

COMESA REGULATIONS ON TRADE REMEDY MEASURES

TITLE : REGULATIONS ON TRADE REMEDY MEASURES

PREAMBLE

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PREAMBLE

ADOPTED by the COMESA Council of Ministers under Article 10(1) of the COMESA Treaty:

PART I : INTRODUCTION

Regulation 1

Short Title

1. These Regulations may be cited as the COMESA Regulations on Trade Remedy measures under the COMESA Treaty.

Regulation 2

Purpose

1. These Regulations are a binding instrument on COMESA Member states in their conduct of trade remedy investigations. Its purpose is to ensure that there is uniformity among COMESA member States in the conduct of trade remedy investigations and to ensure, to the extent possible, that such investigations are undertaken in harmony and within the framework of WTO Safeguard Agreement.

2. These Regulations establish rules for the conduct of trade remedy investigations and the application of trade remedy measures.

Regulation 3

Application

1. These Regulations shall apply to investigations or reviews initiated under national legislation of COMESA Member states on or after the day of entry into force of this Regulation.

2. These Regulations are to be applied in conjunction with the existing national legislation for conducting trade remedy investigations and reviews in the individual COMESA Member states. The Member states of COMESA recognize that most of them are also Signatories in the WTO and may have national legislation, which is consistent with the WTO Agreement. All COMESA Member states recognize that these Member states have the right to apply their national legislation, without amendment, in conducting all trade remedy investigations from the date that this Regulation comes into force, as their national legislation complies with both the WTO Agreement and this Regulation.

3. If an investigation is initiated by a COMESA member State finds that the industry under investigation includes imported products only from COMESA countries, the provisions to be applied are the COMESA trade remedy regulations.

4. If an investigation is initiated by a COMESA member State finds that the industry under investigation includes imported products only from non-COMESA WTO member countries, the provisions to be applied is the WTO Agreement on Safeguards.

5. If an investigation is initiated by a COMESA member State finds that industry under investigation includes imported products from both COMESA and non-COMESA WTO member countries, the provisions to be applied are the WTO Agreement, and where not otherwise provided for by WTO, the provisions of the COMESA trade remedy regulations.

6. In the case of Part III on Anti-Dumping only if an investigation is initiated by a COMESA member State against fellow COMESA members, the provisions of Part III of this Regulation shall apply. If an investigation is initiated by a COMESA member State against non-COMESA WTO member countries, the provisions of the WTO Agreement shall apply. In cases where an investigation under Part III has been initiated by a COMESA member State against fellow COMESA members and non-COMESA WTO member States, both this Regulation and the WTO Agreement will be applied in this investigation.

Regulation 4

Interim Provisions

COMESA Member states without existing national legislation for the conducting of safeguard investigations, undertake to enact empowering national legislation leading to formation of an investigating authority for the conduct of such investigations which reflects the provisions of this Regulation, as soon as practicable. In the interim, they may take trade remedy Measures in accordance to and in compliance with the provisions of these Regulations.

Regulation 5

Interpretation

In these Regulations, unless the context otherwise requires:

“Anti-dumping Regulation” means the Regulation regulating the imposition of anti-dumping duties against dumped imports causing material injury to the domestic industry or threat thereof;

“Committee” means the COMESA Committee on Trade Remedies;

“domestic industry”, this definition is applicable to both industrial and agricultural production and to industry that is either in the ‘start-up’ phase or is ‘established’. It means, 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. Producers are 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 concerned to behave differently from non-related producers.

For the purpose of this definition one shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter;

"injury" means, unless otherwise specified in this Regulation, material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry;

"investigating authority" means the governmental authority charged with the responsibility of conducting anti-dumping investigations in the COMESA Member State;

"interested parties" shall include:

- (i) an exporter or producer in the exporting country, 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 territory of the importing COMESA Member country or a trade or business association, a majority of the members of which, produce the like product in the territory of the importing COMESA Member.

The Investigating Authority shall allow, upon request, domestic or foreign parties other than those mentioned above to be included as interested parties in the investigation;

"independent buyer" means Individual or company that have no relationship with either the importer or the exporter of the product under investigation;

"like product" means a product, which is identical, i.e. alike in all respects to the product under consideration or in the absence of such a product, another product, which, although not alike in all respects, has characteristics closely resembling those of the product under consideration;

“national legislation” means the legislation of a COMESA member State which empowers the Investigating Authority to conduct anti-dumping investigation;

“Regulation” means the COMESA Regulation on Anti-Dumping;

“Safeguard Measures” means Temporary imposition of Tariff or quantitative restrictions; it can also be defined as necessary measures to prevent or remedy serious injury and to facilitate adjustments and shall include an increase in tariff or quantitative restriction;

“Safeguard Regulation” means the Regulation regulating the imposition of safeguard measures against increased imports causing serious injury to the domestic industry or threat thereof;

"Secretary General" means the Secretary General of COMESA;

“serious injury” means a significant overall impairment in the position of a domestic industry.

“subsidies and countervailing Regulation” means the Regulation regulating the imposition of countervailing duties against subsidised imports causing material injury to the domestic industry or threat thereof;

"specific subsidies" means subsidies available only to a defined enterprise or industry, or a group of enterprises or industries, within the jurisdiction of a granting authority;

"subsidized goods" means goods in respect of the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export, or import of which a specific subsidy has been or will be paid, granted, authorized, or otherwise provided, directly or indirectly, by a foreign government:

"subsidy" includes any financial or other commercial benefit that has accrued or will accrue, directly or indirectly, to persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export, or import of goods, as a result of any scheme, program, practice, or thing done, provided, or implemented by a foreign government; but does not include the amount of any duty or internal tax imposed on goods by the Government of the country of origin or country of export from which the goods, because of their exportation from the country of export or country of origin, have been exempted or have been or will be relieved by means of refund or drawback;

"threat of serious injury" shall be understood to mean serious injury that is clearly imminent. 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;

“trade remedy measure” means a safeguard measure, subsidies and countervailing measure or anti-dumping duty as the case may be;

"WTO Agreement" means the agreement establishing the World Trade Organization adopted at Marrakech on the 15th day of April 1994.

Regulation 6

Principles

A trade remedy measure shall be applied only under the circumstances provided for in these Regulations and pursuant to investigations initiated and conducted in accordance with the provisions of these Regulations. Any trade remedy Measure taken in accordance with the COMESA Treaty before the entry into force of these regulations shall remain in place for one year from the date the Measure was imposed and shall thereafter be reviewed with a view to conforming to the provisions of these Regulations.

PART II : SAFEGUARD MEASURES

Regulation 7

Conditions

1. A Member 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 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 within COMESA.

Regulation 8

Investigation

1. A Member may apply a safeguard measure only following an Investigation by the Investigating Authority of that Member pursuant to the procedures established under the provisions of this Regulation. This investigation shall include reasonable public notice to all interested parties and public hearing 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 Investigating Authority shall publish a report setting forth its findings and reasoned conclusions reached on all pertinent issues of fact and law.
2. Any information which is by nature confidential (for example, because its disclosure would be of significant competitive advantage to a competitor or because of its disclosure would have a significantly adverse effect upon a person supplying

the information or upon a person whom that person acquired the information), or which is provided on a confidential basis shall, upon cause being shown, be treated as such by the Investigating Authority. 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. These summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. If such parties indicate that such information cannot be summarized, the reasons why a summarization is not possible must be provided. However, if the Investigating Authority finds 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 Investigating Authority may disregard such information unless it can be demonstrated to its satisfaction from appropriate sources that the information is correct.

Regulation 9

Serious Injury or Threat Thereof

1. 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 Regulation, the Investigating Authority shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation and level of development 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.

2. 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.

3. The demonstration of a causal relationship between the increased volume of imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the Investigating Authority. Where appropriate, the Investigating Authority should also examine any known factors other than the increased imports of the product concerned which at the same time are injuring the domestic industry, and the injury caused by these other factors must not be attributed to the increased volume of imports. 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.

4. The Investigating Authority shall publish immediately, in accordance with the provisions of Regulation 8, a detailed analysis of the case under investigation as well as a demonstration of the relevance of the factors examined. The publication shall also include information required in paragraph 1 of Regulation 15.

Regulation 10

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 provision in subparagraph (a) provided that consultations under paragraph 3 of Regulation 15 are conducted under the auspices of the Committee on Trade Remedies provided for in paragraph 1 of Regulation 15 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 Regulation 12. The departure referred to above shall not be permitted in the case of threat of serious injury.

Regulation 11

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 Regulations 2 through 12 and 15 shall be met. Such measures should take the form of tariff increases to be promptly refunded if the subsequent investigation

referred to in paragraph 1 of Regulation 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 Regulation 12.

Regulation 12

Duration and Review of Safeguard Measures

1. A Member shall apply safeguard measures only 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 Investigating Authority of the importing Member has determined, in conformity with the procedures set out in Regulations 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 Regulations 13 and 15 are observed. A member in consultation with the private sector should agree to a sequence of actions that it will take to adjust to the situation.

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 Regulation 15 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 this Safeguard Regulation, 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.

Regulation 13

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 between it and the exporting Members which would be affected by such a measure, in accordance with the provisions of paragraph 3 of Regulation 15. 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 Regulation 15, then the affected exporting Members shall be free, not later than 90 days after the measure is applied, to suspend, upon the expiration of 30 days from the day on which written notice of such suspension is received by the Secretary General, the application of substantially equivalent concessions or other obligations, to the trade of the Member applying the safeguard measure, the suspension of which the Secretary General 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 Regulation.

Regulation 14

Prohibition and Elimination of Certain Measures

1. 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 side¹. An import quota applied as a safeguard measure in conformity with the relevant provisions of this Regulation may, by mutual agreement, be administered by the exporting Member. 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 this Regulation shall be brought into conformity with this Regulation or phased out in accordance with paragraph 2.

2. The phasing out of measures referred to in paragraph 1 shall be carried out according to timetables to be presented to the Committee on Trade Remedies by the Members concerned not later than 180 days after the date of entry into force of this Regulation. These timetables shall provide for all measures referred to in paragraph 1 be phased out or brought into conformity with this Regulation within a period not exceeding one year after the date of entry into force of this Regulation. Any such exception must be mutually agreed between the Members directly concerned and notified to the Committee on Trade Remedies for its review and acceptance within 90 days of the entry into force of this Regulation.

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.

Regulation 15

Notification and Consultation

¹ 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.

1. A Member shall immediately notify the Committee on Trade Remedies 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 paragraph 1 (b) and 1(c), the Member proposing to apply or extend a safeguard measure shall provide the COMESA Committee on Trade Remedies 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 Committee on Trade Remedies 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 having a 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 Regulation 8.

4. A Member shall make a notification to the Committee on Trade Remedies before taking a provisional safeguard measure referred to in Regulation 6. Consultations shall be initiated immediately after the measure is taken.

5. The result of the consultations referred to in this Regulation, as well as the results of mid-term reviews referred to in paragraph 4 of Regulation 7, any form of compensation referred to in paragraph 1 of Regulation 8, and proposed suspensions of concessions and other obligations referred to in paragraph 2 of Regulation 8, shall be notified immediately to the Committee by the Members concerned.

6. Members shall notify promptly the Committee on Trade Remedies of their laws, regulations and administrative procedures relating to safeguard measures as well as any modifications made to them.

7. Any Member may notify the Committee on Trade Remedies of all laws, regulations, administrative procedures and any measures or actions dealt with in this Regulation that have not been notified by other Members that are required by this Regulation to make such notifications.

8. Any Member may notify the Committee on Trade Remedies of any non-governmental measures referred to in paragraph 3 of Regulation 9.

9. All notifications on Safeguards shall be made through the Committee on Trade Remedies.

10. The provisions on notification in this Regulation 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.

PART III : ANTI-DUMPING

Regulation 16

Determination of Dumping

16.1 For the purpose of this Regulation, 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.

16.2 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 country¹, 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.

16.3 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 Investigating Authority determine that such sales are made within an extended period of time¹ in substantial quantities² 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.

16.4 For the purpose of paragraph 16.2, costs shall normally be calculated on the basis of records kept by the exporter or producer under investigation, provided that

¹ The extended period of time should normally be one year but shall in no case be less than six months.

² Sales below per unit costs are made in substantial quantities when the investigating authority establish that the weighted average selling price of the transactions under consideration for the determination of the normal value is below the weighted average per unit costs, or that the volume of sales below per unit costs represents not less than 20 per cent of the volume sold in transactions under consideration for the determination of the normal value.

