as export subsidies

contained in Annex III.

(j) The provision by governments (or special institutions controlled by governments) of export credit guarantee or insurance programmes, of insurance or guarantee programmes against increases in the cost of exported products or of exchange risk programmes, at premium rates which are inadequate to cover the long-term operating costs and losses of the programmes.

(k) The grant by governments (or special institutions controlled by and/or acting under the authority of governments) of export credits at rates below those which they actually have to pay for the funds so employed (or would have to pay if they borrowed on international capital markets in order to obtain funds of the same maturity and other credit terms and denominated in the same currency as the export credit), or the payment by them of all or part of the costs incurred by exporters or financial institutions in obtaining credits, in so far as they are used to secure a material advantage in the field of export credit terms.

Provided, however, that if a Member is a party to an international undertaking on official export credits to which at least twelve original Members to this Agreement are parties as of 1 January 1979 (or a successor undertaking which has been adopted by those original Members), or if in practice a Member applies the interest rates provisions of the relevant undertaking, an export creditpractice which is in conformity with those provisions shall not be considered anexport subsidy prohibited by this Agreement.

(l) Any other charge on the public account constituting an export subsidy in the sense of Article XVI of GATT 1994.

60 Paragraph (h) does not apply to value-added tax systems and border-tax adjustment in lieu thereof; the problem of the excessive remission of value-added taxes is exclusively covered by paragraph (g).

ANNEX II

GUIDELINES ON CONSUMPTION OF INPUTS IN THE PRODUCTION PROCESS[61]

I

1. Indirect tax rebate schemes can allow for exemption, remission or deferral of prior-stage cumulative indirect taxes levied on inputs that are consumed in the production of the exported product (making normal allowance for waste). Similarly, drawback schemes can allow for the remission or drawback of import charges levied on inputs that are consumed in the production of the exported product (making normal allowance for waste).

2. The Illustrative List of Export Subsidies in Annex I of this Agreement makes reference to the term "inputs that are consumed in the production of the exported product" in paragraphs (h) and (i). Pursuant to paragraph (h), indirect tax rebate schemes can constitute an export subsidy to the extent that they result in exemption, remission or deferral of prior-stage cumulative indirect taxes in excess of the amount of such taxes actually levied on inputs that are consumed in the production of the exported product. Pursuant to paragraph (i), drawback schemes can constitute an export subsidy to the extent that they result in a remission or drawback of import charges in excess of those actually levied on inputs that are consumed in the production of the exported product. Both paragraphs stipulate that normal allowance for waste must be made in findings regarding consumption of inputs in the production of the exported product. Paragraph (i) also provides for substitution, where appropriate.

61 Inputs consumed in the production process are inputs physically incorporated, energy, fuels and oil used in the production process and catalysts which are consumed in the course of their use to obtain the exported product.

II

In examining whether inputs are consumed in the production of the exported product, as part of a countervailing duty investigation pursuant to this Agreement, investigating authorities should proceed on the following basis:

1. Where it is alleged that an indirect tax rebate scheme, or a drawback scheme, conveys a subsidy by reason of over-rebate or excess drawback of indirect taxes or import charges on inputs consumed in the production of the exported product, the investigating authorities should first determine whether the government of the exporting Member has in place and applies a system or procedure to confirm which inputs are consumed in the production of the exported product and in what amounts. Where such a system or procedure is determined to be applied, the investigating authorities should then examine the system or procedure to see whether it is reasonable, effective for the purpose intended, and basedon generally accepted commercial practices in the country of export. The investigating authorities may deem it necessary to carry out, in accordance with paragraph 6 of Article 12, certain practical tests in order to verify information or to satisfy themselves that the system or procedure is being effectively applied.

2. Where there is no such system or procedure, where it is not reasonable, or where it is instituted and considered reasonable but is found not to be applied or not to be applied effectively, a further examination by the exporting Memberbased on the actual inputs involved would need to be carried out in the context of determining whether an excess payment occurred. If the investigating authorities deemed it necessary, a further examination would be carried out in accordance with paragraph 1.

3. Investigating authorities should treat inputs as physically incorporated if such inputs are used in the production process and are physically present in the product exported. The Members note that an input need not be present in the final product in the same form in which it entered the production process.

