PARLIAMENT OF THE DEMOCRATIC SOCIALIST REPUBLIC OF SRI LANKA

ANTI-DUMPING AND COUNTERVAILING DUTIES ACT, No. 2 OF 2018

[Certified on 19th of March, 2018]

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Anti-Dumping and Countervailing Duties Act, No. 2 of 2018

[Certified on 19th of March, 2018]

L.D.—O. 68/2016

AN ACT TO PROVIDE FOR THE INVESTIGATION AND IMPOSITION OF ANTI-DUMPING DUTIES AND COUNTERVAILING DUTIES WITH REGARD TO PRODUCTS IMPORTED INTO SRI LANKA AND FOR MATTERS CONNECTED THEREWITH AND INCIDENTAL THERETO.

Preamble.

WHEREAS Sri Lanka was one of the original contracting parties to the General Agreement on Tariffs and Trade of 1947(GATT 1947):

AND WHEREAS the General Agreement on Tariffs and Trade 1994 (GATT 1994) which is based upon the text of GATT 1947 and was signed in April 1994, includes among others the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 and the Agreement on Subsidies and Countervailing Measures:

AND WHEREAS Sri Lanka intends to protect the domestic industries from prohibited and actionable subsidies and dumping:

AND WHEREAS it is expedient to make legislative provisions for the implementation in Sri Lanka of the two agreements referred to above:

BE it therefore enacted by the Parliament of the Democratic Socialist Republic of Sri Lanka as follows :—

Short title and date of operation.

1. This Act may be cited as the Anti-Dumping and Countervailing Duties Act, No. 2 of 2018, and shall come into operation on such date as the Minister may appoint, by Order published in the *Gazette*.

PART I

ANTI-DUMPING DUTIES

General principle.

2. Anti-dumping duties may be imposed on products imported into Sri Lanka, where the Director-General determines pursuant to an investigation initiated and conducted in accordance with the provisions of this Part of this Act, that —

(*a*) the investigated product is being dumped;

(*b*) there is injury being caused to the Sri Lankan industry; and

(*c*) there exists a causal link between the dumping and the injury caused.

Assessment of effects.

3. Where imports of like products from more than one country are the subject of simultaneous anti-dumping duty investigations, the Director-General may, for the purpose of determining whether injury exists, cumulatively assess the effects of such dumped imports on the Sri Lankan industry, only where —

(*a*) the applications are filed under section 14 of this Act;

(*b*) the Director-General determines that the amount of dumping established in relation to the investigated product imported from each country is more than *de minimis* and the volume of investigated products imported from each country is not negligible as specified in section 20 of this Act; and

(*c*) the Director-General determines that a cumulative assessment of the effects of the imports of investigated product is appropriate in the light of the conditions of competition between the imported

product and the conditions of competition between the imported products and the domestic like product.

ESTABLISHING THE NORMAL VALUE

Basis for determining normal value.

4. (1) For the purposes of this Part of this Act, the Director-General may determine the normal value of an investigated product, on the basis of the comparable price paid or payable in the ordinary course of trade for the like product, when destined for consumption in the domestic market of the exporting country.

(2) Notwithstanding the provisions of subsection (1), the Director-General may determine the normal value on the basis of comparable price paid or payable in the ordinary course of trade for the like product when destined for consumption in the domestic market of the country of origin, where —

(*a*) the products are merely trans-shipped through the country of export;

(*b*) products are not produced in the country of export; or

(*c*) there is no comparable price for them in the country of export.

(3) Where under subsection (2), the normal value is determined on the basis of the country of origin, reference in sections 5, 6, 7 and 9 to the "exporting country", shall be deemed to be a reference to the country of origin.

Normal value to be based on export price to a third country.

5. (1) Where there are no sales in the ordinary course of trade of the like product in the domestic market of the exporting country under subsection (1) of section 4, or where, because of the particular market situation or the low volume

of the sales in the domestic market of the exporting country, such sales do not permit a proper comparison, the normal value of the investigated product shall be —

(*a*) the comparable price paid or payable in the ordinary course of trade for the like product exported to any appropriate third country, provided that such price shall be representative; or

(*b*) the cost of production of such product including administrative, selling and general costs in the exporting country, plus a reasonable amount for profits.

(2) For the purpose of subsection (1), sales of like product destined for consumption in the domestic market of the exporting country or the appropriate third country, shall normally be considered to be a sufficient quantity for the determination of the normal value, if such sales constitute five *per centum* or more of the sales of the investigated product to Sri Lanka, except that a lower ratio shall be acceptable, where the evidence shows that domestic sales at such lower ratio are of sufficient magnitude to provide for a proper comparison.

Sales not in the ordinary course of trade.

6. (1) Sales of the like product in the domestic market of the exporting country, or sales to a third country at prices below per unit (fixed and variable) cost of production, 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 where the Director-General determines that such sales are made—

(*a*) within an extended period of time (which generally is twelve months and not less than six months) in substantial quantities; and

(*b*) at prices which do not provide for the recovery of all costs within a reasonable period of time.

(2) For the purpose of paragraph (*a*) of subsection (1), sales below cost shall be considered to be made in substantial quantities, where it is established that—

(*a*) the weighted average selling price of the transactions under consideration is below the weighted average cost; or

(*b*) the volume of sales below cost represent twenty *per centum* or more of the volume sold in the transactions under consideration.

(3) Where prices which are below per unit cost at the time of sale, are above weighted average per unit cost for the period of investigation or review, the Director-General shall consider such prices as providing for the recovery of costs within a reasonable period of time.

Calculation of cost for purpose subsection (1) of section 5.

7. (1) For the purpose of subsection (1) of section 5 of this Act, costs shall generally be calculated on the basis of records maintained by the exporter or producer under investigation, provided that such records—

(*a*) are maintained in accordance with generally accepted accounting principles of the exporting country; and

(*b*) reasonably reflect the costs associated with the production and sale of the like product.

(2) The Director-General shall consider all available evidence on the proper allocation of costs, including any evidence made available by the exporter or producer in the course of the investigation of allocations which have been historically utilized by the exporter or producer, in particular in relation to establishing appropriate amortization and depreciation periods, and allowances for capital expenditures and other development costs.

(3) Unless already reflected in the cost allocations under this section, costs shall be adjusted appropriately for those non-recurring items of cost which benefit future or current production, or for circumstances in which costs during the period of investigation are affected by start-up operations.

(4) The adjustment made for start-up operations shall reflect the costs at the end of the start-up period or, if that period extends beyond the period of investigation, the most recent costs which can reasonably be taken into account by the Director-General during the investigation.

Determining of cost of production.

8. (1) The cost of production of the like product for the purpose of sections 5 and 6 of this Act, shall be the total sum of —

(*a*) the cost of materials whether direct or indirect and fabrication or processing in the production of the investigated product in the exporting country; and

(*b*) a reasonable amount for administrative, selling and general costs (including financial cost and profits).

(2) The determination of the amounts referred to in subsection (1) shall be based on actual data pertaining to production and sales in the ordinary course of trade of the like product in the exporting country, by the producer or exporter under investigation or review. Where such amounts cannot be determined on this basis, the amounts may be determined on the basis of —

(*a*) the actual amounts incurred and realized by the exporter or producer under investigation or review, in respect of production and sales in the domestic market of the country of origin, of the same general category of products;

(*b*) 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 products in the domestic market of the country of origin; or

(*c*) 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.

(3) In computing the constructed value of the investigated product, the Director-General may disregard any cost arising out of a transaction directly or indirectly between related parties or among parties which appear to have compensatory arrangements with each other, unless that cost is comparable to the costs between unrelated parties or parties which do not have compensatory arrangements with each other.

(4) If a transaction is disregarded under subsection (3) and there are no other transactions available for consideration, the determination of the amounts required to be considered under subsection (1), shall be based on the facts available as to what the amounts would have been if the transaction had occurred between unrelated parties or parties without the compensatory arrangements.