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. The Investigating Authority shall consider all available evidence on the proper allocation of costs, including that which is made 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.

16.5 For the purpose of paragraph 16.2, 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.
- (iv) any other method taking into account the provisions of paragraph 16.8.

16.6 In cases where there is no export price or where it appears to the Investigating Authority concerned that the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party and that as a result the export price may be inflated, the export price may be constructed on the basis of the price at which the imported products are first resold to an independent buyer less the sum of the following amounts:

- (i) The amount of any duties and taxes imposed on the importation of the goods; and
- (ii) The amount of any costs, charges, or expenses arising in relation to the goods after exportation; and
- (iii) The amount of the profit, if any, on the sale by the independent buyer or, an amount calculated based on the rate of profit that would normally be realized by the independent buyer on sales of goods of the same category.

16.7 If the products are not resold to an independent buyer, or not resold in the condition as imported, the export price may be constructed on such reasonable basis as the Investigating Authority may determine.

16.8 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 terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are also demonstrated to affect price comparability. Where the export price has been constructed as in paragraph 7.6, the Investigating Authority 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 Investigating Authority shall indicate to the parties in question what information is necessary to ensure a fair comparison and shall not impose an unreasonable burden of proof on those parties.

16.9 When the comparison under paragraph 16.8 requires a conversion of currencies, such conversion should be made using the rate of exchange on the date of sale³ 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 Investigating Authority 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.

16.10 Subject to the provisions governing fair comparison in paragraph 16.8, 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 Investigating Authority find a pattern of export prices which differ significantly among different purchasers, different places within the exporting country 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.

16.11 In the case where products are not imported directly from the country of origin but are exported to the importing member State from an intermediate country, the price at which the products are sold from the country of export to the importing member State 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,

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Normally, the date of sale would be the date of contract, purchase order, order confirmation, or invoice, whichever establishes the material terms of sale.

or such products are not produced in the country of export, or there is no comparable price for them in the country of export.

16.12 The period of data collection for an investigation into dumping normally should be twelve months, and in any case no less than six months, ending as close to the date of initiation as possible (prior to the date of initiation). The period of data collection for investigating sales below cost under paragraph 16.4, and the period of data collection for an investigation into dumping, normally should coincide in a particular investigation. In all cases the Investigating Authority should set and make known in advance to interested parties, the periods of time covered by the data collection, and may also set certain dates for completing collection and/or submission of data. If such dates are set, they should also be made known to interested parties.

16.13 In establishing the specific periods of data collection in a particular investigation, the Investigating Authority may, if possible, consider practices of firms from which data will be sought concerning financial reporting and the effect this may have on the availability of accounting data. Other factors that may be considered include the characteristics of the product in question, including seasonality and cyclicity, and the existence of special order or customized sales.

Regulation 17

Determination of Injury

17.1 A determination of injury for purposes of this Regulation 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.

17.2 With regard to the volume of the dumped imports, the Investigating Authority 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 State. With regard to the effect of the dumped imports on prices, the Investigating Authority shall consider whether there has been significant price undercutting by the dumped imports as compared with the price of a like product of the importing member State, 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.

17.3 Where imports of a product from more than one country are simultaneously subject to anti-dumping investigations, the Investigating Authority 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 Regulation 16, paragraph 8, 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.

17.4 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.

17.5 It must be demonstrated that the dumped imports are, through the effects of dumping, causing injury within the meaning of this Regulation. 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 Investigating Authority. Where appropriate, the Investigating Authority 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 dumped 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.

17.6 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.

17.7 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. One example, though not an exclusive one, is that there is convincing reason to believe that there will be, in the near future, substantially increased importation of the products at dumped prices. In making a determination regarding the existence of a threat of material injury, the Investigating Authority 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 State'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.

17.8 With respect to cases where injury is threatened by dumped imports, the application of anti-dumping measures shall be considered and decided with special care.

17.9 The data collected for injury investigations normally should be at least for three years, unless a party from whom data is being gathered has existed for a lesser period, and should include the entirety of the period of data collection for the investigation into dumping. In all cases the Investigating Authority should set and make known in advance to interested parties, the periods of time covered by the data collection, and may also set certain dates for completing collection and/or submission of data. If such dates are set, they should also be made known to interested parties.

17.10 In establishing the specific periods of data collection in a particular investigation, the Investigating Authority may, if possible, consider practices of firms from which data will be sought concerning financial reporting and the effect this may have on the availability of accounting data. Other factors that may be considered include the characteristics of the product in question, including seasonality and cyclicity, and the existence of special order or customized sales.

Regulation 18

Initiation and Subsequent Investigation

18.1 Except as provided for in paragraph 16.6, 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.

18.2 An application under paragraph 1 shall include evidence of (a) dumping, (b) injury 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 State;
- (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 of the importing member State 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 17.2 and 17.4 of Regulation 17.

18.3 The Investigating Authority 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.

18.4 An investigation shall not be initiated unless the Investigating Authority has 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.

18.5 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.

18.6 In the case of fragmented industries involving an exceptionally large number of producers, the Investigating Authority may determine support by using statistically valid sampling techniques.

18.7 The Investigating Authority 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 Investigating Authority shall notify the government of the exporting country concerned.

18.8 If, in special circumstances, the Investigating Authority concerned decides to initiate an investigation without having received a written application by or on behalf of a domestic industry for the initiation of such an investigation, it shall proceed only if it has sufficient evidence of dumping, injury and a causal link to justify the initiation of an investigation.

18.9 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 Regulation provisional measures may be applied.

18.10 An application under paragraph 19.1 of this Regulation shall be rejected and an investigation shall be terminated promptly as soon as the Investigating Authority concerned is satisfied that 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 Investigating Authority determines 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 it 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 State, unless countries which individually account for less than 3 per cent of the imports of the like product in the importing member State collectively account for more than 7 per cent of imports of the like product in the importing member State.

18.11 An anti-dumping proceeding shall not hinder the procedures of customs clearance.

18.12 Investigations shall, except in special circumstances, be concluded within one year, and in no case more than 18 months, after their initiation.

Regulation 19

Evidence

19.1 All interested parties in an anti-dumping investigation shall be given notice of the information which the Investigating Authority require and ample opportunity to present in writing all evidence which they consider relevant in respect of the investigation in question.

19.2 Exporters or foreign producers receiving questionnaires used in an anti-dumping investigation shall be given at least 30 days for reply. 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 representative of the exporting Member. 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.

19.3 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.

19.4 As soon as an investigation has been initiated, the Investigating Authority shall provide the full text of the written application received under paragraph 19.1 of Regulation 10 to the known exporters and to the authorities of the exporting Member and shall make it available, upon request, to other interested parties involved. Where the number of exporters involved is particularly high, the full text of the written application may instead be provided only to the Investigating Authority of the exporting Member or to the relevant trade association. Due regard shall be paid to the requirement for the protection of confidential information, as provided for in paragraph 20.5.

19.5 Throughout the anti-dumping investigation all interested parties shall have a full opportunity for the defense of their interests. To this end, the Investigating Authority 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 being shown, to present other information orally.

19.6 Oral information provided under paragraph 20.2 shall be taken into account by the Investigating Authority only in so far as it is subsequently reproduced in writing and made available to other interested parties, as provided for in subparagraph 20.1(i).

19.7 The Investigating Authority 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 20.5, and that is used by the Investigating Authority in an anti-dumping investigation, and to prepare presentations on the basis of this information.

19.8 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 Investigating Authority. Such information shall not be disclosed without specific permission of the party submitting it.

19.9 The Investigating Authority 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.

19.10 If the Investigating Authority finds 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 Investigating Authority may disregard such information unless it can be demonstrated to its satisfaction from appropriate sources that the information is correct.

19.11 Except in circumstances provided for in paragraph 16.8, the Investigating Authority shall, during the course of an investigation, satisfy itself as to the accuracy of the information supplied by interested parties upon which its findings are based.

19.12 In order to verify information provided or to obtain further details, the Investigating Authority may carry out investigations in the territory of other members as required, provided they obtain the permission 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 Investigating Authority shall make the results of any such investigations available, or shall provide disclosure thereof pursuant to paragraph 16.9, to the firms to which they pertain and may make such results available to the applicants.

19.13 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.

19.14 The Investigating Authority 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.

19.15 The Investigating Authority 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 Investigating Authority may limit its 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 Investigating Authority 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. Any selection of exporters, producers, importers or types of products shall preferably be chosen in consultation with and with the consent of the exporters, producers or importers concerned. In cases where the Investigating Authority has limited its examination, as provided for in this paragraph, it 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 Investigating Authority and prevent the timely completion of the investigation. Voluntary responses shall not be discouraged.

19.16 The Investigating Authority 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.

19.17 The Investigating Authority 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.

19.18 The procedures set out above are not intended to prevent the Investigating Authority of a member State 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 Regulation.

Regulation 20

Provisional Measures

20.1 Provisional measures may be applied only if:

- (i) an investigation has been initiated in accordance with the provisions of Regulation 19, 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 Investigating Authority concerned judge such measures necessary to prevent injury being caused during the investigation.

20.2 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 anti-dumping 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 anti-dumping duty be indicated and as long as the withholding of appraisement is subject to the same conditions as other provisional measures.

20.3 Provisional measures shall not be applied sooner than 60 days from the date of initiation of the investigation.

20.4 The application of provisional measures shall be limited to as short a period as possible, not exceeding four months or, on decision of the Investigating Authority concerned, upon request by exporters representing a significant percentage of the trade involved, to a period not exceeding six months. When an Investigating Authority, in the course of an investigation, examines whether a duty lower than the margin of dumping would be sufficient to remove injury, these periods may be six and nine months, respectively.

20.5 The relevant provisions of Regulation 22 shall be followed in the application of provisional measures.

Regulation 21

Price Undertakings

21.1 Proceedings may be suspended or terminated without the imposition of provisional measures or anti-dumping 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 Investigating Authority is satisfied that the injurious effect of the dumping is eliminated. Price increases under such undertakings shall not be higher than necessary to eliminate the margin of dumping. It is desirable that the price increases be less than the margin of dumping if such increases would be adequate to remove the injury to the domestic industry.

21.2 Price undertakings shall not be sought or accepted from exporters unless the Investigating Authority of the importing member State has made a preliminary affirmative determination of dumping and injury caused by such dumping.

21.3 Undertakings offered need not be accepted if the Investigating Authority considers 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 Investigating Authority shall provide to the exporter the reasons which have led it to consider acceptance of an undertaking as inappropriate, and shall, to the extent possible, give the exporter an opportunity to make comments thereon.

21.4 If an undertaking is accepted, the investigation of dumping and injury shall nevertheless be completed if the exporter so desires or the Investigating Authority so decides. 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 Investigating Authority may require that an undertaking be maintained for a reasonable period consistent with the provisions of this Regulation. In the event that an affirmative determination of dumping and injury is made, the undertaking shall continue consistent with its terms and the provisions of this Regulation.

21.5 Price undertakings may be suggested by the Investigating Authority of the importing member State, 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 Investigating Authority is free to determine that a threat of injury is more likely to be realized if the dumped imports continue.

21.6 The Investigating Authority of an importing member State may require any exporter from whom an undertaking has been accepted to periodically provide information relevant to the fulfillment of such an undertaking and to permit verification of pertinent data. In case of violation of an undertaking, the Investigating Authority of the importing member State may take, under this Regulation 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 Regulation 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.

Regulation 22

Imposition and Collection of Anti-Dumping Duties

22.1 The decision whether or not to impose an anti-dumping duty in cases where all requirements for the imposition have been fulfilled, and the decision whether the amount of the anti-dumping duty to be imposed shall be the full margin of dumping or less, are decisions to be made by the Investigating Authority of the importing member State. 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.

22.2 When an anti-dumping duty is imposed in respect of any product, such anti-dumping 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 sources from which price

undertakings under the terms of this Regulation have been accepted. The Investigating Authority 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 Investigating Authority may name the supplying country concerned. If several suppliers from more than one country are involved, the Investigating Authority may name either all the suppliers involved, or, if this is impracticable, all the supplying countries involved.