4. In determining the amount of a particular input that is consumed in the production of the exported product, a “normal allowance for waste” should be taken into account, and such waste should be treated as consumed in the production of the exported product. The term “waste” refers to that portion of a given input which does not serve an independent function in the production process, isnot consumed in the production of the exported product (for reasons such as inefficiencies) and is not recovered,

used or sold by the same manufacturer.

5. The investigating authority's determination of whether the claimed allowance for waste is "normal" should take into account the production process, the average experience of the industry in the country of export, and other technical factors, as appropriate. The investigating authority should bear in mind that an important question is whether the authorities in the exporting Member have reasonably calculated the amount of waste, when such an amount is intended to be included in the tax or duty rebate or remission.

ANNEX III

GUIDELINES IN THE DETERMINATION OF SUBSTITUTION DRAWBACK SYSTEMS AS EXPORT SUBSIDIES

I

Drawback systems can allow for the refund or drawback of import charges on inputs which are consumed in the production process of another product and where the export of this latter product contains domestic inputs having the same quality and characteristics as those substituted for the imported inputs. Pursuant to paragraph (i) of the Illustrative List of Export Subsidies in Annex I, substitution drawback systems can constitute an export subsidy to the extent that they result in an excess drawback of the import charges levied initially on the imported inputs for which drawback is being claimed.

II

In examining any substitution drawback system as part of a countervailing duty investigation pursuant to this Agreement, investigating authorities should proceed on the following basis:

1. Paragraph (i) of the Illustrative List stipulates that home market inputs may be substituted for imported inputs in the production of a product for export provided such inputs are equal in quantity to, and have the same quality and characteristics as, the imported inputs being substituted. The existence of a verification system or procedure is important because it enables the government of the exporting Member to ensure and demonstrate that the quantity of inputs for which drawback is claimed does not exceed the quantity of similar products exported, in whatever form, and that there is not drawback of import charges in excess of those originally levied on the imported inputs in question.

2. Where it is alleged that a substitution drawback system conveys a subsidy, the investigating authorities should first proceed to determine whether the government of the exporting Member has in place and applies a verification system or procedure. Where such a system or procedure is determined to be applied,

the investigating authorities should then examine the verification procedures to see whether they are reasonable, effective for the purpose intended, and based on generally accepted commercial practices in the country of export. To the extent that the procedures are determined to meet this test and are effectively applied, no subsidy should be presumed to exist. It may be deemed necessary by the investigating authorities to carry out, in accordance with paragraph 6 of Article 12, certain practical tests in order to verify information or to satisfy themselves that the verification procedures are being effectively applied.

3. Where there are no verification procedures, where they are not reasonable, or where such procedures are instituted and considered reasonable but are found not to be actually applied or not applied effectively, there may be a subsidy. In such cases a further examination by the exporting Member based on the actual transactions involved would need to be carried out to determine whether an excess payment occurred. If the investigating authorities deemed it necessary,a further examination would be carried out in accordance with paragraph 2.

4. The existence of a substitution drawback provision under which exporters are allowed to select particular import shipments on which drawback is claimed should not of itself be considered to convey a subsidy.

5. An excess drawback of import charges in the sense of paragraph (i) would be deemed to exist where governments paid interest on any monies refunded under their drawback schemes, to the extent of the interest actually paid or payable.

ANNEX IV

CALCULATION OF THE TOTAL AD VALOREM SUBSIDIZATION (PARAGRAPH 1(A) OF ARTICLE 6)[62]

1. Any calculation of the amount of a subsidy for the purpose of paragraph 1(a) of Article 6 shall be done in terms of the cost to the granting government.

2. Except as provided in paragraphs 3 through 5, in determining whether the overall rate of subsidization exceeds 5 per cent of the value of the product, the value of the product shall be calculated as the total value of the recipient firm's[63] sales in the most recent 12-month period, for which sales data is available, preceding the period in which the subsidy is granted.[64]

3. Where the subsidy is tied to the production or sale of a given product, the value of the product shall be calculated as the total value of the recipient firm's sales of that product in the most recent 12-month period, for which sales data is available, preceding the period in which the subsidy is granted.