Export price.

9. (1) The export price of an investigated product shall be the price actually paid or payable for the investigated product, when sold for export from the exporting country to Sri Lanka.

(2) Where there is no export price or where it appears to the Director-General that the export price is unreliable because of an association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed—

(*a*) on the basis of the price at which the imported products are first resold to an independent buyer; or

(*b*) if the products are not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as the Director-General may determine.

(3) If the export price is constructed in the manner specified in subsection (2), allowance shall be made for cost incurred between importation and resale of the investigated product.

(4) Where, under subsection (2) of section 4 of this Act, the Director-General determines the normal value on the basis of the country of origin, the export price shall be the price actually paid or payable for the investigated product when sold for export in the country of origin.

Comparison of normal value and export price.

10. (1) A fair comparison shall be made by the Director-General between the export price and the normal value of any investigated product and such comparison shall be made at the same level of trade, generally at the ex-factory level, and in respect of sales made at, as nearly as possible, the same time.

(2) In the comparison of normal value and export price under subsection (1), due allowance shall be made in each case on its merits to:—

(*a*) differences which affect price comparability;

(*b*) differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics; and

(*c*) any other differences which are demonstrated by parties interested as affecting price comparability.

(3) The Director-General when acting under subsection (2), shall ensure that no duplication takes place in the adjustments made.

(4) In cases where export price is constructed under paragraph (*a*) of subsection (2) of section 9 of this Act, allowances for costs, including duties and taxes incurred between importation and resale, and a reasonable amount for profit accruing, may also be made, and the Director-General shall, where price comparability has been affected, establish the normal value at a level of trade equivalent to the level of trade of the export price constructed under that paragraph, or shall make due allowances as warranted under this section.

(5) To ensure that a fair comparison is being done, the Director-General shall indicate to the parties in question the information that is required from them and shall not impose any unreasonable burden of proof on the parties in question.

Comparison methods.

11. (1) Subject to the provisions of section 10, the existence of dumping margin shall, generally 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.

(2) A normal value established on a weighted average basis may be compared to prices of individual export transactions, if the Director-General finds a pattern of export prices which differ significantly among different purchasers, regions or time periods. It shall be the duty of the Director-General to explain in such cases, why such difference cannot be taken into account appropriately, by the use of a weighted average to weighted average or transaction to transaction comparison.

Currency conversion.

12. (1) Where the comparison of normal value and export price under sections 10 and 11 requires a conversion of currencies, that conversion, subject to subsections (3) and (5), shall be made using the rate of exchange on the date of sale.

(2) The date of sale shall, generally be the date of contract, purchase order, order confirmation or invoice whichever establishes the material terms of the sale of the exported product.

(3) Notwithstanding the provisions of subsections (1) or (2), when a forward rate of exchange is used in relation to an export sale, the Director-General shall use the rate of exchange in the forward sale, for all the related transactions.

(4) Where —

(*a*) the comparison referred to in subsection (1) requires conversion of currencies; and

(*b*) the rate of exchange between those currencies has undergone a short-term fluctuation,

the Director-General shall, for the purposes of that comparison, disregard that fluctuation.

(5) Where —

(*a*) the comparison referred to in subsection (1) requires conversion of currencies; and

(*b*) the Director-General is satisfied that the rate of exchange between those currencies has undergone a sustained movement during the period of investigation,

the Director-General shall allow exporters not less than sixty days to adjust their export prices, to reflect the sustained movement.

Individual dumping margins.

13. (1) The Director-General shall as a rule, determine an individual dumping margin for each known exporter or producer of the investigated product.

(2) Where the number of exporters, producers, importers or types of the investigated product is so large as to make it impracticable to determine an individual dumping margin for each known exporter or producer, the Director-General may limit the examination either to a reasonable number of parties interested or investigated products, by using samples which are statistically valid on the basis of information available to the Director-General 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.

(3) Any selection of exporters, producers, importers or types of products made under subsection (2), shall preferably be chosen in consultation with and with the consent of the exporters, producers or importers concerned.

(4)Where the Director-General has limited the examination under this section, it shall nevertheless determine an individual dumping margin for any exporter or producer who voluntarily submits the necessary information in time for that information to be considered during the course of the investigation.

(5) Notwithstanding the provisions of subsection (4), where the number of exporters or producers is so large that individual examinations would be unduly burdensome to the Director-General and prevent the timely completion of the investigation, the Director-General may decline to determine an individual dumping margin on the basis of voluntary responses, and limit the examination to the exporters and producers in the sample.

INITIATION OF INVESTIGATION

Requirement of a written application.

14. (1) Except as provided for in section 19, an investigation under this Part of this Act shall be initiated upon a written application in the prescribed form being made by or on behalf of a Sri Lankan industry, accompanied by such fee as may be prescribed.

(2) Applications shall be submitted to the Director-General in such a number of copies, as the Director-General may determine.

(3) For the purposes of this section, an application shall be considered to have been made "by or on behalf of a Sri Lankan industry", if such application is supported by those Sri Lankan producers whose collective output constitutes more than fifty *per centum* of the total production of the domestic like product produced by that portion of the Sri Lankan industry, expressing either support for or opposition to the application:

Provided that, those producers who express their support to the application shall be accounted for not less than twenty-five *per centum* of the total production of the domestic like product, produced by the Sri Lankan industry.

(4) Notwithstanding the provisions of subsection (3), in the case of fragmented industries involving an exceptionally large number of producers, the Director-General may determine support and opposition, by using statistically valid sampling techniques.

Information.

15. An application form prescribed under section 14 shall provide for the submission of such information as is reasonably available to the applicant, on the following matters:—

(*a*) name, address and telephone number of the applicant;

(*b*) a description of the volume and value of the domestic like product produced by the applicant;

(*c*) the identity of the Sri Lankan industry by or on behalf of which the application is being made, including the names, addresses and telephone numbers of all other known producers of the like

product in the Sri Lankan industry, and a description to the extent available to the applicant, of the volume and value of the like product accounted for by such known producers;

(*d*) complete description of the allegedly dumped product, including the technical characteristics and uses of the product and its harmonized commodity description and coding system classification;

(*e*) the name of the country in which the allegedly dumped product is manufactured or produced, and if it is imported from a country other than the country of manufacture or production, the intermediate country from which the product is imported;

(*f*) the name and address of each person, the applicant believes, sells the allegedly dumped product and the proportion of total exports to Sri Lanka that person accounted for, during the most recent twelve-months period;

(*g*) information on prices at which the product in question is sold, when destined for consumption in the domestic market of the country of export or origin, or where appropriate, information on the prices at which the product is sold from the country of export or origin to a third country or on the constructed value of the allegedly dumped product;

(*h*) information on export prices or, where appropriate, on the prices at which the allegedly dumped product is first resold to an independent buyer in Sri Lanka, and on any adjustments as provided for in section 10 of this Act; and

(*i*) information on the evolution of the volume of the allegedly dumped imports, the effect of these imports on prices of the domestic like products in the Sri Lankan market and the consequent impact of the imports on the Sri Lankan industry, as demonstrated by relevant factors and indices having a bearing on the state of the Sri Lankan industry, such as those listed in section 76, subsections (1), (2) and (3) of section 77 and section 78 of this Act, and information on the existence of a causal link as provided for in subsections (4), (5), (6) and (7) of section 77.

Publicizing of the application.

16. (1) The Director-General and the Minister shall, unless a decision has been made to initiate an investigation, avoid any publicity being given to the application for the initiation of an investigation, under section 14.

(2) Notwithstanding the provisions of subsection (1), the Director-General shall, upon receipt of an application fulfilling the requirements of section 15 of this Act, immediately notify the government of each exporting country concerned, of such fact.