22.3 Duty shall not exceed the margin of dumping as established under Regulation 16.

22.4 When the Investigating Authority has limited its examination in accordance with Regulation 20, 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 Investigating Authority shall disregard for the purpose of this paragraph any zero and *de minimis* margins and margins established under the circumstances referred to, Regulation 19, paragraph 8. The Investigating Authority 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 Regulation 19, subparagraph 19.15.

22.5 If a product is subject to anti-dumping duties in an importing member State, the Investigating Authority 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 State 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 anti-dumping 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 State.

No anti-dumping duties shall be levied on imports from such exporters or producers while the review is being carried out. The Investigating Authority 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, anti-dumping duties can be levied retroactively to the date of the initiation of the review.

Regulation 23

Retroactivity

23.1 Provisional measures and anti-dumping duties shall only be applied to products which enter for consumption after the time when the decision taken under paragraph 20.1 and paragraph 22.1 respectively, enters into force, subject to the exceptions set out in this Regulation.

23.2 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, anti-dumping duties may be levied retroactively for the period for which provisional measures, if any, have been applied.

23.3 If the definitive anti-dumping 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.

23.4 Except as provided in paragraph 23.2, where a determination of threat of injury or material retardation is made (but no injury has yet occurred) a definitive anti-dumping 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.

23.5 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.

23.6 A definitive anti-dumping 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 Investigating Authority 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 practices dumping and that 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 anti-dumping duty to be applied, provided that the importers concerned have been given an opportunity to comment.

23.7 The Investigating Authority may, after initiating an investigation, take such measures as the withholding of appraisement or assessment as may be necessary to collect anti-dumping duties retroactively, as provided for in paragraph 15.6, once they have sufficient evidence that the conditions set forth in that paragraph are satisfied.

23.8 No duties shall be levied retroactively pursuant to paragraph 23.6 on products entered for consumption prior to the date of initiation of the investigation.

Regulation 24

Duration and Review of Anti-Dumping Duties and Price Undertakings

24.1 An anti-dumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury.

24.2 The Investigating Authority 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 anti-dumping 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 Investigating Authority 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 Investigating Authority determines that the anti-dumping duty is no longer warranted, it shall be terminated immediately.

24.3 Notwithstanding the provisions of paragraphs 24.1 and 24.2, any definitive anti-dumping 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 24.2 if that review has covered both dumping and injury, or under this paragraph), Unless the Investigating Authority determines, in a review initiated before that date 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 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.

24.4 For the purposes of paragraph 24.3, existing anti-dumping measures shall be deemed to be imposed on a date not later than the date of entry into force for a member State of this Regulation, except in cases in which the domestic legislation of a member State in force on that date already included a clause of the type provided for in that paragraph.

24.5 The provisions of Regulation 19 regarding evidence and procedure shall apply to any review carried out under this Regulation. Any such review shall be carried out expeditiously and shall normally be concluded within 12 months of the date of initiation of the review.

24.6 The provisions of this Regulation 21 shall apply *mutatis mutandis* to price undertakings accepted under Regulation 16.

Regulation 25

Public Notice and Explanation of Determinations

25.1 When the investigating Authority is satisfied that there is sufficient evidence to justify the initiation of an anti-dumping investigation pursuant to Regulation 18, the Member or Members the products of which are subject to such investigation and other interested parties known to the Investigating Authority to have an interest therein, shall be notified and a public notice shall be given.

25.2 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;
- (ii) the basis on which dumping is alleged in the application;
- (iii) 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.

25.3 Public notice shall be given of any preliminary or final determination, whether affirmative or negative, of any decision to accept an undertaking pursuant to Regulation 25, of the termination of such an undertaking, and of the termination of a definitive anti-dumping 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 Authority. 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.

25.4 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 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;
- (ii) 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 Regulation 16;
- (iii) considerations relevant to the injury determination as set out in Regulation 17;
- (v) the main reasons leading to the determination.

25.5. 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 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 25.2(i), 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 paragraph 19.15.

25.6 A public notice of the termination or suspension of an investigation following the acceptance of an undertaking pursuant to Regulation 21 shall include, or otherwise make available through a separate report, the non-confidential part of this undertaking.

25.7 In order to increase transparency of proceedings, the Investigating Authority should include in public notices or in the separate reports provided pursuant to 25.2 of the Regulation, an explanation of the reason for the selection of a particular period for data collection if it differs from that provided for in paragraph 16.12 or 17.9 of these Regulations, national legislation, regulation or established national guidelines.

25.8 The provisions of this Regulation shall apply *mutatis mutandis* to the initiation and completion of reviews pursuant to Regulation 24 and to decisions under Regulation 23 to apply duties retroactively.

PART IV : SUBSIDIES AND COUNTERVAILING MEASURES

Regulation 26

Existence of a Subsidy

26.1 For the purpose of this Regulation, a subsidy shall be deemed to exist if there is a financial contribution by a government or any public body within the territory of a foreign government i.e. where:

- (i) government revenue that is otherwise due is foregone or not collected (e.g. fiscal incentives such as tax credits)¹;
- (ii) a government provides goods or services other than general infrastructure, or purchases goods;
- (iii) 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 government;
- (iv) there is any form of income or price support in the sense of Article XVI of GATT 1994;
- (v) a benefit is thereby conferred.

26.2 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 Regulation 2.

Regulation 27

Specific Subsidy

27.1 In order to determine whether a subsidy, as defined in paragraph 1 of Regulation 1, is specific to an enterprise or industry or group of enterprises or industries (referred to in this Regulation as “certain enterprises”) within the jurisdiction of the granting authority, the following principles shall apply:

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 Regulation, 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) 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 conditions² 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 documents, 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), 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 subsidy³. 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.

27.2 Any subsidy falling under the provisions of Regulation 3 shall be deemed to be specific.

27.3 Any determination of specificity under the provisions of this Regulation shall be clearly substantiated on the basis of positive evidence.

Regulation 28

Application of Article VI of GATT 1994

Member States shall take all necessary steps to ensure that the imposition of a countervailing duty on any product of the territory of any member State imported into the territory of another member State is in accordance with the provisions of Article VI of GATT 1994 and the terms of this Regulation. Countervailing duties may only be imposed pursuant to investigations initiated and conducted in accordance with the provisions of this Regulation and the Regulation on Agriculture.

Regulation 29

Initiation and subsequent Investigation

29.1 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 behalf of the domestic industry.

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 as number of employees or size of enterprise.

³ In this regard, in particular, information on the frequency with which applications for a subsidy are refused or approved and the reasons for such decisions shall be considered.

29.2 An application under paragraph 1 shall include sufficient evidence of 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 Regulation and (c) causal link between the subsidized 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 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 Regulation 35.

29.3 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.

29.4 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 the 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.

29.5 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.

29.6 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 the existence of a subsidy, injury and causal link, as described in paragraph 2, to justify the initiation of an investigation

29.7 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 Regulation provisional measures may be applied.

29.8 In cases where products are not imported directly from the country of origin but are exported to the importing member State from an intermediate country, the provisions of this Regulation shall be fully applicable and the transactions or transaction shall, for the purposes of this Regulation, be regarded as having taken place between the country of origin and the importing member State.

29.9 An application under paragraph 1 shall be rejected and an investigation shall be terminated promptly as soon as the authorities concerned are that satisfied there is not sufficient evidence of either subsidization or of injury to justify proceeding with the case. Any countervailing duty investigation 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 State, unless imports from member States 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 State.

29.10 An investigation shall not hinder the procedures of customs clearance

29.11 Investigation shall, except in special circumstances, be concluded within one year, and in no case more than 18 months, after their initiation.

Regulation 30

Evidence

30.1 Interested member State and all interested parties in a countervailing duty investigation shall be given notice of the information which the authorities require ample opportunity to present in writing all evidence which they consider relevant in respect of the investigation in question.

30.2 Exporters, foreign producers or interested member State receiving questionnaires used in a countervailing duty investigation shall be given at least 30 days for reply.⁴ 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.

⁴ 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 on week from the date on which it was sent the respondent or transmitted to the appropriate diplomatic representatives of the exporting Member State or, in the case of a separate customs territory Member State, an official representative of the exporting territory.

30.3 Subject to the requirement to protect confidential information, evidence presented in writing by one interested member State or Interested party shall be made available promptly to other interested member States or interested parties participating in the investigation.

30.4 As soon as an investigation has been initiated, the authorities shall provide the full text of the written application received under paragraph 1 of Regulation 11 to the known exporters⁵ and to the authorities of the exporting Member State 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.

30.5 Interested member States and interested parties also shall have the right, upon justification, to present information orally. Where such information is provided orally, the interested member States 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 argument as were on the written record of this authority and which were available to interested Member States and interested parties participation in the investigation, due account having been given to the need to protect confidential information.

30.6 The authorities shall whenever provide timely opportunities for all interested member States 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.

30.7 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.

30.8 The authorities shall require interested member States 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 member States 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.

30.9 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 correct⁶.

⁵ 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 State or to relevant trade association who then should forward copies to the exporters concerned.

⁶ Member States agree that requests for confidentiality should not be arbitrarily rejected. Member States further agree that the investigating authority may request the waiving of confidentiality only regarding information relevant to the proceedings.

30.10 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 member States or interested parties upon which their findings are based.

30.11 The investigating authorities may carry out investigations in the territory of other member States as required, provided that they have notified in good time the member State in question and unless that member State 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 State in question is notified and does not object. The procedures set forth in 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.

30.12 In cases in which any interested member State 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.

30.13 The authorities shall, before a final determination is made, inform all interested member States 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.

30.14 For the purposes of this Regulation, "interested parties" shall include:

- (i) an export or foreign producer or the importer of a product subject to investigation, or a trade or business association a majority of the member States of which are producers, exporters or importers of such product; and
- (ii) a producer of the like product in the importing member State or a trade and business association a majority of the member States of which produce the like product in the territory of the importing member State. This list shall not preclude member States from allowing domestic or foreign parties other than those mentioned above to be included as interested parties.

30.15 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.

30.16 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.

30.17. The procedures set out above are not intended to prevent the authorities of a member State 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 Regulation.

Regulation 31

Consultations

31.1 As soon as possible after an application under Regulation 9 is accepted, and in any event before the initiation of any investigation, member States 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 Regulation 29 and arriving at mutually agreed solution.

31.2 Furthermore, throughout the period of investigation, member States 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.

31.3 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 State from proceeding expeditiously with regard to initiating the investigation, reaching preliminary or final determinations, whether affirmative or negative, or from applying provisional or final measures, in accordance with the provisions of this Regulation .

31.4 The member State which intends to initiate any investigation or is conducting such an investigation shall permit, upon request, the member State or member States 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.

Regulation 32

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 Regulation 26 shall be provided for in the national legislation or implementing regulations of the member State 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 State;
- (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 difference 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 condition of purchase or sale).

Regulation 33

Determination of Injury

33.1 A determination of injury for purposes of Regulation 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 and (b) the consequent impact of these imports on the domestic producers of such products.

33.2 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 State. With regard to the effect of the subsidized imports on 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 State, 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.

33.3 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 29 of Regulation 9 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.

33.4 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 or 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 programs. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.

33.5 It must be demonstrated that the subsidized imports are, through the effects⁷ of subsidies, causing injury within the meaning of this Regulation. 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

⁷ As set forth in paragraphs 2 and 4.

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.

33.6 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.

33.7 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 there from;
- (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 State'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.

33.8 With respect to cases where injury is threatened by subsidized imports, the application of countervailing measures shall be considered and decided with special care

Regulation 34

Domestic Industry

34.1 For the purposes of this Regulation, 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 of collective output of the products constitutes a major proportion of the total domestic production of those products, except that when producers are related⁸ to the exporters 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.

34.2 In exceptional circumstances, the territory of a member State 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.

34.3 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 State may levy the countervailing duties without limitation only if (a) the exporters shall have been given an opportunity to cease exporting at subsidized prices to the area concerned or otherwise give assurances pursuant to Regulation 16, 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.

34.4 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.

34.5 The provision of paragraph 6 of Regulation 13 shall be applicable to this Regulation.

Regulation 35

Provisional Measures

35.1 Provisional measures may be applied only if:

- (a) an investigation has been initiated in accordance with the provisions of Regulation 29, a public notice has been given to that effect and

⁸ 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 concerned to 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 the latter.

interested Member States and interested parties have 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.

35.2 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.

35.3 Provisional measures shall not be applied sooner than 60 days from the date of initiation of the investigation.

35.4 The application of provisional measures shall be limited to as short a period as possible, not exceeding four months.