4. Where the recipient firm is in a start-up situation, serious prejudice shall be deemed to exist if the overall rate of subsidization exceeds 15 per cent of the total funds invested. For purposes of this paragraph, a start-up period will not extend beyond the first year of production.[65]

5. Where the recipient firm is located in an inflationary economy country, the value of the product shall be calculated as the recipient firm's total sales (or sales of the relevant product, if the subsidy is tied) in the preceding calendar year indexed by the rate of inflation experienced in the 12 months preceding the month in which the subsidy is to be given.

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62 An understanding among Members should be developed, as necessary, on matters which are not specified in this Annex or which need further clarification for the purposes of paragraph 1(a) of Article 6.

63 The recipient firm is a firm in the territory of the subsidizing Member.

64 In the case of tax-related subsidies the value of the product shall be calculated as the total value of the recipient firm's sales in the fiscal year in which the tax-related

measure was earned.

65 Start-up situations include instances where financial commitments for product development or construction of facilities to manufacture products benefiting from the subsidy have been made, even though production has not begun.

6. In determining the overall rate of subsidization in a given year, subsidies given under different programmes and by different authorities in the territory of a Member shall be aggregated.

7. Subsidies granted prior to the date of entry into force of the WTO Agreement, the benefits of which are allocated to future production, shall be included in the overall rate of subsidization.

8. Subsidies which are non-actionable under relevant provisions of this Agreement shall not be included in the calculation of the amount of a subsidy for the purpose of paragraph 1(a) of Article 6.

ANNEX V

PROCEDURES FOR DEVELOPING INFORMATION CONCERNING SERIOUS PREJUDICE

1. Every Member shall cooperate in the development of evidence to be examined by a panel in procedures under paragraphs 4 through 6 of Article 7. The parties to the dispute and any third-country Member concerned shall notify to the DSB, as soon as the provisions of paragraph 4 of Article 7 have been invoked, the organization responsible for administration of this provision within its territory and the procedures to be used to comply with requests for information.

2. In cases where matters are referred to the DSB under paragraph 4 of Article 7, the DSB shall, upon request, initiate the procedure to obtain such information from the government of the subsidizing Member as necessary to establish the existence and amount of subsidization, the value of total sales of the subsidized firms, as well as information necessary to analyze the adverse effects caused by the subsidized product.[66] This process may include, where appropriate, presentation of questions to the government of the subsidizing Member and of the complaining Member to collect information, as well as to clarify and obtain elaboration of information available to the parties to a dispute through the notification procedures set forth in Part VII.[67]

3. In the case of effects in third-country markets, a party to a dispute may collect information, including through the use of questions to the government of the third-country Member, necessary to analyse adverse effects, which is not otherwise reasonably available from the complaining Member or the subsidizing Member. This requirement should be administered in such a way as not to impose an unreasonable burden on the third-country Member. In particular, such a Member is not expected to make a market or price analysis specially for that purpose. The information to be supplied is that which is already available or can be readily obtained by this Member (e.g. most recent statistics which

66 In cases where the existence of serious prejudice has to be demonstrated.

67 The information-gathering process by the DSB shall take into account the need to protect information which is by nature confidential or which is provided on a confidential basis by any Member involved in this process.

have already been gathered by relevant statistical services but which have not yet been published, customs data concerning imports and declared values of the products concerned, etc.). However, if a party to a dispute undertakes a detailed market analysis at its own expense, the task of the person or firm conducting such an analysis shall be facilitated by the authorities of the third-country Member and such a person or firm shall be given access to all information which is not normally maintained confidential by the government.

4. The DSB shall designate a representative to serve the function of facilitating the information-gathering process. The sole purpose of the representative shall be to ensure the timely development of the information necessary to facilitate expeditious subsequent multilateral review of the dispute. In particular, the representative may suggest ways to most efficiently solicit necessary information as well as encourage the cooperation of the parties.

5. The information-gathering process outlined in paragraphs 2 through 4 shall be completed within 60 days of the date on which the matter has been referred to the DSB under paragraph 4 of Article 7. The information obtained during this process shall be submitted to the panel established by the DSB in accordance with the provisions of Part X. This information should include, *inter alia*, data concerning the amount of the subsidy in question (and, where appropriate, the value of total sales of the subsidized firms), prices of the subsidized product, prices of the non-subsidized product, prices of other suppliers to the market, changes in the supply of the subsidized product to the market in question and changes in market shares. It should also include rebuttal evidence, as well as such supplemental information as the panel deems relevant in the course of reaching its conclusions.