Withdrawal of an application.

17. An application made under section 14 may be withdrawn:—

(*a*) at any time prior to the initiation of an investigation, in which case it shall be considered to have not been made; or

(*b*) at any time after an investigation has been initiated, in which case the Director-General shall terminate the investigation without measures, unless he determines that it shall be continued in the economic interest of Sri Lanka.

Decision to initiate.

18. (1) The Director-General shall, having examined the accuracy and adequacy of the evidence provided in the application, determine whether there is sufficient evidence to justify the initiation of an investigation. In arriving at a decision, the Director-General may where necessary, seek further information from the applicant.

(2) Where the Director-General determines that —

(*a*) the application is made by or on behalf of a Sri Lankan industry; and

(*b*) there is sufficient evidence of dumping, injury and causal link within the meaning of this Act,

the Director-General shall decide, within forty days of receipt of the application, whether or not to initiate an investigation.

Self-initiation.

19. The Minister may, in special circumstances direct the Director-General to initiate an investigation, without having an application being made by or on behalf of the Sri Lankan industry, for the initiation of such investigation, where —

(*a*) the Director-General submits to the Minister sufficient evidence of dumping, injury and a causal link, within the meaning of this Act, to justify the initiation of an investigation; and

(*b*) the Director-General recommends the initiation of an investigation on the basis of the available evidence.

Negligible import volumes and *de minimis* dumping margins.

20. Notwithstanding the provisions of section 18 and section 19 of this Act, the Director-General shall not initiate an investigation, where from information available to the Director-General, he determines that —

(*a*) imports of the allegedly dumped product from that country into Sri Lanka represent less than three *per centum* of total imports of the allegedly dumped and like product in Sri Lanka, unless imports of the allegedly dumped product from countries under investigation, which individually account for less than three *per centum* of the imports of the allegedly dumped and like product in Sri Lanka, collectively account for more than seven *per centum* of imports of the allegedly dumped and like product in Sri Lanka; or

(*b*) the dumping margin is less than two *per centum*, expressed as a percentage of the export price.

Public notice of determination to initiate an investigation.

21. (1) Where an investigation is initiated under this Part of this Act, the Director-General shall:—

(*a*) notify of such investigation to the exporters, importers and representative associations of importers or exporters known to the Director-General to be concerned, as well as representatives of the exporting countries, the complainants and any other parties interested; and

(*b*) give public notice by publishing a notice in any newspaper widely circulated in Sri Lanka, in all three languages.

(2) The notification and public notice referred to in subsection (1), shall contain adequate information on the following matters:—

(*a*) the name of the country or countries of export, and if different, the country or countries of origin, of the investigated product;

(*b*) a complete description of the investigated product, including the technical characteristics and uses of the product and its harmonized commodity description and coding system classification;

(*c*) a description of the alleged dumping to be investigated, including the basis for such allegations;

(*d*) a summary of the factors on which the allegations of injury and casual link are based;

(*e*) the address to which information and comments may be submitted;

(*f*) the date of initiation of the investigation; and

(*g*) the proposed schedule for the conduct of the investigation.

(3) The initiation of an investigation shall be deemed to have commenced on the date on which the public notice required under paragraph (*b*) of subsection (1) is published.

Disclosure of application.

22. (1) Subject to the provisions of section 25 relating to the protection of confidential information, the Director-General shall, as soon as an investigation is initiated, provide the full text of the written application received under section 14, to all known exporters and foreign producers and to the authorities of the exporting country, and upon request, make it available to any other parties interested in such investigation.

(2) Notwithstanding the provisions of subsection (1), where the number of exporters involved is large, the Director-General may provide the text of the application to any relevant trade associations or, where that is not so possible, to the authorities of the exporting countries.

CONDUCT OF INVESTIGATION

Duration of investigation.

23. It shall be the duty of the Director-General except in special circumstances, to conclude an anti-dumping investigation within a period of twelve months of its initiation and in no case more than a period of eighteen months of its initiation.

Customs clearance.

24. The initiation of an anti-dumping investigation shall not hinder the procedures of customs clearance, and once measures are adopted, no additional formalities other than those required for the application of those measures, shall be applied.

Confidentiality.

25. (1) The Director-General shall keep confidential, all information submitted which is entitled to such treatment under subsection (2) of this section, and such information shall not be disclosed without specific permission of the party submitting it.

(2) The Director General shall treat as confidential all information designated as confidential by the party supplying such information, which is protected from disclosure under the Right to Information Act, No. 12 of 2016.

(3) The following types of information, if designated as confidential by the person submitting such information, shall for the purpose of subsection (2) be deemed to be supplied in confidence in terms of paragraph (*i*) of section 5(1) of the Right to Information Act, No. 12 of 2016 —

(*a*) business or trade secrets concerning the nature of a product, production processes, operations, production equipment, or machinery;

(*b*) information concerning the financial condition of a company which is not publicly available; and

(*c*) information concerning the costs, identification of customers, sales, inventories, shipments, amount or source of any income, profit, loss or expenditure related to the manufacture and sale of a product.

(4) A party to an investigation may seek confidential status for certain information made available to the Director-General on request being made in that behalf at the time such information is submitted, including reasons for the request for such treatment. The Director-General shall consider such requests expeditiously, and shall inform the party submitting the information, if he determines that the request for confidential treatment is not warranted.

(5) Parties to an investigation shall furnish non-confidential summaries of all information for which confidential treatment is sought, which may take the form of indexation of figures provided in the confidential version, or marked deletions in the text and which shall permit a reasonable understanding of the substance of the information submitted in confidence.

(6) In exceptional circumstances, parties may indicate that information for which confidential treatment is sought is not susceptible of summary, in which case a statement of the reasons why summarization is not possible, shall also be provided by such parties.

(7) Where the Director-General is of the view that the non-confidential summary provided under subsection (5) fails to satisfy the requirements of that subsection, the Director-General may determine that the request for confidential treatment is not warranted, and where in such instance the supplier of the information is unwilling to make the information public, the Director-General shall disregard such information, and return the information concerned to the party who submitted it, unless it is demonstrated to the satisfaction of the Director-General that the information is correct.

Reliance on information available.

26. (1) Where, at any time during an investigation, any party interested —

(*a*) refuses access to, or otherwise does not provide any necessary information within the time determined by the Director-General; or

(*b*) otherwise significantly impedes the investigation,

the Director-General may reach preliminary and final determinations (affirmative or negative), on the basis of the information available, including information contained in the application. The provisions of the First Schedule to this Act, shall be followed by the Director-General in reaching a determination under this subsection.

(2) The Director-General shall take due account of any difficulties experienced by parties interested, in particular small companies, in supplying information requested for, and as such shall provide any practicable assistance or may extend the time granted for the submission of any specified information, as the case may be.

Public file and access thereto.

27. (1) The Director-General shall establish and maintain a public file relating to each investigation or review conducted under this Act. Subject to the provisions of section 25, the Director-General shall place in the public file:—

(*a*) all public notices relating to the investigation or review;

(*b*) all material, including questionnaires, responses to questionnaires, and written communications submitted to the Director-General;

(*c*) all other information developed or attained by the Director-General including any verification reports prepared under section 33; and

(*d*) any other documents the Director-General deems appropriate for public disclosure.

(2) The public file shall be made available to the public for review and copying at the office of the Director-General, throughout the period of the investigation, review and any resulting judicial review.

INVESTIGATION PROCEDURE

Proposed schedule for investigation.

28. The Director-General shall, in the notice published under section 21 of the initiation of an investigation, include the proposed procedure for the conduct of the investigation, including the proposed time-limits for submission of written arguments, the proposed date for any hearing if requested, the proposed date for the preliminary determination and the proposed date for the final determination.

Gathering information.