35.5 The relevant provisions of Regulation 37 shall be followed in the application of provisional measures.

Regulation 36

Undertakings

36.1 Proceedings may 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 State 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 investigation 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.

36.2 Undertakings shall not be sought or accepted unless the authorities of the importing member State 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 State.

36.3 Undertakings offered need not be accepted if the authorities of the importing member State 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 in appropriate, and shall, to the extent possible, give the exporter an opportunity to make comments thereon.

36.4 If an undertaking is accepted, the investigation of subsidization and injury shall nevertheless be completed if the exporting member State so desires or the importing member State so decides. In such a case, if a negative determination of subsidization or injury is made, the undertaking shall automatically lapse, except in

cases such a determination is due in large part to the existence of an undertaking. In such cases, the authorities concerned may require that an undertaking be maintained for a reasonable period consistent with the provisions of this Regulation. 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 Regulation.

36.5 price undertakings may be suggested by the authorities of the importing member State, 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.

36.6 authorities of an importing member State 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 State may take, this Regulation 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 Regulation 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.

Regulation 37

Imposition and Collection of Countervailing Duties

37.1 If, after reasonable efforts have been made to complete consultations, a member State 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 Regulation unless the subsidy or subsidies are withdrawn

37.2 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 State. It is desirable that imposition should be permissive in the territory of all member State, 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 parties⁹ whose interests might be adversely affected by the imposition of a countervailing duty.

37.3 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 Regulation have been accepted. Any exporter whose exports are subject to a

⁹ For the purpose of this paragraph, the term “domestic interested parties“ shall include consumers and industrial users of the imported product subject to investigation.

definitive countervailing duty but who was not actually investigated for reasons other than a refusal to cooperate, shall be entitled to an expedited review in order that the investigating authorities promptly establish an individual countervailing duty rate for that exporter.

37.4 No countervailing duty shall be levied¹⁰ 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.

Regulation 38

Retroactivity

38.1 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 Regulation 35 and paragraph 1 of Regulation 37, respectively, enter into force, subject to the exceptions set out in this Regulation.

38.2 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 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.

38.3 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

38.4 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.

38.5 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.

38.6 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 Regulation 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.

Regulation 39

Duration and Review of Countervailing Duties and Undertakings

¹⁰ As used in this Regulation "levy" shall mean the definitive or final legal assessment or collection of a duty or tax.

39.1 A countervailing duty shall remain in force only as long as and to the extent necessary to counteract subsidization which is causing injury.

39.2 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 right to 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 not longer warranted, it shall be terminated immediately.

39.3 Notwithstanding the provision 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. The duty may remain in force pending the outcome of such a review.

39.4 The provisions of Regulation 30 regarding evidence and procedure shall apply to any review carried out under this Regulation. Any such review shall be carried out expeditiously and shall normally be concluded within 12 months of the date of initiation of the review.

39.5 The provisions of these Regulations shall apply *mutatis mutandis* to undertakings accepted under Regulation 36.

Regulation 40

Public Notice and Explanation of Determinations

40.1 When the authorities are satisfied that there is sufficient evidence to justify the initiation of an investigation pursuant to Regulation 29, the member State or member States 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.

40.2 A public notice of the initiation of an investigation shall contain, or otherwise make available through a separate report, adequate information on the following:

- (ii) the name of the exporting country or countries and the product involved;
- (iii) the date of initiation of the investigation;
- (iv) a description of the subsidy practice or practices to be investigated;
- (v) a summary of the factors on which the allegation of injury is based;
- (vi) the address to which representations by interested member States and interested parties should be directed; and

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

40.3 Public notice shall be given of any preliminary or final determination, whether affirmative or negative, of any decision to accept an undertaking pursuant to Regulation 36, 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 State or member States the products of which are subject to such determination or undertaking and to other interested parties known to have an interest therein.

40.3 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;
- (iii) considerations relevant to the injury determination as set out in Regulation 33;
- (v) the main reasons leading to the determination.

40.5 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 member States and by the exporters and importers.

40.6 A public notice of the termination or suspension of an investigation following the acceptance of an undertaking pursuant to Regulation 36 shall include, or otherwise make available through a separate report, the non-confidential part of this undertaking.

40.7 The provisions of this Regulation shall apply *mutatis mutandis* to the initiation and completion of reviews pursuant to Regulation 39 and to decisions under Regulation 38 to apply duties retroactively.

PART V: DISPUTE SETTLEMENT

Regulation 41

Scope and Application

These Regulations shall apply to disputes concerning, interpretation, application or violation of any provision of the regulations on safeguards, anti-dumping and subsidies and countervailing duties among COMESA member States.

Regulation 42

Consultations

42.1 Any dispute between member States relating to the application of trade remedies shall, as much as possible, be settled amicably among the member States involved.

42.2 Either Party can request the use of the good offices of the Secretary General to facilitate in the resolution of the issue.

42.3 Upon a request for consultations, the member State to which the request for consultations is made shall, reply to the request within a period of 14 days after the date of its receipt, and shall enter into consultations within a period of not more than 21 days after the date of receipt of the request, with a view to reaching a mutually satisfactory solution to the dispute.

42.3 If the other party does not respond within 14 days, or does not enter into consultations within a period of not more than 21 days, after the date of receipt of the request, then the member States that requested the holding of consultations may refer the matter to the Secretary General for establishment of a Dispute Panel of Trade Experts.

42.4 The Secretary General shall within a period of 21 days from the date of the receipt of a request from a party to the dispute call for the establishment of a panel of trade experts to resolve the issue.

Regulation 43

Composition of the Dispute Panel of Trade Experts

43.1 The Panel shall be composed of three Trade Experts who shall be neutral and with sufficient background and experience in trade remedies.

43.2 The complaining and defending parties to the dispute shall select one trade expert each to the Panel.

43.3 The third expert shall be mutually agreed upon by both parties.

43.4 If the parties fail to mutually agree on the third expert, the latter shall be selected by the Secretary General.

Regulation 44

Panel Procedures

44.1 Unless the parties to the dispute agree otherwise within a period of 14 days from the composition of the Panel, the Panel shall proceed to consider the matter with regards to factual and legal aspects of the dispute in accordance with relevant regulations.

44.2 The parties to the dispute shall supply within a period of 21 days all documents and/or information to the Panel. The documents and/or information so supplied shall also be supplied, at the same time, to the other party to the dispute and to the Secretary General

44.3 Due regard shall be paid to the confidentiality of documents so supplied to the Panel.

44.4 Upon request by any party to the dispute during the arbitration proceedings, the Panel shall hear evidence, oral or written, from any witness including experts invited by any party to the dispute.

44.5 The Panel shall consider the submissions from the parties to the dispute and any expert witness(es) and may request additional information or clarification from the parties to the dispute or the Secretary General and make its findings and recommendation(s).

44.6 The Dispute Panel shall hold its first sitting within a period of fourteen (14) days from the date of acceptance to serve on the Panel by the last panelist and shall, unless otherwise constrained, complete its task and submit its findings and recommendation(s) to the parties to the disputes and the Secretary General within a period of thirty (30) days from date of its first sitting.

Regulation 45

Appeals Against Findings and Recommendations of the Panel

If any party to the dispute is dissatisfied with the findings and recommendations(s) of the Panel, the party shall, within 45 days of the submission of the findings and recommendations to the Parties and the Secretary General refer the matter to the COMESA Court of Justice for arbitration under Article 28 of the Treaty.

Regulation 46

Services of Documents

46.1 Service of documents under these regulations shall be effected by courier.

46.1 Service shall be deemed to be effective 7 days after the documents have been submitted to the courier for dispatch.

Regulation 47

Third Party Rights

Any Third Party having an interest in a matter before a Panel shall notify the Secretary General of its interest and submit its written submissions to the Panel within a period of 14 days from the date of its establishment.

Regulation 48

Miscellaneous

Provisions of this mechanism shall be interpreted in accordance with the COMESA Treaty.

PART VI : GENERAL

Regulation 49

Surveillance

49.1 A COMESA Group of Experts on Trade Remedies (referred to in this Regulation as the "Group on Trade Remedies") is hereby established, composed of representatives of each of the Member states.

49.2 The Group on Trade Remedies shall elect its own Chairman and shall establish its own rules of procedures for conducting its own meetings. In respect of safeguard issues, the Group on Trade Remedies will have the following functions:

- (a) to monitor, and report annually to the Trade and Customs Committee on the general implementation and operation of this Regulation and make recommendations towards its improvement;
- (b) to find, upon request of an affected Member, whether or not the procedural requirements of this Regulation have been complied with in connection with a safeguard measure, and report its findings to the Committee;
- (c) to assist Members, if they so request, in their consultations under the provisions of this Regulation;
- (d) 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 Committee;
- (e) examine existing safeguard measures and monitor the phase-out of such measures as appropriate.
- (f) to receive and review all notifications provided for in this Regulation and report as appropriate to Trade and Customs Committee; and
- (g) to perform any other function connected with this Regulation that the Trade and Customs Committee may determine.

49.3 To assist the Group of Experts on Trade Remedies in carrying out its surveillance function, the Secretariat shall prepare annually a factual report on the operation of this Regulation based on notifications and other reliable information available to it.

49.4 The COMESA Committee on Trade Remedies shall examine new and full notifications submitted at special sessions held every third year. Notifications submitted in the intervening years (up-dating notifications) shall be examined at each regular meeting of the Committee.

49.5 The COMESA Committee on Trade Remedies shall examine reports submitted at each regular meeting of the Committee.

Regulation 50

Judicial Review

Each member State 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. Such tribunals or procedures shall be independent of the Investigating Authority in the Member State responsible for the determination or review in question.

Regulation 51

Existing Trade Remedy Measures

51.1 Existing trade remedy measures which have been established within the territory of any member State before the date on which such a member State signed the Regulation and which are inconsistent with the provisions of this Regulation shall be:

- (a) notified to the COMESA Committee on Trade Remedies not later than 90 days after the date of entry into force of the Regulation for such member State; and
- (b) brought into conformity with the provisions of this Regulation within three years of the date of entry into force of the Regulation for such member State and until then shall not be subject to Part II.

51.2 No member State shall extend the scope of any such measure, nor shall such a measure be renewed upon its expiry.

Regulation 52

Other Final Provisions

52.1 Reservations may not be entered in respect of any of the provisions of this Regulation without the consent of the other member States.

52.2 Subject to paragraph 3, provisions of this Regulation 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 State of the Regulation.

52.3 For the purposes of paragraph 3 of Regulation 39, existing countervailing measures shall be deemed to be imposed on a date not later than the date of entry into force for a member State of the Regulation, except in cases in which the domestic legislation of a member State in force at that date already included a clause of the type provided for in that paragraph.

52.4 Each member State shall take all necessary steps, of a general or particular character, to ensure, not later than the date of entry into force of the Regulation for it, the conformity of its laws, regulations and administrative procedures with the provisions of this Regulation as they may apply to the member State in question.

52.5 Each member State shall inform the COMESA Committee on Trade Remedies of any changes in its laws and regulations relevant to this Regulation and in the administration of such laws and regulations.

52.6 The COMESA Committee on Trade Remedies shall review annually the implementation and operation of this Regulation, taking into account the objectives thereof. The Committee shall inform annually the Secretary General of development during the period covered by reviews.

52.7 The Annexes to this Regulation constitute an integral part thereof.

Regulation 53

Entry into Force

These Regulations shall come into force on the date they are adopted by the Council of Ministers.

Annex 1

PROCEDURES FOR ON-THE-SPOT INVESTIGATIONS PURSUANT TO PARAGRAPH 7 OF REGULATION 19

1. Upon initiation of an investigation, the authorities of the exporting country 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 country 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 country before the visit is finally scheduled.
4. As soon as the agreement of the firms concerned has been obtained, the Investigating Authority should notify the authorities of the exporting country 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 Investigating Authority of the importing member State notifies the representatives of the exporting member country 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 country is informed by the Investigating Authority 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. Inquiries or questions put by the Investigating Authority or firms of the exporting country 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 REGULATION 19

1. As soon as possible after the initiation of the investigation, the Investigating Authority 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 Investigating Authority should also ensure that the party is aware that if information is not supplied within a reasonable time, the Investigating Authority 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 Investigating Authority may also request that an interested party provide its response in a particular medium (e.g. computer tape or floppy disk) or computer language. Where such a request is made, the Investigating Authority 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 already 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.
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 Investigating Authority, should be taken into account when determinations are made. If a party does not respond in the preferred medium or computer language but the Investigating Authority finds 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 Investigating Authority does not have the ability to process information if provided in a particular medium (e.g. computer tape or floppy disk), the information should be supplied in the form of written material or any other form acceptable to the Investigating Authority.
5. Even though the information provided may not be ideal in all respects, this should not justify the Investigating Authority 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 therefore, 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 Investigating Authority as not being satisfactory, the reasons for the rejection of such evidence or information should be given in any published determinations.
7. If the Investigating Authority has to base its 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 Investigating Authority should, where practicable, check the information from other independent sources at

its 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 Investigating Authority, this situation could lead to a result which is less favourable to the party than if the party did cooperate.