6. If the subsidizing and/or third-country Member fail to cooperate in the information-gathering process, the complaining Member will present its case of serious prejudice, based on evidence available to it, together with facts and circumstances of the non-cooperation of the subsidizing and/or third-country Member. Where information is unavailable due to non-cooperation by the

subsidizing and/or third-country Member, the panel may complete the record as necessary relying on best information otherwise available.

7. In making its determination, the panel should draw adverse inferences from instances of non- cooperation by any party involved in the information-gathering process.

8. In making a determination to use either best information available or adverse inferences, the panel shall consider the advice of the DSB representative nominated under paragraph 4 as to the reasonableness of any requests for information and the efforts made by parties to comply with these requests in a cooperative and timely manner.

9. Nothing in the information-gathering process shall limit the ability of the panel to seek such additional information it deems essential to a proper resolution to the dispute, and which was not adequately sought or developed during that process. However, ordinarily the panel should not request additional information to complete the record where the information would support a particularparty's position and the absence of that information in the record is the result of unreasonable non-cooperation by that party in the information-gathering process.

ANNEX VI
PROCEDURES FOR ON-THE-SPOT INVESTIGATIONS PURSUANT TO PARAGRAPH 6 OF ARTICLE 12

1. Upon initiation of an investigation, the authorities of the exporting Member and the firms known to be concerned should be informed of the intention to carry out on-the-spot investigations.

2. If in exceptional circumstances it is intended to include non-governmental experts in the investigating team, the firms and the authorities of the exporting Member should be so informed. Such non-governmental experts should be subject to effective sanctions for breach of confidentiality requirements.

3. It should be standard practice to obtain explicit agreement of the firms concerned in the exporting Member before the visit is finally scheduled.

4. As soon as the agreement of the firms concerned has been obtained, the investigating authorities should notify the authorities of the exporting Member of the names and addresses of the firms to be visited and the dates agreed.

5. Sufficient advance notice should be given to the firms in question before the visit is made.

6. Visits to explain the questionnaire should only be made at the request of an exporting firm. In case of such a request the investigating authorities may place themselves at the disposal of the firm; such a visit may only be made if
(a) the authorities of the importing Member notify the representatives of the government of the Member in question and *(b)* the latter do not object to the visit.

7. As the main purpose of the on-the-spot investigation is to verify information provided or to obtain further details, it should be carried out after the response to the questionnaire has been received unless the firm agrees to the contrary and the government of the exporting Member is informed by the investigating authorities of the anticipated visit and does not object to it; further, it should be

standard practice prior to the visit to advise the firms concerned of the general nature of the information to be verified and of any further information which needs to be provided, though this should not preclude requests to be made on the spot for further details to be provided in the light of information obtained.

8. Enquiries or questions put by the authorities or firms of the exporting Members and essential to a successful on-the-spot investigation should, whenever possible, be answered before the visit is made.

ANNEX VII

DEVELOPING COUNTRY MEMBERS REFERRED TO IN PARAGRAPH 2(A) OF ARTICLE 27

The developing country Members not subject to the provisions of paragraph 1(a) of Article 3 under the terms of paragraph 2(a) of Article 27 are:

(a) Least-developed countries designated as such by the United Nations which are Members of the WTO.

(b) Each of the following developing countries which are Members of the WTO shall be subject to the provisions which are applicable to other developing country Members according to paragraph 2(b) of Article 27 when GNP per capita has reached $1,000 per annum[68]: Bolivia, Cameroon, Congo, Côte d'Ivoire, Dominican Republic, Egypt, Ghana, Guatemala, Guyana, India, Indonesia, Kenya, Morocco, Nicaragua, Nigeria, Pakistan, Philippines, Senegal, Sri Lanka and Zimbabwe.

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68 The inclusion of developing country Members in the list in paragraph (b) is based on the most recent data from the World Bank on GNP per capita.