29. (1) Upon the initiation of an investigation, the Director-General shall send questionnaires to any person, he believes, may have information relevant to the investigation, including domestic producers, importers, exporters and foreign producers.

(2) The Director-General shall grant the exporters and foreign producers to whom the questionnaire is sent, a period of not less than thirty seven days for reply, beginning from the date on which the questionnaire was sent to the respondent or transmitted to the appropriate diplomatic or official representative of the exporting country. The Director-General shall give due consideration to any request for an extension of the time granted to reply and shall grant such an extension whenever practicable, upon good cause shown, taking into consideration the time limits set for the conclusion of the investigation.

(3) The Director-General may disregard any reply to a questionnaire that is not submitted within the time provided, or in the form in which it was requested to be sent.

(4) The Director-General may, during the course of an investigation, request for further information from parties interested in the form of supplementary questionnaires, or written requests for clarification or additional information. Such requests shall state the date by which reply should be forwarded, taking into consideration sufficient time that may be required to send a meaningful reply.

(5) Any party interested may on its own initiative, submit in writing, any information it considers relevant to the investigation, which shall be considered by the Director-General, unless such consideration would be unduly burdensome or would disrupt the timely progress of the investigation.

(6) The Director-General shall base his assessments of dumping, injury and causal link on data relating to defined periods, which shall —

(*a*) in the case of dumping, generally cover a period of not less than six months and not more than twelve months preceding the date of initiation of the investigation for which data is available; and

(*b*) in the case of injury, generally cover a period of thirty six months.

(7) Notwithstanding the provisions of subsection (6), the Director-General may where appropriate, determine a shorter or longer period as the case may be, in the light of available information regarding the Sri Lankan industry, and the nature of the investigated product.

Preliminary written arguments.

30. Parties interested may, not later than a period of fifteen days before the date scheduled for the making of the preliminary determination, submit written arguments concerning any matter relevant to the investigation.

Preliminary determination.

31. (1) The Director-General shall make a preliminary determination of dumping, injury and causal link, not earlier than a period of two months and not later than a period of five months after initiation of the investigation, based on all information available to the Director-General at that time.

(2) A public notice of the preliminary determination shall be issued by the Director-General, which shall set forth in sufficient detail the findings and conclusions reached on all

issues of fact and law considered material, due regard being given to the requirement for protection of confidential information. The notice shall also contain —

(*a*) the names of the known exporters and producers of the investigated product;

(*b*) a description of the investigated product that is sufficient for customs purposes, including the harmonized commodity description and coding system classification;

(*c*) the amount of the dumping margin, if any, found to exist and the basis for such determination, including a description of the methodology used in determining normal value and export price, and any adjustments made in comparing the two;

(*d*) if the method of comparison provided for in subsection (2) of section 11 of this Act was used, the explanation required by that subsection;

(*e*) if the Director-General declined to determine an individual dumping margin on the basis of voluntary responses as provided for in subsection (5) of section 13 of this Act, the basis for that decision;

(*f*) the factors that have led to the determination of injury and causal link, including information on factors other than dumped imports that have been taken into account; and

(*g*) the amount of any provisional measures to be applied and the reasons why such provisional measures are necessary to prevent injury being caused during the period of the investigation.

(3) The Director-General shall publish the public notice in the *Gazette*, and in any newspaper widely circulated in Sri Lanka in all three languages, and a copy of such notice shall be forwarded to the country or countries exporting the investigated product and to any other known parties interested.

Acceptance of a price undertaking.

32. (1) Where the Director-General —

(*a*) accepts a price undertaking under section 44, the Director-General shall publish a notice to that effect in the *Gazette* and in any newspaper widely circulated in Sri Lanka in all three languages; or

(*b*) refuses to accept a price undertaking under section 44, the Director-General shall provide the reasons for such refusal and shall give the exporter an opportunity to make any comments thereon.

(2) The public notice of the acceptance of an undertaking shall include the non-confidential part of the undertaking and set forth in sufficient detail the findings and conclusions on all issues of fact and law considered material by the Director-General, and such notice shall be forwarded to the country or countries the products of which are subject to such determination, and to any other known parties interested.

(3) Where the Director-General continues the investigation under section 46 of this Act, he shall publish a notice of the continuation of the investigation, setting forth the proposed date for the final determination, and any other modifications to the proposed procedure adopted for the conduct of the investigation. Any final determination in such a continued investigation shall be made within a period of six months of the date of publication of such notice.

Verification of information.

33. (1) Except in the circumstances provided for in section 26, the Director-General shall, during the course of an investigation, satisfy himself as to the accuracy of the information supplied by parties interested upon which his findings are based.

(2) For the purpose of verifying information provided or to obtain further information, the Director-General may carry out investigations in other countries where necessary, with prior consent of the firms concerned, and after notifying the representatives of the government of the country in question.

(3) The procedures specified in the Second Schedule to this Act shall apply with regard to the verifications carried out in the territory of other countries, under subsection (2).

(4) The Director-General shall prepare a report on any verification conducted under this section, and the report shall be made available to the company to which it pertains, and a non-confidential version shall be placed in the public file kept under section 27.

(5) The Director-General shall make every effort to complete any verification, prior to the date of any hearing in the investigation.

Written arguments.

34. (1) In an investigation in which:—

(*a*) no hearing is requested for, a party interested may submit written arguments concerning any matter it considers relevant to the investigation, not later than a period of one and a half months before the date proposed for the final determination;

(*b*) a hearing is held, not later than a period of ten days before the scheduled date of the hearing, a party interested may submit written submissions concerning any matter it considers relevant to the investigation.

(2) Following the hearing, parties interested who participated in the hearing may within a period of ten days, submit further written submissions in response to arguments and information presented at the hearing.

Hearings.

35. (1) The Director-General shall, upon request made by a party interested not later than a period of one month after the publication of the preliminary determination, fix a date not later a period of than three weeks and not more than a period of one month prior to the date of the proposed date of the final determination, for the hearing at which all parties interested may present information and arguments.

(2) There shall be no obligation on any party interested to attend a hearing, and failure to do so shall not be prejudicial to that interested party's case. Hearings shall, as far as possible, be organized by the Director-General so as to take into account the convenience of all the parties interested.

(3) Parties interested intending to appear at the hearing shall notify the Director-General of the names of representatives and witnesses who may appear at the hearing, not less than a period of seven days before the date of the hearing.

(4) Hearings shall be presided over by the Director-General, who shall ensure that confidentiality is preserved, and shall organize the hearing in such manner so as to ensure that all parties participating have an adequate opportunity to present their views. The Director-General shall maintain a record of the hearing, which shall be placed in the public file, with the exception of any confidential information.

Contributions by industrial users and representatives of consumer organizations.

36. (1) The Director-General shall provide opportunities for industrial users of the investigated product in Sri Lanka and for representatives of consumer organizations, to provide information and submit written arguments concerning matters relevant to the investigation, including the economic interest of Sri Lanka, in imposing measures.

(2) All information under this section shall be provided in writing, and the Director-General shall allow industrial users of the investigated product and representatives of consumer organizations, to make oral representations at any hearing held during the course of an investigation.

Essential facts.

37. (1) At least a period of three weeks before the proposed date for the final determination, the Director-General shall, subject to the confidentiality requirement under section 25, inform all parties interested in writing sent by registered post or by any other means, of the essential facts under consideration which shall form the basis for the decision whether to apply definitive measures.

(2) Parties interested may submit comments in writing by registered post, if any, on information disclosed to them under subsection (1), within a period of one week of such disclosure, or in exceptional circumstances, within such extended period of time as may be determined by the Director-General.

Final determination.

38. (1) The Director-General shall make a final determination of dumping, injury, and causal link, generally within a period of six months of the date of the preliminary determination, and such final determination shall be based on all information obtained by the Director-General during the course of the investigation that has been disclosed to parties interested, subject to the confidentiality requirements under section 25.