Annex III

ASSESSMENT OF ANTI-DUMPING DUTIES PURSUANT TO PARAGRAPH 3 OF REGULATION 22

1. When the amount of the anti-dumping duty is assessed on a retrospective basis, the determination of the final liability for payment of anti-dumping 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 anti-dumping 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 sub-paragraph. In any case, where a refund is not made within 90 days, the Investigating Authority shall provide an explanation if so requested.

2. When the amount of the anti-dumping 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 anti-dumping duty. The refund authorized should normally be made within 90 days of the above-noted decision.

3. In determining whether and to what extent a reimbursement should be made when the export price is constructed in accordance with Article 7, paragraph 7.3, the Investigating Authority 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 anti-dumping duties paid when conclusive evidence of the above is provided.

This Regulation shall come into force on the date it is adopted by the Council of Ministers.

Annex IV

COMESA SECRETARIAT

[Insert COMESA member
country file reference
and date of return]

Committee on Trade Remedies

Original: English

**SEMI-ANNUAL REPORT UNDER
REGULATION 24.4 OF THE REGULATIONS**

[INSERT COMESA MEMBER COUNTRY NAME]

Reproduced herewith is the semi-annual report for the period
[DAY,MONTH,YEAR]-[DAY,MONTH,YEAR] from [INSERT COMESA
MEMBER COUNTRY NAME].

Reporting Country: [INSERT COMESA MEMBER COUNTRY NAME]

SEMI-ANNUAL REPORT OF ANTI-DUMPING ACTIONS
For the period [INSERT DAY,MONTH,YEAR]-[INSERT DAY,MONTH,YEAR]

Country/ Customs territory	Product	Initiation*	Provisional measures/ determinations	FINAL MEASURES		NO FINAL MEASURES				Trade volume**	Dumped imports as % of domestic consumption	% of trade volume investigated (of the exporting country)	Basis of determination
				Definitive Duty	Price undertaking	No dumping	No injury	Case withdrawn	Other				
1	2	3	4	5	6	7	8	9	10	11	12	13	14
		Date	Date, dumping margin ¹	Date, dumping margin ¹	Date, dumping margin ¹	Date	Date	Date	Date	\$000			

The symbol (R) is used if an investigation is opened in the context of a review of an existing measure, or after an allegation of a breach of an undertaking.

Trade volume based on statistical data for the latest calendar year prior to initiation. Trade volume is provided for the total trade volume of the subject goods from the country/customs territory under investigation.

CF = Information not provided for reasons of confidentiality.

n/a = Not available.

Average percentage or amount per unit if appropriate. NV - based on the difference between the normal value and the export price; NIFOB - based on the difference between a non-injurious price and the export price.

Basis for determination codes:

- HM - Home market price
- TM - Third country market price (specify country)
- CV - Constructed value
- SP - Prices charged by same producer
- OP - Prices charged by other producer
- OPT - Prices charged by other producer in third country
- OCT - Costs of other producer in third country
- O - Other (specify)
- LDC - Treatment having regard to Article 15 of the Agreement
- FA - Facts available

Annex IV.1

DEFINITIVE DUTIES IN FORCE
(As of DAY,MONTH,YEAR)

Country/customs territory	Product	Date of Imposition (Review)
		XX,XX,XX (XX,XX,XX)

Annex IV.2

UNDERTAKINGS IN FORCE
(As of DAY,MONTH,YEAR)

Country/customs territory	Product	Date of Imposition (Review)

Annex 2

REVOCATION OF ANTI-DUMPING MEASURES
(DAY,MONTH,YEAR-DAY,MONTH,YEAR)

Country/customs territory	Product	Date of revocation

ANNEX V

CALCULATION OF THE TOTAL AD VALOREM SUBSIDIZATION

1. Any calculation of the amount of a subsidy for the purpose of paragraph 1 (a) of Article 26 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% of the value of the product, the value of the product shall be calculated as the total value of the recipient firm's sales in the most recent 12-month period, for which sales data is available, preceding the period in which the subsidy is granted.
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 in 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 in the overall rate of subsidization exceeds 15% of the total funds invested. For purposes of this paragraph, a start-up period will not extend beyond the first year of production¹¹
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.
6. In determining the overall rate of subsidization in a given year, subsidies given under different programs and by different authorities in the territory of a Member State shall be aggregated.
7. Subsidies granted prior to the date of entry into force of the Regulation, the benefits of which are allocated future production, shall be included in the overall rate of subsidization.

¹¹ **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.**

ANNEX VI

PROCEDURES FOR ON-THE-SPOT INVESTIGATIONS PURSUANT TO

PARAGRAPH 6 OF ARTICLE 30

1. Upon initiation of an investigation, the authorities of the exporting Member State and the firms known to be concerned should be informed of the intention to carry out-on the-spot investigation.
2. If in exceptional circumstances it is intended to include non-government team, the firms and the authorities of the exporting member State 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 Regulation of the firms concerned in the exporting Member State before the visit is finally scheduled.
4. As soon as the Regulation of the firms concerned has been obtained, the investigating authorities should notify the authorities of the exporting Member State of the names and addresses of the firms to be visited and the dates agreed.
5. Sufficient advance notice should be given to the firm 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 State notify the representatives of the government of the Member State 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 State 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 firm concerned of the general nature of the information to be verified and of any further information which needs to be provided, through this should not preclude requests to be made on the spot for further details to be provided in the light of information obtained.

8. Inquiries or questions put by the authorities or firms of the exporting Member States and essential to a successful on-the-spot investigation should, whenever possible, be answered before the visit is made.

PART B
MANUAL OF GUIDELINES

I. GENERAL GUIDELINES FOR THE APPLICATION OF TRADE REMEDIES

- (1) Each Member state shall establish a permanent and independent body to conduct fairly and objectively trade remedies investigation.

- (2) Each Member State shall inform promptly the COMESA Trade Remedies Committee of their laws, regulations, administrative procedures and its concerned body referred to in paragraph 1, relating to trade remedies and any changes occurred in it.
- (3) Each Member State shall report without delay, on a semi-annual basis of any trade remedies actions taken within the preceding six –months to the COMESA Committee on Trade Remedies for inspection by other member states.
- (4) Each member State shall notify the COMESA Trade Remedies Committee of any subsidy programmes granted or maintained within their territories.
- (5) Each member State may, at any time, make a written request for information on the nature and extent of any subsidy granted or maintained by another member, or for an explanation of the reasons for which a specific measure is considered as not subject to the requirement of notification.
- (6) Each member state shall maintain judicial, arbitral or administrative tribunals or procedures for the purpose of the prompt review of administrative actions relating to final determinations or reviews. Such tribunals or procedures shall be independent of the investigating authority in the member state.
- (7) Subject to the requirement to protect confidential information, the Investigating Authority shall make available all information and data, relevant to the investigation, to all the parties concerned. The Investigating Authority shall disclose the confidential information to the person or the entity requesting for such information upon written permission from the party providing such information.
- (8) The initiation of the investigation:
 - (i) The Investigating Authority shall initiate the investigation upon a written complaint, submitted by or on behalf of the domestic industry, Chamber of the Industries concerned, Federation of Industries, Producers Associations according to Annex I in this Guideline.
 - (ii) The Investigating Authority may also after approval of the Minister concerned, initiate an investigation without having received a written application if they have sufficient evidence of dumping, subsidy or unjustifiable increase of imports.
 - (iii) The applicant shall attach a non-confidential summary to the complaint, in sufficient details to permit a reasonable understanding of substance of the information submitted in confidence.

- (iv) The Investigating Authority shall examine whether the complaint contains sufficient evidence to justify the initiation of the investigation, and in case of the acceptance of the complaint, the investigating authority shall notify both the applicant and the concerned parties in the foreign countries within seven working days from the date of receiving the complaint.
- (v) The Investigating Authority may ask the applicant to provide information required to consider the acceptance of the complaint. The complaint shall be registered promptly after acceptance.
- (vi) The Investigating Authority shall examine the accuracy and adequacy of the evidence provided within thirty days from the date of registering the complaint and then submit a preliminary report to the concerned Minister if accepted to initiate the investigation.
- (vii) The Investigating Authority shall notify the applicant of the reasons why the application was rejected within no more than seven days of the Ministerial determination.
- (viii) The Investigating Authority shall publish the notice of the initiation of an investigation in the Official Gazette. The notice shall include:
 - Names of the countries or origin or export of the product under investigation.
 - A description of the product under investigation.
 - A description of the allegations and practices under investigation.
 - A summary of the basis for alleged injury.
 - Time limits for other interested parties to submit their comments.
 - The address the interested parties should send their replies to.

(7) Procedures of Investigation

- (i) In cases where the number of the parties concerned or the types of products involved is so large as to make such investigation impracticable, the investigating authority may limit their investigation to a representative sample of the parties or types of products involved.

- (ii) The Investigating Authority shall send all known interested parties and the representatives of the exporting countries a copy of the non-confidential version of the application, the notice of initiation and questionnaires as mentioned in annex (2) to get the data necessary for the investigation. The parties concerned should send their responses within 37 days from the date of receiving the questionnaires. This period may be extended upon written Authority from the investigating authority on application by the party concerned stating the reasons for the extension
- (iii) The Investigating Authority shall provide fair opportunity for all parties concerned to defend their interests during the period of investigation and may, upon request hold hearings for the interested parties to present their views and arguments. All interested parties can present verbal information during the hearings. However, this information shall not be taken into consideration unless it is provided in writing later on.
- (iv) The Investigating Authority may conduct on-the-spot verification visits inside and outside the country to verify the information provided and to obtain the information and data required for the investigation as referred to Annex 1 in the anti-dumping regulation.
- (v) The Investigating Authority shall, where conditions of an injurious practice in trade are met or not, prepare a preliminary report of the investigation within three months from the date of the notice of initiation.
- (vi) Investigation shall be terminated if the Investigating Authority finds no sufficient evidence of injurious practices, injury or causal link and shall publish its conclusion in the Official Gazette and notify all parties.
- (vii) The Investigating Authority shall verify that the injury suffered by the industry is caused by the injurious practices.
- (viii) The Minister concerned may impose upon the Investigating Authority report provisional measures retroactively
- (ix) In case of absence of the data required, failure to submit data within the time limit or non-co-operation with the Investigating Authority, the Investigating Authority may proceed with the investigation and come to conclusions according to the information available
- (x) The Investigating Authority shall prepare a report to recommend the termination of the investigation in Trade Remedies, and also the reasons justifying the termination.

(8) Provisional Measures

- Provisional measures may take the form of cash deposit, which is not greater than provisionally estimated margin of dumping, the amount of subsidy and unjustifiable increase of imports in safeguard. Such provisional measures shall not be applied sooner than 60 days from the date of initiation of dumping and subsidy investigation.
- The duration of the provisional measures applied for a period will not exceed four months to both dumping and subsidy, and will not exceed 200 days to safeguard.