AGREEMENTON
SAFEGUARDS

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AGREEMENT ON SAFEGUARDS

Members,

Having in mind the overall objective of the Members to improve and strengthen the international trading system based on GATT 1994;

Recognizing the need to clarify and reinforce the disciplines of GATT 1994, and specifically those of its Article XIX (Emergency Action on Imports of Particular Products), to re-establish multilateral control over safeguards and eliminate measures that escape such control;

Recognizing the importance of structural adjustment and the need to enhance rather than limit competition in international markets; and

Recognizing further that, for these purposes, a comprehensive agreement, applicable to all Members and based on the basic principles of GATT 1994, is called for;

Hereby *agree* as follows:

Article 1
General Provision

This Agreement establishes rules for the application of safeguard measures which shall be understood to mean those measures provided for in Article XIX of GATT 1994.

Article 2
Conditions

1. A Member[1] may apply a safeguard measure to a product only if that Member has

determined, pursuant to the provisions set out below, that such product is being

1 A customs union may apply a safeguard measure as a single unit or on behalf of a member State. When a customs union applies a safeguard measure as a single unit, all the requirements for the determination of serious injury or threat thereof under this Agreement shall be based on the conditions existing in the customs union

imported into its territory in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products.

2. Safeguard measures shall be applied to a product being imported irrespective of its source.

Article 3
Investigation

1. A Member may apply a safeguard measure only following an investigation by the competent authorities of that Member pursuant to procedures previously established and made public in consonance with Article X of GATT 1994. This investigation shall include reasonable public notice to all interested parties and public hearings or other appropriate means in which importers, exporters and other interested parties could present evidence and their views, including the opportunity to respond to the presentations of other parties and to submit their views, *inter alia*, as to whether or not the application of a safeguard measure would be in the public interest. The competent authorities shall publish a report setting forth their findings and reasoned conclusions reached on all pertinent issues of fact and law.

2. Any information which is by nature confidential or which is provided on a confidential basis shall, upon cause being shown, be treated as such by the competent authorities. Such information shall not be disclosed without permission of the party submitting it. Parties providing confidential information may be requested to furnish non-confidential summaries thereof or, if such parties indicate that such information cannot be summarized, the reasons why a summary cannot be provided. However, if the competent authorities find

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as a whole. When a safeguard measure is applied on behalf of a member State, all the requirements for the determination of serious injury or threat thereof shall be based on the conditions existing in that member State and the measure shall be

limited to that member State. Nothing in this Agreement prejudges the interpretation of the relationship between Article XIX and paragraph 8 of Article XXIV of GATT 1994.

that a request for confidentiality is not warranted and if the party concerned is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the authorities may disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.

Article 4

Determination of Serious Injury or Threat Thereof

1. For the purposes of this Agreement:

   (a) "serious injury" shall be understood to mean a significant overall impairment in the position of a domestic industry;

   (b) "threat of serious injury" shall be understood to mean serious injury that is clearly imminent, in accordance with the provisions of paragraph 2. A determination of the existence of a threat of serious injury shall be based on facts and not merely on allegation, conjecture or remote possibility; and

   (c) in determining injury or threat thereof, a "domestic industry" shall be understood to mean the producers as a whole of the like or directly competitive products operating within the territory of a Member, orthose whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of those products.

2. (a) In the investigation to determine whether increased imports have caused or are threatening to cause serious injury to a domestic industry under the terms of this Agreement, the competent authorities shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry, in particular, the rate and amount of the increase in imports of the product concerned in absolute and relative terms,

the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilization, profits and losses, and employment.

(b) The determination referred to in subparagraph (a) shall not be made unless this investigation demonstrates, on the basis of objective evidence, the existence of the causal link between increased imports of the product concerned and serious injury or threat thereof. When factors other than increased imports are causing injury to the domestic industry at the same time, such injury shall not be attributed to increased imports.

(c) The competent authorities shall publish promptly, in accordance with the provisions of Article 3, a detailed analysis of the case under investigation as well as a demonstration of the relevance of the factors examined.

Article 5

Application of Safeguard Measures

1. A Member shall apply safeguard measures only to the extent necessary to prevent or remedy serious injury and to facilitate adjustment. If a quantitative restriction is used, such a measure shall not reduce the quantity of imports below the level of a recent period which shall be the average of imports in the last three representative years for which statistics are available, unless clear justification is given that a different level is necessary to prevent or remedy serious injury. Members should choose measures most suitable for the achievement of these objectives.