(2) Where the final determination demonstrates that there is dumping and injury is being caused as a result of such dumping, and taking into consideration among other matters:—

(*a*) the situation of domestic competition for the product under investigation; and

(*b*) the needs of industrial users and the interest of final consumers, where applicable,

and where the economic interest of Sri Lanka calls for the imposition of anti-dumping duties, a proposal for a definitive anti-dumping duty, subject to the provisions of subsection (4), shall be submitted by the Director-General to the Inter-Ministerial Committee.

(3) It shall be the duty of the Inter-Ministerial Committee to consider the appropriateness of imposing a definitive anti--dumping duty, and it shall submit its recommendation to the Minister in charge of the subject of Finance through the Minister, within a period of ten working days of receipt of such proposal.

(4) The Director-General shall examine whether a duty less than the full dumping margin would be adequate to remove the injury to the Sri Lankan industry. Where the Director-General determines that such a lesser duty would be adequate to remove the injury, the amount of the final anti-dumping duty imposed shall not exceed that lesser duty.

(5) Where the final determination is that, there is no evidence of dumping and consequently no injury is being caused to the Sri Lankan Industry or there is no evidence of injury being caused to the Sri Lankan Industry though there is evidence of dumping, or the Sri Lankan economic interest does not call for the imposition of any anti-dumping duties, the Director-General shall immediately terminate the investigation.

Imposition of duty and issue of public notice.

39. (1) Where the Inter-Ministerial Committee recommends the imposition of a definitive anti-dumping duty, the Minister in charge of the subject of Finance in consultation with the Minister shall, within a period of fourteen working days of the date of receipt of the recommendation of the Inter-Ministerial Committee and taking into consideration the economic interest of Sri Lanka, determine whether or not to adopt a definitive anti-dumping duty, and the amount of duty to be imposed, if any, provided that the duty imposed shall not exceed the dumping margin, that was found to exist.

(2) The Director-General shall issue a public notice of:—

(*a*) the final determination (whether affirmative or negative); and

(*b*) the amount of duty, if any, imposed by the Minister in charge of the subject of Finance,

which shall be published in the *Gazette,* and in any newspaper widely circulated in Sri Lanka in all three languages.

(3) A report shall be prepared by the Director-General, containing —

(*a*) the final determination, including all relevant information on matters of fact and law, and the reasons that have led to such determination, due regard being given to the requirement for the protection of confidential information; and

(*b*) the information referred to in subsection (4) of this section,

and such report shall be made available for public inspection, and copies thereof may be issued on the payment of such fee, as may be determined by the Director-General.

(4) The information required under paragraph (*b*) of subsection (3) to be included in the report, shall consist of the following:—

(*a*) the names of the known exporters and producers of the investigated product;

(*b*) description of the investigated product that is sufficient for customs purposes, including the harmonized commodity description and coding system classification;

(*c*) the amount of the dumping margin, if any found to exist and the basis for such determination, including a description of the methodology used in determining normal value and export price, and any adjustments made in comparing the two;

(*d*) if the method of comparison provided for in subsection (2) of section 11 of this Act was used, the explanation required by that subsection;

(*e*) if the Director-General declined to determine an individual dumping margin on the basis of voluntary responses as provided for in subsection (4) of section 13 of this Act, the basis for that decision;

(*f*) the factors that have led to the determination of injury and casual link, including information on factors other than dumped imports that have been taken into account;

(*g*) the reasons for the acceptance or rejection of relevant arguments or claims made by exporters and importers;

(*h*) the amount of any anti-dumping duties, if any, imposed by the Minister in charge of the subject of Finance; and

(*i*) if final anti-dumping duties are to be collected with regard to the imports to which provisional measures were applied, the reasons for the decision to do so.

(5) Where, within a period of seven days of making the report available for public inspection under subsection (3), any party interested brings to the notice of the Director-General any clerical errors appearing in such report, the Director-General may, where he considers it necessary, rectify such error.

(6) A copy each of the notice published under subsection (2) and of the report prepared under subsection (3), shall be sent to the country or countries the product of which was subject to the final determination, and to any other known parties interested, as may be determined by the Director-General.

Disclosure.

40. The Director-General shall, on request made within a period of fifteen days of the publication of the notice under subsection (2) of section 39 of this Act, hold separate disclosure meetings with exporters or producers requesting for such a meeting, to explain the dumping calculation methodology finally applied for that exporter or producer.

PROVISIONAL MEASURES

Imposition of provisional measures.

41. (1) Where the Director-General makes an affirmative preliminary determination of dumping, injury and the existence of a causal link between the dumping and the injury, and is of opinion that provisional measures are necessary to prevent injury being continued during the investigation, he shall communicate his opinion to the Minister who shall submit such opinion to the Minister in charge of the subject of Finance.

(2) The Minister in charge of the subject of Finance shall, in consultation with the Minister, determine whether or not to adopt provisional measures and the amount of provisional duty to be imposed, if any, and the Director-General shall cause notice of such duty imposed to be published in the *Gazette* and in any newspaper widely circulated in Sri Lanka in all three languages.

(3) A negative preliminary determination of dumping shall not automatically terminate the investigation, but no provisional measures shall be imposed in such a case.

Amount of provisional duty to be imposed.

42. The provisional duty imposed by the Minister in charge of the subject of Finance under subsection (2) of section 41, shall not be greater than the estimated dumping margin set forth in the public notice of the preliminary determination published under subsection (3) of section 31.

Duration of application of provisional measures.

43. (1) Provisional measurers shall not be imposed until the expiration of a period of not less than two months from the date of initiation of the investigation, and shall generally be applied for a period not exceeding six months.

(2) The Director-General may, upon a request made in that behalf by exporters representing a significant percentage of the trade involved, extend the period of application of the provisional measures referred to in subsection (1), to a period not exceeding nine months.

(3) The provisions of sections 48 and 49 of this Act, shall be followed *mutatis mutandis* in the application of provisional measures imposed under section 41.

PRICE UNDERTAKINGS

Undertakings relating to price undertakings.

44. (1) The Director-General may suspend an investigation without the imposition of provisional measures or anti-dumping duties, on receipt of satisfactory voluntary undertakings from any exporter, to revise its prices or to cease exports to the area in question at dumped prices, and the Director-General is satisfied that the injurious effect of the dumping is eliminated.

(2) Any price increases imposed as a result of an undertaking given under subsection (1), shall not be higher than what is necessary to eliminate the dumping margin and where the Director-General determines in the interest of the national economy, that a lesser price increase would be adequate to remove the injury to the Sri Lankan industry, the price increase imposed may be less than the dumping margin.

(3) Price undertaking for the purpose of subsection (1) may be suggested by the Director-General, but no exporter shall be forced to enter into such an undertaking.

(4) The fact that exporters do not offer any price undertakings, or do not accept an invitation to do so, shall in no way prejudice the consideration of the case, but the Director-General shall be free to determine that a threat of injury is more likely to be realized, if the dumped imports continue.

(5) Except in exceptional circumstances, a price undertaking under subsection (1) may be offered by any exporter at any time not less than a period of two months before the proposed date of the final determination.

Conditions for acceptance of price undertakings.

45. (1) The Director-General shall not seek to suggest or accept any price undertakings from exporters, until a preliminary affirmative determination is made of dumping, injury, and causal link.

(2) Undertakings offered may not be accepted by the Director-General, if he considers their acceptance impractical such as, if the number of actual or potential exporters is too great, or for any other reasons, including reasons of general policy.

(3) Where the Director-General decides not to accept an undertaking, he shall provide to the exporter the reasons which have led to consider the acceptance of an undertaking as inappropriate, and grant to such exporter an opportunity to make written comments thereon.