(9) Definitive Measures

- The amount of definitive duties shall not exceed the margin of dumping, or the amount of the subsidy calculated for unit under investigation and in case of safeguard definitive measure shall be applied to the extent necessary to prevent or remedy the serious injury caused to the domestic industry.
 - Definitive duties for anti-dumping and subsidy shall be imposed for a period which will not exceed 5 years from the date of publishing the final determination of imposition in the Official Gazette, while definitive safeguard duties shall be applied for four years which may be extended to not more than 8 years including the period of application of provisional measures.
 - No safeguard measure shall be applied to the imports of a product, which has been previously subject to a safeguard measure, provided that the period of non-application is at least two years.
 - When a certain product is subject to anti-dumping or subsidy investigation at the same time, one type of duty shall be imposed.
- (10) Investigation procedures shall not prevent clearance of consignments of the subject goods from customs.
- (11) The Investigating Authority shall be required to complete the investigation within 12 months from the date of initiation. The Minister may extend this period, upon recommendation by the Investigating Authority for another period of no more than six months.
- (12) The concerned Minister shall impose price undertakings according to the COMESA Trade Remedies Regulations.
- (13) Review of Definitive Duties

- (a) The Investigating Authority should review the need for the continued imposition of the duty, upon request by any interested party (or submits positive information substantiating the need for a review).
- (b) If as a result of the review the Investigating Authority determines that the definitive duties are no longer warranted, they shall be terminated without delay.
- (c) The Investigating Authority may give notice to initiate a new investigation or a review of the measures in force if it finds that there is circumvention, which affects the effectiveness of these measures

(14) Confidentiality

All persons and bodies shall be required to protect the confidentiality of information and data in cases where it is necessary for the purpose of investigation or appeal, to have access to such information.

- (15) Where a decision by the dispute settlement panels of COMESA or a final judgement is issued for termination of any measures taken in accordance with the provisions of this regulation, the concerned Minister may terminate these measures or give directions to the Investigating Authority to reconsider these measures in the light of recommendations made by the dispute settlement panels or the final judgements.

Annex 1

**The complaint of Anti-dumping,
Anti-subsidy, safeguard.**

- 1. Requesting an initiation of an investigation of Anti-dumping, Anti-subsidy, safeguard.

2. The Applicants:

Names: _____

Certificate of incorporation No: _____

Addresses

Physical _____

Mail : _____

Telephone: _____

Fax: _____

E-mail _____

3. Description to the product concerned and its code number in H.S.

4. The country of origin or the producing country.

5. The foreign exporters and the foreign producers of the product concerned.

6- Proportion of applicants' production to the total of the country's domestic industry of the product in question.

7- Supporting to this complaint, attach the evidence of the following items:

- (i) Dumping, subsidy, safeguard
- (iii) The injury.
- (iv) The causal link.
- (v) The complaint submitted by or on behalf of the domestic industry

Questionnaire

This questionnaire has to be completed twice, once as the confidential version and once as the non-confidential version.

Annex (2)

Questionnaires

The content of these forms is organized according to the nature of the respondent. The investigator must select the questions which apply to the particular investigation in which he or she is engaged, fill in the blanks and italicized data and add or rephrase questions to obtain the information needed. There is no standard questionnaire just as there is no standard investigation. Before beginning to assemble the questionnaire, the investigator should study the sections of the manual on research and decision-making in the Chapter on the Investigation Process and the Chapter on Normal Value, Export Price and Subsidy Calculations. Following this, the investigators (unfair trade practice and injury) must decide what particular information is important in this investigation and how to go after it, i.e. what questions to ask and how to ask them. REMEMBER, THIS MAY BE THE ONLY CHANCE THAT YOU WILL HAVE TO OBTAIN WRITTEN INFORMATION FROM SOME SOURCES. USE IT WELL. AN HOUR SPENT IN THOUGHT BEFORE YOU DECIDE ON THE QUESTIONS (INCLUDING WHAT YOU WILL DO WITH THE ANSWER) MAY SAVE YOU MANY HOURS WHEN YOU WORK ON THE CALCULATION OF MARGINS OR COMPILE AND ANALYZE THE INFORMATION FOR THE STAFF REPORT.

Each page of the questionnaire must be clearly headed by the classification that the investigator believes is justified by the answer sought. Confidential and non-confidential information must not be sought on the same page. The responder to the questionnaire is free to change the classification of any answer if he or she does not agree. The Investigating Authority will not question any decision to down-grade an answer from confidential to non-confidential. However, the Investigating Authority must be persuaded that the reverse is justified (see Chapter on Treatment of Confidential Information). The exporters' questionnaire is organized differently and respondents are required to provide separate confidential and non-confidential replies. Otherwise, the same rules apply.

Generally, the questionnaires for domestic manufactures will be the same, regardless of the trade remedy involved. Since the Investigating Authority is interested in injury and causality and these questions are basically the same whether it is investigating dumping, subsidy or safeguard complaints. The same applies to Purchasers' (major retailers, industrial users) questionnaires. The questionnaires to importers will have many common questions because they will deal with the injury issues and price effects, regardless of the nature of the investigation but may also ask additional questions in dumping investigations in case the export price has to be calculated.

The questionnaires to exporters will change depending on the kind of investigation. In a dumping investigation, the focus is on questions related to normal

value and export price in addition to volume and value of exports questions, and questions like production capacity and utilization and inventories which may relate to future injury. In a subsidy investigation the focus is on the receipt of and benefit from subsidies and how they affected the company (and you will have to design the questionnaire for each case), in addition to questions on exports, production capacity and utilization and inventories. In safeguard investigations, the focus is essentially in volume and value of exports and other questions which may relate to future injury.

Questionnaires are only sent to exporting governments in the case of subsidy investigations. They must be specifically tailored to the subsidies alleged in the complaint and any other subsidies that the Investigating Authority suspects may be benefiting the exporter.

Some of the questions in these sets of questionnaires are numbered and some are not numbered.

The numbers of the questions are only intended to provide the general order of the questions in a questionnaire. When the Investigating Authority is compiling a set of questionnaires in an investigation, the questions will be numbered serially in the order that is used. PLEASE DOUBLE-CHECK TO ENSURE THAT THE INTERNAL CROSS REFERENCES TO NUMBERS AND SCHEDULES IN A QUESTIONNAIRE ARE CONSISTENT AND THAT THE NUMBERS ARE IN SEQUENCE WITH ALL NUMBERS IN THE SEQUENCE USED.

Period of Review and Investigation

The Period of Review is the five year period which generally begins at the end of the Period of Investigation and usually goes back five years in time. For example, if the Period of Investigation ended on December 31, 1995 (and began on January 1, 1995), the Period of Review would include the calendar years 1991, 1992, 1993, 1994 and 1995. Note that most of the questions in the Exporters Questionnaire only go back three years as they relate to dumping issues.

The Period of Investigation (POI) is selected on a case-by case basis based on the specific nature of the product involved and the characteristics of the market into which it is sold. There is no standard time period. In selecting the POI, the Department's objectives in dumping investigations are to provide for a fair comparison between normal values and export prices such that the determination whether dumping exists is itself fair. In subsidies and safeguard investigations, the objective is to choose a period which is sufficiently recent and representative to provide a fair picture of the imports.

Factors generally taken into account when establishing a POI include:

- the POI must encompass a sufficient number of domestic sales to allow the Investigating Authority to substantiate or refute the allegation of dumping.
- the duration of the POI must be such that it does not place an unreasonable burden on the parties involved with regard to the amount of information they are required to submit.
- the POI should be concurrent with the period of the alleged injurious dumping, subsidized imports or increase in market share of the national market.
- one key aspect of a dumping allegation is that import prices are low because of dumping with the net effect being injury to the domestic industry in a member state. Where export prices vary, the Investigating Authority will include in a POI that period where it appears import prices are falling or low.
- the nature of the product and how it is ordered are considered. For example, are the goods seasonal, are they custom-made, is there a large variety of product, are there contract sales, is there a lengthy time delay between the date of the contract and the shipping date and are there infrequent sales as in the case of major capital goods?

One of the key factors to consider in selecting a POI is whether there are sufficient export sales or shipments during the period such that, in dumping cases, a proper comparison may be made between normal values and export prices to determine the existence of dumping. The Investigating Authority does not provide the direct guidance respecting the sufficiency of export sales or shipments. Therefore, the determination of what is sufficient is a judgement made on a case-by-case basis.

In cases where there are insufficient sales or infrequent shipments, a relatively long period may be required to obtain sufficient information on which to base the determinations. Insufficient sales or infrequent shipments may also require a relatively longer POI in order to ensure that all of the major importers are given an opportunity to participate in the investigation. On the other hand, the investigation period for cases involving products which are sold regularly and frequently to a member State may be shorter in order not to place an unreasonable burden on the exporters involved with regard to the amount of information required.

Common Information

Foreign Trade Policy Department
 Questionnaire for (*manufacturers, importers, exporters etc.*)
 Subject Goods (*abbreviated or short description*)

Date

Period of Investigation *(insert appropriate period)*

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Period of Review *(insert appropriate period)*

The information in this questionnaire is for use by the Foreign Trade Policy Department in its investigation into

(insert full description of subject goods)

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.....
.....

Deadline

You are requested to complete this questionnaire and return it to the Foreign Trade Policy Department of a member State at (address when known) by hand or by messenger service or by facsimile to (insert FAX # when known) by no later than *(insert date)*. You are advised not to send confidential information by mail or by facsimile, and the Department accepts no responsibility if such information is misdirected.

Confidentiality

By law, information that is confidential will be treated accordingly and may not be released or revealed by the Investigating Authority to any other person, company or

government organization without the specific authority in writing of the person providing the confidential information. However, the law also requires that a non-confidential version of any confidential information be submitted with the confidential information. The non-confidential version must be sufficiently clear as to the content of the information that a reader understands what information has been provided, even if the confidential numbers are missing.

The Investigating Authority has classified the information requested on certain pages as non-confidential and others as confidential. The page is clearly marked with the classification. If you agree with the classification, you have only to complete the questionnaire and return it to the Investigating Authority. If you change a response from "Confidential" to "Non-confidential", no other action is required of you in this regard. However, if you change the classification of the response from "Non-confidential" to "Confidential", you must submit with the reply an explanation of the change and provide a non-confidential version. The explanation must be satisfactory to the Investigating Authority or the Investigating Authority can require that the information be re-classified as "Non-confidential", otherwise it must not be taken into consideration by the Investigating Authority. If you provide additional information or submissions that you believe should be treated as confidential, the same rules apply. Because of the format of the Exporter Questionnaire, exporters, in particular, are cautioned that they must provide a non-confidential version of any confidential responses to their questionnaire. A Non-confidential version and an explanation of the confidentiality acceptable to the Investigating Authority must also be supplied. In the absence of changes in classification or additional confidential information, you need take no action in this respect and the Investigating Authority will use a blank copy of the "Confidential" section of the questionnaire as the "Non-confidential" version.

Notice

You are requested to complete this questionnaire and return it in two copies to the Foreign Trade Policy Department by facsimile, by hand or by messenger by no later than (*insert date*). Facsimile transmission is not a secure means of sending Confidential information and the Investigating Authority recommends strongly against using this medium for confidential replies or submissions. Moreover, the Investigating Authority accepts no responsibility for the protection of confidential information from disclosure as a result of its transmission by facsimile.

Information received by the above date will be taken into consideration in the Preliminary Determination by the Department in this investigation and will be used in the compilation of the Department's Staff Report. Information received at a later date may have to be used at a later stage in the investigation. You are strongly recommended to respond to all of the questions asked. The absence of responses to individual questions or the lack of a response to the questionnaire will cause the Department to use the best information available, which may be the information provided in the original complaint which triggered the investigation.

The information requested is to enable the Department of Foreign Trade Policy to determine the normal value, export price, margins of dumping or subsidisation, increases in market shares in the complainant's country held by imports, and the existence of and/or causes of injury to domestic industry as relevant to a particular investigation as required under the (Acts for AD, SCV & SFGDs).

The Investigating Authority may request additional information from individual companies as necessary.

Notice of Appearance

If you wish to provide written submissions and evidence to the Investigating Authority in the event of an affirmative Preliminary Determination (if you respond to the questionnaire, you will receive a copy of any Preliminary Determination) and the continuation of the investigation, you are required to complete and return the Notice of Appearance which forms part of this questionnaire. If you appoint counsel to represent you and you designate those counsel in the appropriate section of the Notice, it is your responsibility to provide them with any confidential information that you wish them to see. The Department will not provide Confidential information to any counsel nor will it discuss such information with those counsel at any stage in the investigation unless specifically authorized in writing by the person who provided the Confidential information.

Verification

The information provided in the response to this questionnaire is subject to audit and verification by the Department during a visit to you by an investigator from the Department. The investigator would verify the data by an examination of your records and personnel. You would be advised in advance of the timing and purpose of such a visit.

Name and Address of Reporting Company

CERTIFICATION

The undersigned certifies that the information supplied herein is complete to the best of my knowledge and belief.

Date Signature of Authorized Official Company Stamp or Seal (if existing)

.....
.....