2. (a) In cases in which a quota is allocated among supplying countries, the Member applying the restrictions may seek agreement with respect to the allocation of shares in the quota with all other Members having a substantial interest in supplying the product concerned. In cases in which this method is not reasonably practicable, the Member concerned shall allot to Members having a substantial interest in supplying the product shares based upon the proportions, supplied by such Members during a previous representative period, of the total quantity or value of imports

of the product, due account being taken of any special factors which may have affected or may be affecting the trade in the product.

(b) A Member may depart from the provisions in subparagraph (a) provided that consultations under paragraph 3 of Article 12 are conducted under the auspices of the Committee on Safeguards provided for in paragraph 1of Article 13 and that clear demonstration is provided to the Committee that (*i*) imports from certain Members have increased in disproportionate percentage in relation to the total increase of imports of the product concerned in the representative period, (*ii*) the reasons for the departure from the provisions in subparagraph (a) are justified, and (*iii*) the conditions of such departure are equitable to all suppliers of the product concerned. The duration of any such measure shall not be extended beyond the initial period under paragraph 1 of Article 7. The departure referred to above shall not be permitted in the case of threat of serious injury.

Article 6
Provisional Safeguard Measures

In critical circumstances where delay would cause damage which it would be difficult to repair, a Member may take a provisional safeguard measure pursuant to a preliminary determination that there is clear evidence that increased imports have caused or are threatening to cause serious injury. The duration of the provisional measure shall not exceed 200 days, during which period the pertinent requirements of Articles 2 through 7 and 12 shall be met. Such measures should take the form of tariff increases to be promptly refunded if the subsequent investigation referred to in paragraph 2 of Article 4 does not determine that increased imports have caused or threatened to cause serious injury to a domestic industry. The duration of any such provisional measure shall be counted as a part of the initial period and any extension referred to in paragraphs 1, 2 and 3 of Article 7.

Article 7

Duration and Review of Safeguard Measures

1. A Member shall apply safeguard measures only for such period of time as may be necessary to prevent or remedy serious injury and to facilitate adjustment. The period shall not exceed four years, unless it is extended under paragraph 2.

2. The period mentioned in paragraph 1 may be extended provided that the competent authorities of the importing Member have determined, in conformity with the procedures set out in Articles 2, 3, 4 and 5, that the safeguard measure continues to be necessary to prevent or remedy serious injury and that there is evidence that the industry is adjusting, and provided that the pertinent provisions of Articles 8 and 12 are observed.

3. The total period of application of a safeguard measure including the period of application of any provisional measure, the period of initial application and any extension thereof, shall not exceed eight years.

4. In order to facilitate adjustment in a situation where the expected duration of a safeguard measure as notified under the provisions of paragraph 1 of Article 12 is over one year, the Member applying the measure shall progressively liberalize it at regular intervals during the period of application. If the duration of the measure exceeds three years, the Member applying such a measure shall review the situation not later than the mid-term of the measure and, if appropriate, withdraw it or increase the pace of liberalization. A measure extended under paragraph 2 shall not be more restrictive than it was at the end of the initial period, and should continue to be liberalized.

5. No safeguard measure shall be applied again to the import of a product which has been subject to such a measure, taken after the date of entry into force of the WTO Agreement, for a period of time equal to that during which such measure had been previously applied, provided that the period of non-application is at least two years.

6. Notwithstanding the provisions of paragraph 5, a safeguard measure with a duration of 180 days or less may be applied again to the import of a product if:

   (a) at least one year has elapsed since the date of introduction of a safeguard measure on the import of that product; and

   (b) such a safeguard measure has not been applied on the same product more than twice in the five-year period immediately preceding the date of introduction of the measure.

Article 8

Level of Concessions and Other Obligations

1. A Member proposing to apply a safeguard measure or seeking an extension of a safeguard measure shall endeavour to maintain a substantially equivalent level of concessions and other obligations to that existing under GATT 1994 between it and the exporting Members which would be affected by such a measure, in accordance with the provisions of paragraph 3 of Article 12. To achieve this objective, the Members concerned may agree on any adequate means of trade compensation for the adverse effects of the measure on their trade.