(4) The Director-General may require any exporter from whom an undertaking have been accepted, to provide periodically, information relevant to the fulfillment of such undertakings, and to permit verification of the information so provided. The communication of these data shall be subject to the provisions of section relating to

confidentiality. Failure to provide information requested by the Director-General may be deemed to be a violation of the undertaking.

(5) Price undertakings offered shall be enforced in such manner and following such procedure as shall be prescribed.

Completion of the investigation.

46. (1) Notwithstanding the acceptance of one or more undertakings, the Director-General shall, where an exporter so desires or the Director-General so decides, complete the investigation of dumping and injury.

(2) In a case where the Director-General completes the investigation under subsection (1) and —

(*a*) the Director-General makes a negative determination of dumping or injury, the undertakings shall automatically lapse, except in cases where such a determination is due in large part to the existence of such undertakings, and the Director-General may require that an undertaking be maintained for a reasonable period of time as shall be determined by him;

(*b*) the Director-General makes an affirmative determination of dumping and injury, the undertaking shall stand modified to the extent of the determination.

Violation of undertakings.

47. Where an undertaking given under section 44 is violated, the Director-General may, in compliance with the provisions of this Act, take all necessary steps as may be necessary for the imposition of provisional measures, using the best information available. In such cases, definitive duties may be levied in accordance with this Act on goods imported for consumption not more than a period of three months before the application of such provisional measures, except that any such assessment shall not apply to imports entered before the violation of the undertaking.

IMPOSITION AND COLLECTION OF ANTI-DUMPING DUTIES

Imposition and collection of anti-dumping duties.

48. (1) Anti-dumping duties shall take the form of *ad valorem* or specific duties, and shall be imposed in addition to other import duties levied on the imported products concerned.

(2) Anti-Dumping duties shall be collected by the Director-General of Customs and the provisions of the Customs Ordinance relating to collection of duties, shall *mutatis mutandis* apply to and in relation to the same.

(3) Except in the circumstances provided for in subsection (4), the Director-General shall establish an individual anti-dumping duty for each known exporter or producer of dumped imports concerned.

(4) When the Director-General has limited the examination in accordance with the provisions of subsections (2) and (3) of section 13 of this Act, any anti-dumping duty applied to imports from exporters or producers not included in the examination, shall not exceed the weighted average dumping margin established with respect to the selected exporters or producers, provided that the Director-General shall disregard for the purpose of this subsection, any zero or *de minimis* margins and margins established under the circumstances referred to in section 26.

(5) Except as otherwise provided for in subsections (4) and (5) of section 13 of this Act, the Director-General shall apply individual duties to imports from any exporter or producer not included in the examination who has provided the necessary information during the course of the investigation.

(6) The Minister in charge of the subject of Finance may apply an anti-dumping duty rate for imports from exporters and producers not known to the Director-General at the time the final determination was made. Such anti-dumping duty rate shall not exceed the weighted average of the individual

dumping margins established for exporters and producers examined during the investigation, excluding margins established under the circumstance referred to in section 26 of this Act.

Refund of duties paid in excess of the dumping margin.

49. (1) An importer shall be granted a refund of the duties collected by the Director-General of Customs, where the Director-General determines that the dumping margin, on the basis of which duties were paid, has been eliminated or reduced to a level which is below the level of the duty in force.

(2) The importer shall submit an application to the Director-General for the refund of anti-dumping duties collected within any period of six months, within a period of two months of the end of that period. The application shall contain information on the amount of refund of anti-dumping duties claimed for the period, and all customs documentation relating to the calculation and payment of such amount. It shall also include evidence of normal value and export prices to Sri Lanka, for the exporter or the producer to which the duty applies.

(3) In any case where the importer is not associated with the producer or exporter and the information referred to in subsection (2) is not immediately available, or where the producer or the exporter is unwilling to release it to the importer, the application shall contain a statement from the producer or exporter that the dumping margin has been reduced or eliminated, and that the relevant supporting evidence shall be directly provided to the Director-General. Where such evidence is not forthcoming from the exporter or producer within a reasonable period of time, the application shall be rejected.

(4) In investigating an application for a refund, the Director-General shall apply the relevant provisions of this Act relating to the conduct of an investigation, to his determination. In particular when determining whether and

to what extent a refund should be made when the export price is contracted on the basis of the price at which the imported products are first resold to an independent buyer due to the absence of export price, or because it appears that the export price is unreliable in terms of subsection (2) of section 9, the Director-General shall take account of any change in normal value, any change of costs incurred between importation and resale, and any movement in the resale price which is duly reflected in subsequent selling prices, and shall calculate the export price with no deduction for the amount of anti-dumping duties paid, when satisfactory evidence of the above is provided.

(5) The Director-General shall provide the importer making the request, with a detailed explanation of the reasons for the determination concerning the request for refund.

(6) Refunds of duties shall generally take place within a period of twelve months and in no case more than a period of eighteen months after the date on which an application for a refund was made. Any refund authorized, shall be made by the Director-General of Customs within a period of three months of the determination to grant a refund. The observance of the time-limits mentioned in this subsection may not be possible where the determination to apply the duties in question is subject to a judicial review proceeding.

(7) Notwithstanding the provisions of this section, the time limits referred to herein, may not be strictly adhered to where as a result of the subject matter being judicially reviewed, such adherence is not possible.

Suspension.

50. (1) Subject to the provisions of subsection (2), the Minister in charge of the subject of Finance may, in consultation with the Director-General and upon the recommendations of the Inter-Ministerial Committee, suspend the application of provisional measures or anti-dumping duties imposed under this Act for a specified period.

(2) The decision to suspend the application of provisional measures or anti-dumping duties shall be arrived at, having taken into consideration the interest of the national economy, and –

(*a*) subsequent to an examination of such factors, including market conditions, as the Minister may prescribe in consultation with the Minister in charge of the subject of Finance; and

(*b*) having given an opportunity to the Sri Lankan industry to comment on the issue.

RETROACTIVITY

Principle of retroactivity.

51. Except as provided for in sections 47, 52 and 53 of this Act, provisional measures and anti-dumping duties shall only be applied to products which enter into Sri Lanka for consumption, on or after the date of the publication of an affirmative preliminary or final determination in an investigation conducted under the preceding provisions of this Act, or a review carried under sections 57 to 59 of this Act.

Retroactive application of definitive duties in certain circumstances.

52. A definitive anti-dumping duty may be collected on products which were entered for consumption not more than a period of three months prior to the date of application of provisional measures, where the Director-General determines, in regard to the dumped product in question, that —

(*a*) 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

(*b*) the injury is caused by massive dumped imports of a product in a relatively short time, which in the 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.

Definitive collection of provisional duties.

53. (1) Where the Director-General makes a final determination of injury (but not of a threat thereof or of material retardation of the establishment of an industry) or, in the case of a final determination of a threat of injury, where the Director-General considers that the effect of the dumped imports would, in the absence of the provisional measures, have led to a determination of injury, definitive anti-dumping duties may be levied retroactively for the period for which provisional measures, if any, have been applied.

(2) Where the definitive anti-dumping duty is higher than the amount estimated for the purpose of the provisional measure, the difference shall not be collected, but where the definitive duty is lower than the amount estimated for the purpose of the security, the difference shall be reimbursed.

(3) Except as provided for in subsection (1), where the Director-General makes a determination of threat of injury or material retardation (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. Any provisional duty paid shall be reimbursed within a period of one and a half months.

(4) Where the Director-General makes a negative final determination, any provisional duty paid during the period of application shall be reimbursed within a period of one and a half months.

TERMINATION WITHOUT ADOPTION OF MEASURES

Termination for insufficient evidence, *de minimis* dumping margin or negligible volume.

54. (1) An investigation shall be terminated at any time, where the Director-General is satisfied that there is not sufficient evidence of either dumping or injury, to justify proceeding with the investigation.