Telephone

Facsimile Name and Title of Authorized Official (please type or print)

General Instructions

1. Except for the Exporter Questionnaire, this questionnaire is divided into two parts.

Part I deals with information that is public in nature and will be treated as such unless you request (and justify) otherwise.

Part II deals with information that is normally confidential in nature and will not be revealed to anyone outside the Department, unless you so authorize in writing or you change the classification.

Exporter Questionnaires do not distinguish confidential from non-confidential information in the questions asked. Exporters are required to make that decision themselves and to submit separate confidential responses and non-confidential summaries with explanations for the confidentiality as required.

2. If the answer to any question is "none", "not applicable" or "not available" please indicate which of these situations applies rather than leaving blank the answer space to any question.
3. All information is requested on a calendar year basis. If adjustments are necessary to audited statements to convert them to a calendar year basis, please identify the adjustments and give a full explanation of how they were made.
4. If the information is not available from your records in exactly the form requested, please give us estimates with a full explanation of how they were prepared.
5. Please provide your answers in the space provided in the questionnaire, as applicable, or on separate sheets, clearly identified as to question and confidentiality, attached to the questionnaire.
6. When possible, data should be presented in tabular format (tables) rather than narrative format. Where data contain estimates rather than actual amounts, please so indicate, explain how the estimates were made and identify the source documents used.
7. If the hard copy (paper) of your response was prepared on a computer please provide in addition to a hard copy, a soft copy (on diskette) containing that information. Please list the files contained on this diskette and the software used to generate the files.
8. Unless instructed differently, all values, costs, charges, etc. should be quoted in the currency in which they occurred (and so identified, eg US\$, EURO, £) and not converted into national currency.
9. It is important that the responses to questionnaires are supportable by concrete evidence, including source documents and working papers. In addition to evidence specifically requested in the questionnaire, the Investigating Authority may request documentation to support any response either by written communication or at the time of the verification visit. It is particularly important that respondents be able to produce source documents used to generate any computer input.

- 10. Responses should be as specific as possible. Where a particular question is not worded in such a manner that the reply clearly reflects the existing situation, please provide such additional information as you believe is appropriate. Any subsequent submissions, if required, must be accompanied by a non-confidential version of any confidential data submitted together with an explanation of the reasons for its confidentiality.
- 11. If a question has been answered fully in response to an earlier question, it is not necessary to repeat the answer but simply to indicate the cross-reference.
- 12. Any questions related to this questionnaire can be directed to *insert name(s)* at telephone number *(insert)* or facsimile number *(insert)*.
- 13. Under the Regulations governing this investigation, a "sale" includes leasing and renting and an agreement to lease or rent.

QUESTIONNAIRES INVOLVING ALL FORMS OF TRADE REMEDIES

Common to All Except Exporting Governments

Public Information (non-confidential)

- 1. Give details of your company name, address, (physical and mail) telephone and facsimile numbers, if any.

2. Give the names, titles, addresses (if different from above), telephone and facsimile numbers, if any, of persons in your company to be contacted for further information.

3. What is your company's fiscal year? _____

4. Please provide audited (to the extent available) or un-audited (if audited not available) copies of your annual reports for the last five financial years. If the information is not public information, please classify it as confidential, give an explanation for its confidentiality and provide a non-confidential version for general access.

5. Please provide any brochure, pamphlets or booklets giving further information about your company and its products.

6. If your firm is a wholly or partially owned subsidiary, please give the name and address of the parent company and indicate the extent of ownership.

Name

Address

Extent of Ownership

7. If your firm wholly or partially owns other firms, please list the names and addresses and indicate the extent of your company's ownership in these firms.

Name

Address

Extent of Ownership

8. If your firm is affiliated in any manner with manufacturers of the subject goods in a member States or in any of the countries subject to the investigation (subject sources), importers or exporters of the subject goods suppliers of raw materials to manufacturers in a member State of the subject goods, or customers in a member State that buy the subject goods, please list those affiliations with their addresses and the nature of the affiliation.

Name

Address

Affiliation

9. Please provide a brief history of your firm with particular emphasis on the subject goods. The history, among other things, should cover the date of incorporation, corporate structure, organization chart and the range of products made, imported, and/or marketed by your firm, with particular emphasis on subject goods marketed in a member State. Describe the nature of your trade level i.e. manufacturer, importer, exporter, distributor, wholesaler, retailer etc., and detail the functions which you perform.

10. If you manufacture the subject goods, please indicate the location of your plants and the respective products produced at each plant. Please indicate which plants produce the subject goods and which, if different, you are using to supply the National market.

Questions Specific to Type of Respondent

Domestic Manufacturer's Questionnaire

Public Information

Have you permanently closed or otherwise disposed of any plants producing the subject goods or made any significant asset disposals since January 1, 19x (last five years including period of investigation)?

YES NO (circle correct answer)

If yes, please indicate the plant or major asset concerned and the date, the location and the reasons for the closure or disposal.

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Please describe how the subject goods are produced and provide a flow chart of the production process.

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Please submit complete price lists for the subject goods for years (the last five years including the period of investigation). If the price lists cover more than

the subject goods, please identify clearly on the price lists which are the subject goods.

Please report your methods of marketing and product distribution as they pertain to all of your production and, particularly, to subject goods.

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Please describe the current state of the market outside your country for the subject goods. Also please provide the names of any documents, such as studies or articles in trade journals, that you know provide a description of the current state of the world market for the subject goods.

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II Application of Safeguards

1- The Complainant:

- 1/1 Please mention in detail the name of your company, address (physical and mail) telephone number, telefax and E-mail.
- 1/2 Please mention in detail information concerning company's owner or its shareholder.
- 1/3 Please mention the names of the persons to contact and their functions within the company.

Name	Job Title	Telephone/Telefax/E-mail
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- 1/4 Describe in brief all types of the product produced and /or sold by your company.
- 1/5 Mention in more detail information about the producers or the parties who submit the complaint on behalf of them: name, address, (Physical and mail) telephone, telefax and E-mail.
- 1/6 Mention in more detail all other producers in your country: name, address, (Physical and mail) telephone, telefax and E-mail.

2- Like or directly competitive products

- 2 /1 Describe in detail the imported product alleged to injure the domestic market (enclose catalogues and /or brochures).
- 2 /2 Describe in detail the product that your company produces (enclose catalogues and /or brochures issued by your company).
- 2/3 Mention if there are differences in the physical characteristic/ ways of production/and the uses between the imported product and your product, please provide a table of correspondences for the differences between the products concerned
- 2 /4 Mention the H.S. Tariff Heading for the imported product.
- 2 /5 Provide the prices of both domestic product and imported product (wholesale price, retail price, the price to the final consumer)

3- Injury:

- 3 /1 Explain and provide the evidence that there is an increase in the imports of the alleged product, either absolute or relative to the domestic production, to the domestic market.
- 3/2 Submit the evidence that the alleged imported product causes or threatens to cause serious injury to the domestic industry, which produces like or directly competitive product.
- 3/3 In order to demonstrate that the injury suffered by the domestic industry, Provide all relevant factors having the bearing on the situation of the domestic industry, in particular, the rate and amount of the increases in imports of the product concerned in absolute and relative terms, the share of the domestic market taken by the increased imports, changes in the level of sales, production, capacity utilization, profits and losses and employment.
 - Please provide this information in details for the last 3 financial and/or fiscal year and the current year.
- 3 /4 Explain the effect of imports on prices in the domestic market for the like product including price undercutting, price depression, and price suppression.
- 3/5 Analyze any known factors other than the alleged imports that contribute in injuring the domestic industry that include, the volume and the prices of 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.

4- Plan for restructuring the domestic industry:

- 4/ 1 Submit a plan for restructuring the domestic industry of the alleged product, including, *interalia*, the increasing in the productivity of worker, the reduction in the cost of manufacture, programs for quality improvement, changing in marketing and distributing patterns, entering new technology, etc and determining the date of implementing such elements.

5- Safeguard measures:

5/ 1 Determine the safeguard measures proposed (quota, raising the applied customs duties) and explain the reasons behind your choice, and the amount of measures required.

5/ 2 Mention in details the duration required for such measures and gradual reduction program per year.

6- Public interest:

6 /1 Provide detailed explanation how the proposed measures benefit the public interest.

Signed:

Position:

Date:

III Application of Anti-dumping

1- The Applicants:

- 1/1 Please mention in detail the name of your company or producer by or on whose behalf this application is made, address, (Physical and Mail) telephone number, telefax and E-mail.
- 1/2 Please mention in detail information concerning company's owner or its shareholders.
- 1/3 Please mention the names of the persons to contact and their titles for this case.

Name	Job Title	Telephone/Telefax/E-mail

- 1 /4 Describe in brief all types of the product produced and /or sold by your company.
- 1/ 5 Mention names and addresses of the parties related to the case.
- 1/ 6 Describe in detail the product produced or sold by your company.
- 1/ 7 Mention in more detail all other producers in your country: name, addresses, (Physical and mail) telephone, telefax and E-mail.

2- Like product:

- 2 /1 Describe in detail the imported product alleged to injure the domestic market (enclose catalogues and /or brochures).
- 2 /2 Describe in detail the product that your company produce (enclose catalogues and/or brochures issued by your company).
- 2 /3 Explain how the goods produced in your domestic industry are like the allegedly subsidized goods, including physical characteristics, end use and methods of manufacture.
- 2 /4 Mention the H.S. Tariff Heading for the imported product.

3- Imported Product:

- 3 /1 Mention the countries of origin for the imported product.

3 /2 Provide the name and addresses of the known foreign producers and/or the exporter who export this product to your country.

3 /3 Provide the name and addresses of the known importer who import this product in your country.

4- Domestic Industry:

4 /1 Mention the names and the addresses of all other producers to the product concerned in your country, who support the complaint and their percentage of production.

4 /2 Mention if your company import the product under consideration during the last three financial and/or fiscal year and the current year. If yes, please provide a list of the imports (quantity and values), the name of the exporter and the country of origin.

5- Export Price:

5/1 Mention the export price of the product subject to the complaint, (After deducting the operating costs, expenses, and all freight costs incurred, which considered additional than that sold in its domestic market).

5/2 Mention if there is any relationship* between the exporter and the importer.

6- Normal Value:

6 /1 Mention the price of the product subject to the complaint in the domestic market of the exported country. (Provide a price list and/or invoices). (If not possible calculate the constructed normal value).

* Persons shall be deemed to be related to exporters or importers only if one of them directly or indirectly controls the other; or both of them are directly or indirectly controlled by a third person; or 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 concerned to behave differently from non-related producers. For the purpose of the paragraph, one shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter

6 /2 Concerning the prices provided in 6 /1 determines the trade level or the trade level of consumer (whether final users or whole trader or retail trader).

7- Dumping Margin:

7 /1 Determine the differences between the normal value and the export price to the product subject to the complaint.

8- The Injury:

8 /1 Provide the evidence that your industry has been injured by the exported product subject to the complaint, and provide evidence that there is a causal link between the injury suffered by the domestic industry and the dumped imported products.

8 /2 In order to justify the injury suffered by the domestic industry. Submit evidence showing the following:

1. The volume of the dumped imports,
2. The effect of the dumped imports on prices,
3. The economic impact of the volume of imports and the price effect on the domestic industry.

8 /3 Mention when the alleged dumped imports cause injury to the domestic industry, or threat to cause material injury, or material retardation of the establishment of such industry. Determine when it causes serious injury or threat to cause it.

8 /4 Analyze any known factors other than the dumped imports that contribute in injuring the domestic industry including, the volume and the 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.

9- Economic Impact:

9/1 Provide details of any decline in the industry's output of the goods for the domestic industry.

9/2 Provide details of any decline in the industry's sales of goods.

9/3 Explain any lost sales due to direct competition from the alleged dumped product.

- 9/4 Provide evidence of the size of the domestic market, (in volume or in value).
- 9/5 Compare the market share of domestic industry with the share held by imports of the alleged dumped goods and imports from other sources.
- 9/6 Explain how the gross and net profit on the domestic sales of the like goods have been affected.
- 9/7 Show how productivity has been affected in the most recent three years, monthly and quarterly if possible.
- 9/8 Show return on shareholder's funds or return on assets, or a similar appropriate measure of return on investment, in terms of net profit.
- 9/9 State the industry's production capacity for the most recent three financial and/or physical years and the current year available if possible on a monthly or quarterly basis for the like goods.
- 9/10 What has been the industry's capacity utilization rate for the investigation period specified?
- 9/11 Mention evidence to support claims of injurious effects in any of the following:
- Cash flow.
 - Inventories/stocks.
 - Employment.
 - Wages.
 - Growth.
 - Investments.