2. If no agreement is reached within 30 days in the consultations under paragraph 3 of Article 12, then the affected exporting Members shall be free, not later than 90 days after the measure is applied, to suspend, upon the expiration of30 days from the day on which written notice of such suspension is receivedby the Council for Trade in Goods, the application of substantially equivalent concessions or other obligations under GATT 1994, to the trade of the Member applying the safeguard measure, the suspension of which the Council for Trade in Goods does not disapprove.

3. The right of suspension referred to in paragraph 2 shall not be exercised for the first three years that a safeguard measure is in effect, provided that the safeguard measure has been taken as a result of an absolute increase in imports and that such a measure conforms to the provisions of this Agreement.

Article 9

Developing Country Members

1. Safeguard measures shall not be applied against a product originating ina developing country Member as long as its share of imports of the product concerned in the importing Member does not exceed 3 per cent, provided that developing country Members with less than 3 per cent import share collectively account for not more than 9 per cent of total imports of the product concerned.[2]

2. A developing country Member shall have the right to extend the period of application of a safeguard measure for a period of up to two years beyond the maximum period provided for in paragraph 3 of Article 7. Notwithstanding the provisions of paragraph 5 of Article 7, a developing country Member shallhave the right to apply a safeguard measure again to the import of a product which has been subject to such a measure, taken after the date of entry into force of the WTO Agreement, after a period of time equal to half that during which such a measure has been previously applied, provided that the period of non-application is at least two years.

Article 10

Pre-existing Article XIX Measures

Members shall terminate all safeguard measures taken pursuant to Article XIX of GATT 1947 that were in existence on the date of entry into force of the WTO Agreement not later than eight years after the date on which they were first applied or five years after the date of entry into force of the WTO Agreement, whichever comes later.

2 A Member shall immediately notify an action taken under paragraph 1 of Article 9 to the Committee on Safeguards.

Article 11

Prohibition and Elimination of Certain Measures

1. (a) A Member shall not take or seek any emergency action on imports of particular products as set forth in Article XIX of GATT 1994 unless such action conforms with the provisions of that Article applied in accordance with this Agreement.

   (b) Furthermore, a Member shall not seek, take or maintain any voluntary export restraints, orderly marketing arrangements or any other similar measures on the export or the import side.[3],[4] These include actions taken by a single Member as well as actions under agreements, arrangements and understandings entered into by two or more Members. Any such measure in effect on the date of entry into force of the WTO Agreement shall be brought into conformity with this Agreement or phased out in accordance with paragraph 2.

   (c) This Agreement does not apply to measures sought, taken or maintained by a Member pursuant to provisions of GATT 1994 other than Article XIX, and Multilateral Trade Agreements in Annex 1A other than this Agreement, or pursuant to protocols and agreements or arrangements concluded within the framework of GATT 1994.

2. The phasing out of measures referred to in paragraph 1(b) shall be carried out according to timetables to be presented to the Committee on Safeguards by the Members concerned not later than 180 days after the date of entry into force of the WTO Agreement. These timetables shall provide for all measures referred to in paragraph 1 to be phased out or brought into conformity with this Agreement within a period not exceeding four years after the date of entry into force of the WTO Agreement, subject to not more than one specific measure per importing

3 An import quota applied as a safeguard measure in conformity with the relevant provisions of GATT 1994 and this Agreement may, by mutual agreement, be administered by the exporting Member.

[4] Examples of similar measures include export moderation, export-price or import-price monitoring systems, export or import surveillance, compulsory import cartels and discretionary export or import licensing schemes, any of which afford protection.

Member[5], the duration of which shall not extend beyond 31 December 1999. Any such exception must be mutually agreed between the Members directly concerned and notified to the Committee on Safeguards for its review and acceptance within 90 days of the entry into force of the WTO Agreement. The Annex to this Agreement indicates a measure which has been agreed as falling under this exception.

3. Members shall not encourage or support the adoption or maintenance by public and private enterprises of non-governmental measures equivalent to those referred to in paragraph 1.