(2) The Director-General shall terminate an investigation, if he determines that the dumping margin is *de minimis*, or that the volume of dumped imports, whether actual or potential, or the injury, is negligible.

(3) For the purpose of subsection (2) —

(*a*) the dumping margin shall be considered to be *de minimis* if the margin is less than two *per centum*, expressed as a percentage of the export price; and

(*b*) the volume of dumped imports shall generally be regarded as negligible, if the volume of dumped imports of the investigated product from a particular country is found to account for less than three *per centum* of total imports of the investigated and like product in Sri Lanka, unless imports of the investigated product from all countries under investigation which individually account for less than three *per centum* of the total imports of the investigated and like product in Sri Lanka, collectively account for more than seven *per centum* of imports of the investigated and like product in Sri Lanka.

Public notice of conclusion of an investigation without imposition of measures.

55. The Director-General shall, with due regard being paid to the requirement for the protection of confidential information, issue a public notice of the conclusion of an investigation without imposition of measures, which shall set forth in sufficient detail the findings and conclusions

reached on all issues of fact and law considered material by the Director-General, including the matters of fact and law which have led to arguments being accepted or rejected, as the case may be.

DURATION AND REVIEW OF ANTI-DUMPING DUTIES AND PRICE UNDERTAKINGS

Duration of an anti-dumping duty.

56. (1) An anti-dumping duty shall remain in force as long as, and to the extent necessary, to counteract dumping which is causing injury.

(2) Any definitive anti-dumping duty shall stand terminated on a date not later than a period of five years from its imposition or from the date of the most recent review under section 57, if that review has covered both dumping and injury.

(3) The Director-General shall, not later than a period of three months preceding the date of expiry of the definitive anti-dumping duty, publish a notice in the *Gazette* and in any newspaper widely circulated in Sri Lanka in all three languages, of the impending expiry of any anti-dumping duty. A definitive duty, however, may not expire, if the Director-General determines, in a review initiated before the date of expiry on his own initiative, or upon a duly substantiated request made by or on behalf of the Sri Lankan industry within a period of one and a half months from the public notice of impending termination of the definitive anti-dumping duties concerned, that the expiry of the duty would be likely to lead to a continuation or recurrence of dumping and injury. The duty may remain in force pending the outcome of such a review.

Review for change of circumstances.

57. (1) The Director-General shall, where it is warranted, review the need for the continued imposition of the anti-dumping duty on his own initiative or, where a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty, upon a written request submitted by any party interested, which contains positive information substantiating the need for a review.

(2) The Director-General shall, upon initiation of a review under subsection (1), publish a notice in the *Gazette* and in any newspaper widely circulated in Sri Lanka in all three languages, of the initiation of such a review.

(3) In conducting a review under this section, the Director-General shall, upon request made by a party interested, examine whether —

(*a*) the continued imposition of the duty is necessary to offset dumping;

(*b*) the injury would be likely to continue or recur, if the duty were removed or varied; or

(*c*) both events are happening.

(4) Where, as a result of a review under this section, the Director-General determines that the anti-dumping duty is no longer warranted, the Director-General shall recommend to the Minister in charge of the subject of Finance that such duty be terminated immediately.

Newcomer review.

58. (1) Where a product is subject to definitive anti-dumping duties, the Director-General shall promptly carry out a review for the purpose of determining individual dumping margins for any exporters or producers in the exporting country concerned who did not export the product to Sri Lanka during the period of investigation, provided, such exporters or producers may 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 imported investigated product. Such a review shall be initiated within a period of one month following the date of receipt of the application by the producer or exporter concerned.

(2) A review under subsection (1) shall generally be completed within a period of six months from its initiation and, in any event, a period not later than twelve months of its initiation.

(3) No anti-dumping duty shall be levied on imports from such exporters or producers at whose instigation a review is being carried out under subsection (1), while the review is being carried on. The Director-General may, however, request guarantees in the amount of the residual anti-dumping duty rate, as determined under subsection (6) of section 48 of this Act, in order 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.

Duration and review of undertakings.

59. The provisions of —

(*a*) sections 56 and 57 of this Act shall apply, *mutatis mutandis*, to price undertakings accepted under the provisions of sections 44 to 47 of this Act;

(*b*) sections 21, 25, 26, 27, 29, 32, 33, 34, 35, 36, 37, 38, 39 and 40 of this Act shall apply, *mutatis mutandis*, to any review carried out under this Part of this Act; and

(*c*) section 22 of this Act shall apply to any review conducted under sections 56 and 57 of this Act which shall be carried out expeditiously and be concluded within a period of twelve months of the date of initiation of the review.

ANTI-CIRCUMVENTION

Circumvention of anti-dumping duty.

60. (1) Where an article subject to anti-dumping duty is imported into Sri Lanka from any country including the country of origin or country of export notified for the purposes of levy of anti-dumping duty, in an unassembled, unfinished or incomplete form and is assembled, finished or completed

in Sri Lanka or in such country, such assembly, finishing or completion shall be considered to circumvent the anti-dumping duty in force if, -

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

(*b*) the value consequent to assembly, finishing or completion operation is less than thirty-five *per centum* of the cost of assembled, finished or completed article.

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

(3) Where an article subject to anti-dumping duty is imported into Sri Lanka through exporters or producers or country not subject to anti-dumping duty, such exports shall be considered to circumvent the anti-dumping duty in force, if the exporters or producers notified for the levy of anti-dumping duty change their trade practice, pattern of trade or channels of sales of the article in order to have their products exported to Sri Lanka through exporters or producers or country not subject to anti-dumping duty.

Initiation of investigation to determine circumvention.

61. (1) Except as provided herein below, the Director-General may initiate an investigation to determine the existence and effect of any alleged circumvention of the anti-dumping duty levied under section 2(1) of the Act, upon receipt of a written application by or on behalf of the Sri Lankan industry.

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

(3) Notwithstanding anything contained in subsection (1), the Director-General may initiate an investigation on his own initiative, if he is satisfied from information received from any party interested that sufficient evidence exists as to the existence of the circumstances pointing to circumvention of anti-dumping duty in force.

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

Provided that, the Director-General shall notify the government of the exporting country before proceeding to initiate such an investigation.

(5) The provisions regarding the conduct of anti-dumping investigations under this Act shall apply *mutatis mutandis* to any investigation carried out under this section.

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

Determination of Circumvention.

62. (1) The Director-General, upon determination that circumvention of anti-dumping duty exists, may recommend to the Inter-Ministerial Committee the imposition of anti-dumping duty to imports of articles found to be circumventing an existing anti-dumping duty or to imports of articles originating in or exported from countries other than those which are already notified for the purpose of levy of the anti-dumping duty and such levy may apply retrospectively from the date of initiation of the investigation under section 61.

(2) It shall be the duty of the Inter-Ministerial Committee to consider the appropriateness of the recommendation of the Director-General under subsection (1), and it shall submit its recommendation to the Minister in charge of the subject of Finance through the Minister, within a period of ten working days of receipt of such recommendation.

Review of circumvention.

63. (1) The Director-General may review the need for the continued imposition of the duty, where warranted, on his own initiative or a reasonable period of time has elapsed since the imposition of the measures, upon request made by any party interested which submits positive information substantiating the need for the review.

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

PART II

COUNTERVAILING DUTIES

Circumstances in which a countervailing duty may be imposed.

64. (1) Countervailing duties may be imposed on products imported into Sri Lanka, where the Director-General determines, pursuant to an investigation initiated and conducted in accordance with the provisions of this Act, that —

(*a*) a prohibited subsidy or an actionable subsidy within the meaning of this Act is being provided with respect to the investigated product;

(*b*) there is injury being caused to the Sri Lankan industry; and

(*c*) there exists a causal link between the subsidized imports and the injury caused.