Signed:

Position:

Date:

IV Application of Subsidies

1- Complainant:

- 1/1 Mention in detail information about the producers or the person who submit the complaint on their behalf : name, address, (physical and mail) telephone, telefax and E-mail.
- 1/2 Please mention the names of the persons to contact and their titles for this case.
- 1/3 Mention names and addresses of the parties related to the case.
- 1/ 4 Mention in more detail all other producers in your country: name, addresses, (physical and mail) telephone, telefax and E-mail.
- 1/5 Describe in detail information about the product produced and/or sold by your company.

2- Product:

- 2/1 Describe the alleged subsidized product that injured or threat to injured the domestic industry. (Enclose catalogues and /or brochures).
- 2/2 Describe the like product produced by your company. (Enclose catalogues and /or brochures).
- 2/3 Mention the H.S. tariff heading for the alleged subsidized imported product.
- 2/4 Explain how the goods produced in your domestic industry are like the alleged subsidized goods, including physical characteristics, end use and methods of manufacture.

3- Subsidized imported product:

- 3/1 Mention the country or countries of origin and the exporting country of the alleged subsidized product.
- 3/2 Provide the name and addresses of the known foreign producers and/or the exporter of the alleged subsidized product who export it to your country.
- 3/3 Provide the name and addresses of any known importers of the alleged subsidized product and describe the nature of their business, e.g. wholesale, retail.

4- Subsidy Programme:

- 4/1 Name the subsidy programmes which are believed to apply to the alleged subsidized product, and the legislation or regulation under which the scheme operates.
- 4/2 Mention the nature and operation of the programmes, including the product coverage, the form of assistance provided, (e.g. export subsidy, government grants, loan guarantees, tax credits), and the policy objective and /or the purpose of the subsidy programme.
- 4/3 Calculate the amount of subsidy granted under each programme per unit, if possible.
- 4/4 Explain why the subsidy granted is considered countervailable, specific (if possible).

5- Injury:

- 5/1 Explain and provide the evidence to justify that the alleged injury to the domestic industry is caused by subsidized imports.
- 5/2 Mention when the alleged subsidized imported product caused or threat to material injury or cause retardation to the establishing industry.
- 5/3 In order to justify the injury suffered by the domestic industry. Submit evidence showing:
 - 1. The volume of imports of subsidized goods,
 - 2. The effect of the subsidized goods on prices,
 - 3. The economic impact of the volume of imports and the price effect on the domestic industry.
- 5/4 Mention when the alleged subsidized imports cause injury to the domestic industry, or threat to cause material injury, or material retardation of the establishment of such industry. Determine when it causes serious injury or threat to cause it.
- 5/5 Analyze any known factors other than the subsidized imports that contribute in injuring the domestic industry that include, the volume and the 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.

6. Economic Impact:

- 6 /1 Provide details of any decline in the industry's output of the goods for the domestic industry.
- 6 /2 Provide details of any decline in the industry's sales of goods.
- 6 /3 Explain any lost sales due to direct competition from the alleged subsidized goods.
- 6 /4 Provide evidence of the size of the domestic market, (in volume or in value).
- 6 /5 Compare the market share of domestic industry with the share held by imports of the alleged subsidized goods and imports from other sources.
- 6/6 Explain how the gross and net profit on the domestic sales of the like goods have been affected.
- 6/7 Show how productivity has been affected in the most recent three years, monthly and quarterly if possible.
- 6/8 Show return on shareholder's funds or return on assets, or a similar appropriate measure of return on investment, in terms of net profit.
- 6/9 State the industry's production capacity for the most recent three years available if possible on a monthly or quarterly basis for the like goods.
- 6/10 What has been the industry's capacity utilization rate for the investigation period specified?
- 6/11 Mention evidence to support claims of injurious effects in any of the following:
- Cash flow.
 - Inventories/stocks
 - Employment.
 - Wages.
 - Growth.
 - Investments.

Signed:
Position:
Date:

**V: DUMPING INVESTIGATION QUESTIONNAIRE FOR THE
EXPORTER OR PRODUCER**

Section 1: GENERAL INFORMATION

Thank you for supplying information relating to your company details, the information requested below will assist us to better understand the case under investigation.

1/1 Please supply details of your company:

Name:

Address:
Physical and
Mail

Telephone:

Fax:

E-mail:

1/2 Provide a description of the organizational structure of your company and its related entities.

1/3 Provide a copy of your company certificate of incorporation and any brochures, pamphlets of your company and its products.

1/4 Provide names, address, (physical and mail) telephone, fax, and E-mail address numbers of all subsidiaries or other related companies in all countries, which are involved directly or indirectly with the product concerned.

Section 2: PRODUCT DETAILS

2/1 Mention a description of the product exported.

2/2 Explain any differences between this product concerned and those produced in the domestic industry (such as physical characteristics, method of manufacture, function and uses, marketing and distribution.

2/3 The subject products are classified in the tariff schedule under H.S. Heading items:

Section 3: SALES TO INJURED COUNTRY

3/1 Mention if you charge a brokerage fee or commission.

3/2 Provide us with a list of the shipments of the product concerned exported by your company to injured country.

Period of Investigation

The Investigating Authority has decided the period of investigation (POI) is from -----
to -----

Verification

Department officials may need to visit your company to verify information supplied. Such a visit is normally undertaken once a completed questionnaire has been received and analysed. You will be contacted at a later date concerning such a visit.

Documentation Provided

It is important that your responses to the questionnaire be backed up by evidence in support of your claims.

Additional documentation in support of your response may be requested during the investigation. Original source material for all documents submitted, including source documents used in loading computers, should be made available at the time that any verification visit is made.

Confidential Information

Any information which is by nature commercially 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 on the person supplying the information or upon the person from whom the information was acquired) or which is provided on a confidential basis by parties to an anti-dumping investigation will upon good cause being shown be treated as confidential by the investigating Authority.

Parties requesting that information be treated as confidential should:

- (a) Clearly identify the information, for which confidential treatment is requested,
- (b) Provide justification for the request for confidential treatment,
- (c) Provide a non-confidential version or non-confidential summary of the information for which confidential treatment is requested, or, if it is claimed that the information is not susceptible to such a summary, a statement of the reasons why such a summary is not possible. A non-confidential version should reproduce the original but have information considered to be confidential either omitted or summarized.

The investigating Authority is required to ensure that all interested parties to an investigation are given reasonable opportunity to have access to all non-confidential information relevant to the presentation of their case.

Time Frame

Your reply to this questionnaire along with any supporting documentation must be received by the Investigating Authority at the address given below, by close of business 37 days from the date of the receipt of the questionnaire, or earlier if possible.

Language

Your reply to this questionnaire must be in one of the COMESA official language (namely: English, French or Portuguese) as appropriate a translation of any supporting documentation and evidence should also be provided.

4. Sales to Domestic Customers

4.1 Do you sell the products under investigation in your domestic market?

IF YES, Please answer the questions from 4.2 to 4.9 below.

IF NO, Please go straight to section 5.

4.2 Give a detailed explanation of your company's channels of distribution to domestic customers, including:

- (i) The relationship between you and your domestic customers; and
- (ii) Details of any domestic clients or companies that have corporate affiliations with you.

4.3 Give an explanation of the terms of trade offered by your company and a description of your selling arrangements. This should cover:

- Ordering and invoicing.
- Terms of arrangements or contracts.
- Terms of payment.

4.4 Are the prices that your company charges:

- (i) Subject to direct or indirect reimbursement to your customers (e.g., sales promotion, advertising, warranty, etc)? or
- (ii) Influenced by a commercial agreement or relationship? or
- (iii) Inclusive of any consideration other than price?

4.5 Please supply quantities and net sales revenue for each type and size of products under investigation at each level of trade in your domestic market.

- 4.6 Please provide a listing of all invoiced ex-factory sales of the product in question in your domestic market.
- 4.7 Please provide domestic price lists covering all sizes of the product under investigation for the investigation period. If price lists are not used, please specify how domestic prices are set.
- 4.8 Please provide copies of three invoices for sales as a sample of your domestic customers for each of the products under investigation, that are equivalent to those exported to imported country over the investigation period.
- 4.9 Are your company's domestic sales subject to the payment of any domestic consumption or sales taxes or duties? If so, please provide details.

5. Sales to your Exports

- 5.1 Please provide details of your company's distribution systems to your importers including:
 - (i) The relationship between you and your importers; and
 - (ii) Details of any clients or companies in importing country that has corporate affiliations with you.
- 5.2 Are the prices of products under investigation that are exported to the importing country:
 - (i) Subject to any direct or indirect reimbursement to your customers (e.g., sales promotion, advertising, warranty, etc.)? or
 - (ii) Influenced by a commercial agreement or relationship? or
 - (iii) Inclusive of any consideration other than price?
- 5.3 Please schedule the individual shipments of exports to the importing country by you in the investigating period.

6. **COSTS OF PRODUCTION**

- 6.1 Please provide the cost of production for product under investigation for the domestic market and a third country*. This should include details of the quantity and types of materials used, direct labour costs, and the method used to allocate overheads, for each type & size of products under investigation.
- 6.2 Where the products sold or produced for the domestic and export markets differ from the products exported to the importing country, give details and evidence of the cost differences and the effects on the costs of production.
- 6.3 Does your company receive, either directly or indirectly, any consideration from a central or provincial Government or other

organization (e.g., subsidies export incentives, etc.) for the products you manufacture and sell? If so, please provide details of any assistance on a per annum basis or on per unit basis, as appropriate.

6.4 Production

- Identify in detail the percentage of domestic and foreign components in the product under investigation (if you import components for the product under investigation).
- Identify and quantify the indirect factory costs (see appendices 8A-B) and the basis of distribution of these costs to the products under investigation during the period of investigation.
- Identify and quantify the elements of selling, general and administrative costs SG&A (see appendices 8A-B) and the methods you used to allocate these costs to the products under investigation.

7. Financial Details

- 7.1 Provide copies of your financial statements, income statement, balance sheet, and statement of cash flow for the last four fiscal years, and for the current year to date, showing details of selling, general and administrative costs, any other costs, and net profits (or losses).
- 7.2 Describe the accounting methods used in preparing your financial statements, including:
 - 人 Inventory/stocks evaluation;
 - 人 Depreciation methods;
 - 人 Whether standard or actual costing methods are used;
 - 〇 Historical or current cost.
 - 天 Please prepare the income statement shown in **Appendix (10)** for domestic and export sales. The results should be shown separately concerning the products sold domestically, exported, and the total operations. Please provide full details of any allocation method used.
 - 天 Please provide also the cost sheets for the last three financial and/or physical year and the current year with the supporting documents. In case the method used in preparing the financial statement for previous years is totally different from the method

used currently, please provide the working papers and supporting documents explaining the differences.

7.3 Provide a list of exchange rates for your domestic currency against the U.S. dollar on a monthly and annual average basis for the Last complete calendar year and available months for the current calendar year, and identify the source of these rates.

8. Submission of Information by Electronic Means or in an Electronic Format

” ○ The Investigating Authorities is pleased to receive submissions in response to this questionnaire in an electronic format. The information below is intended to assist you in providing such submissions. Information which may be susceptible to electronic submission or provision in an electronic format may be *inter alia*;

☞ ○ Questionnaire responses in an electronic form

☞ × Supporting information in the form of databases or spreadsheets.

☞ × Explanatory graphics or charts.

” × **Submission formats**

The following applications / formats are supported by the Investigating Authority; submission may be provided in any of the formats listed.

Document Type	Formats / Supported	Latest version Supported
Word Processing	Microsoft Word	7.0
Spreadsheet	Microsoft Excel	7.0
Database	Microsoft Access	7.0

☞ 7 Backup Submission

If making a submission by electronic means or providing supporting data in electronic format, please also provide a hard copy of the submission and soft copy (3.5 inch, CD-ROM or ZIP disk). If it is necessary to compress the document/s, please do so either into a self-extracting file or using PKZIP and advise the format used.

Please remember to refer to page 4 for details of the fax number and address to which your completed response should be sent.