Article 12

Notification and Consultation

1. A Member shall immediately notify the Committee on Safeguards upon:

   (a) initiating an investigatory process relating to serious injury or threat thereof and the reasons for it;

   (b) making a finding of serious injury or threat thereof caused by increased imports; and

   (c) taking a decision to apply or extend a safeguard measure.

2. In making the notifications referred to in paragraphs 1(b) and 1(c), the Member proposing to apply or extend a safeguard measure shall provide the Committee on Safeguards with all pertinent information, which shall include evidence of serious injury or threat thereof caused by increased imports, precise description of the product involved and the proposed measure, proposed date of introduction, expected duration and timetable for progressive liberalization. In the case of an extension of a measure, evidence that the industry concerned is adjusting shall also be provided. The Council for Trade in Goods or the Committee on

5 The only such exception to which the European Communities is entitled is indicated in the Annex to this Agreement.

Safeguards may request such additional information as they may consider necessary from the Member proposing to apply or extend the measure.

3. A Member proposing to apply or extend a safeguard measure shall provide adequate opportunity for prior consultations with those Members havinga substantial interest as exporters of the product concerned, with a view to, *inter alia*, reviewing the information provided under paragraph 2, exchanging views on the measure and reaching an understanding on ways to achieve the objective set out in paragraph 1 of Article 8.

4. A Member shall make a notification to the Committee on Safeguards before taking a provisional safeguard measure referred to in Article 6. Consultations shall be initiated immediately after the measure is taken.

5. The results of the consultations referred to in this Article, as well as the results of mid-term reviews referred to in paragraph 4 of Article 7, any form of compensation referred to in paragraph 1 of Article 8, and proposed suspensions of concessions and other obligations referred to in paragraph 2 of Article 8, shall be notified immediately to the Council for Trade in Goods by the Members concerned.

6. Members shall notify promptly the Committee on Safeguards of their laws, regulations and administrative procedures relating to safeguard measures as well as any modifications made to them.

7. Members maintaining measures described in Article 10 and paragraph 1 of Article 11 which exist on the date of entry into force of the WTO Agreement shall notify such measures to the Committee on Safeguards not later than 60 days after the date of entry into force of the WTO Agreement.

8. Any Member may notify the Committee on Safeguards of all laws, regulations, administrative procedures and any measures or actions dealt with in this Agreement that have not been notified by other Members that are required by this Agreement to make such notifications.

9. Any Member may notify the Committee on Safeguards of any non-governmental measures referred to in paragraph 3 of Article 11.

10. All notifications to the Council for Trade in Goods referred to in this Agreement shall normally be made through the Committee on Safeguards.

11. The provisions on notification in this Agreement shall not require any Member to disclose confidential information the disclosure of which would impede law enforcement or otherwise be contrary to the public interest or would prejudice the legitimate commercial interests of particular enterprises, public or private.

Article 13
Surveillance

1. A Committee on Safeguards is hereby established, under the authority ofthe Council for Trade in Goods, which shall be open to the participation ofany Member indicating its wish to serve on it. The Committee will have the following functions:

   (a) to monitor, and report annually to the Council for Trade in Goods on, the general implementation of this Agreement and make recommendations towards its improvement;

   (b) to find, upon request of an affected Member, whether or not the procedural requirements of this Agreement have been complied with in connection with a safeguard measure, and report its findings to the Council for Trade in Goods;

   (c) to assist Members, if they so request, in their consultations under the provisions of this Agreement;

   (d) to examine measures covered by Article 10 and paragraph 1 of Article 11, monitor the phase-out of such measures and report as appropriate to the Council for Trade in Goods;

(e) to review, at the request of the Member taking a safeguard measure, whether proposals to suspend concessions or other obligations are "substantially equivalent", and report as appropriate to the Council for Trade in Goods;

(f) to receive and review all notifications provided for in this Agreement and report as appropriate to the Council for Trade in Goods; and

(g) to perform any other function connected with this Agreement that the Council for Trade in Goods may determine.

2. To assist the Committee in carrying out its surveillance function, the Secretariat shall prepare annually a factual report on the operation of this Agreement based on notifications and other reliable information available to it.

Article 14
Dispute Settlement

The provisions of Articles XXII and XXIII of GATT 1994 as elaborated and applied by the Dispute Settlement Understanding shall apply to consultations and the settlement of disputes arising under this Agreement.