(2) Where imports of like products from more than one country are the subject of simultaneous countervailing duty investigations, the Director-General may, for the purpose of determining whether injury exists, cumulatively assess the effects of such subsidized imports on the Sri Lankan industry, only if —

(*a*) the applications are filed under section 14 of this Act;

(*b*) the Director-General determines that the amount of countervailable subsidization established in relation to the imports from each country is more than *de minimis* as specified in section 74 and the volume of imports from each country is not negligible as specified in section 74; and

(*c*) the Director-General determines that a cumulative assessment of the effects of the imports is appropriate in the light of the conditions of competition between the imported products, and the conditions of competition between the imported products and the domestic like products.

When may a subsidy be subject to a countervailing duty.

65. (1) Subject to the provisions of section 64 of this Act, a subsidy may be subject to a countervailing duty, if it is —

(*a*) a prohibited subsidy; or

(*b*) an actionable subsidy.

(2) A subsidy shall not be subject to a countervailing duty and be considered a non-actionable subsidy within the meaning of this Act, where the Director-General determines that, such subsidy is —

(*a*) not specific within the meaning of section 66 of this Act; or

(*b*) a subsidy referred to in the Third Schedule to this Act.

(3) A prohibited subsidy shall be deemed to be specific in terms of section 66 of this Act.

Specificity and contingency of subsidy.

66. (1) In order to determine whether for the purpose of subsection (1) of section 65 of this Act, a subsidy is specific to an enterprise or industry or group of enterprises or industries (referred to in this section as "certain enterprises") within the jurisdiction of authority granting it, the following principles shall apply:—

(*a*) where the granting authority or the legislation pursuant to which the granting authority operates,explicitly limits access to a subsidy to certain enterprises, such subsidy shall be specific;

(*b*) where the granting authority or the legislation pursuant to which the granting authority operates, establishes objective criteria or conditions 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 and are clearly spelt out in that legislation or other official document, so as to be capable of verification; and

(*c*) if, notwithstanding any appearance of non-specificity resulting from the application of the

principles laid down in sub-paragraphs (*a*) and (*b*) of this subsection, there are reasons to believe that the subsidy may in fact be specific, the following factors may be considered:—

(i) use of a subsidy programme by a limited number of certain enterprises, predominant use by certain enterprises, the granting of disproportionately large amounts of subsidy to certain enterprises, and the manner in which discretion has been exercised by the granting authority in the decision to grant a subsidy; and

(ii) account shall be taken of the extent of diversification of economic activities within the jurisdiction of the granting authority, as well as of the length of time during which the subsidy programme has been in operation.

(2) For the purposes of paragraph (*b*) of subsection (1), objective criteria or conditions means, 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 the number of employees or the size of the enterprise.

(3) The setting or change of generally applicable tax rates, shall not be deemed to be a specific subsidy.

(4) A subsidy which is limited to certain enterprises located within a designated geographical region within the jurisdiction of the authority granting the subsidy shall be deemed to be a specific subsidy.

(5) Any determination of specificity under this section shall be established on the basis of positive evidence.

Determination of benefit by the grant of a subsidy.

67. (1) In determining what amounts to the "conferring of a benefit" for the purpose of a "subsidy" as defined in section 85 of this Act, the Director-General shall have regard to 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 the provision of risk capital, of private investors in the territory of that country;

(*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 which case the benefit shall be the difference between these two amounts;

(*c*) a loan guaranteed 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 without that government guarantee, in which case the benefit shall be the difference between these two amounts adjusted for any differences in fees; and

(*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.

(2) For the purposes of paragraph (*d*) of subsection (1), the adequacy of remuneration shall be determined in relation to prevailing market conditions for the goods or services in question in the country of provision or purchase, including price, quality, availability, marketability, transportation and other conditions of purchase or sale.

Establishing the countervailing duty rate.

68. (1) The Director-General shall subject to the provisions of subsection (4), submit through the Minister, a proposal to the Minister in charge of the subject of Finance, relating to the application of an individual countervailing duty rate for each known exporter or producer concerned, of the investigated product that has been individually investigated.

(2) Where the number of exporters, producers, importers or types of the investigated product is so large as to make it impracticable to individually examine each party interested or all the investigated products for the purpose of subsection (1), the Director-General may limit the examination either to a reasonable number of parties interested or investigated products, by using samples which are statistically valid on the basis of information available to the Director-General 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.

(3) Any selection of exporters, producers, importers or types of investigated products made under subsection (2), shall preferably be chosen in consultation with and the consent of the exporters, producers or importers concerned.

(4) Where a limited examination is carried out under subsections (2) and (3), the Director-General shall apply to any exporter or producer not included in the investigation, a rate that is equal to the weighted average of the individual countervailing duty rates established for all exporters and producers individually examined, provided that, the Director-General shall disregard for the purpose of this subsection, any zero or countervailable subsidy considered to be *de minimis.*

INITIATION, CONDUCT AND CONCLUSION OF INVESTIGATION AND REVIEW

Initiation of investigation under this Part of the Act.

69. In regard to the initiation of a countervailing duty investigation under this Part of this Act, the provisions of sections 14 to 22 (inclusive of both sections) of this Act, shall *mutatis mutandis*, apply to and in relation to the same, subject to the following modifications:—

(*a*) before initiating a countervailing duty investigation and throughout the conduct of the investigation, the Director-General shall provide any interested foreign government, an opportunity for consultation for the purpose of clarifying any matters that shall be relevant to the investigation and arriving at a mutually agreed solution;

(*b*) a consultation under paragraph (*a*) shall not in any way impede the Director-General from proceeding with the conduct of the investigation, or reaching a provisional or final determination, in relation to the same; and

(*c*) the requirement of notifying the government of each exporting country of a decision to initiate an investigation, where the application fulfills the relevant requirement as provided for in subsection (2) of section 16, shall not be applicable to an investigation initiated under this Part of this Act.

Conduct and conclusion of an investigation under this Part of this Act.

70. In regard to the conduct and conclusion of an investigation under this part of this Act, including the imposition of provisional measures, the provisions of sections 23 to 43 (inclusive of both sections) of this Act, shall *mutatis mutandis* apply to and in relation to the same, subject to the following modifications:—

(*a*) the requirement under section 29 of this Act of sending questionnaires upon the initiation of an

investigation, shall in the case of an investigation under this Part of this Act, also include the sending of such questionnaire to interested members or parties interested;

(*b*) the provisional measures imposed under section 41 of this Act, shall, in the case of an investigation under this Part of this Act, take the form of cash deposits or bonds equal to the amount of the provisionally calculated amount of subsidization;

(c) the duration of the application of any provisional measures imposed as referred to in subsection (1) of section 43 of this Act, shall, in the case of provisional measures imposed in an investigation under this Part of this Act, not exceed a period of four months; and

(*d*) the provisions of subsection (2) of section 43 relating to the granting of an extension of the period of the application of provisional measures imposed, shall not apply to an investigation under this Part of this Act.

Price undertakings.

71. (1) The Director-General may suspend an investigation under this Part of this Act, without the imposition of provisional measures, on receipt of satisfactory voluntary undertakings from the government granting the subsidy or the exporter concerned, that —

(*a*) the government granting the subsidy agrees to eliminate or limit the subsidy or take other measures concerning its effects; or

(*b*) the exporter concerned agrees to revise its prices so that the injurious effects caused by the granting of that subsidy is eliminated.

(2) Any price increases imposed as a result of an undertaking given under paragraph (*b*) of subsection (1), shall not be higher than necessary to eliminate the amount of the subsidy and preferably be less than the amount of the subsidy, if such price increase imposed is adequate to remove the injury caused to the Sri Lankan industry.

(3) Price undertakings for the purpose of subsection (1) may be suggested by the Director-General, but, the exporter concerned shall not be forced to enter into such undertakings.

(4) The fact that exporter concerned does not offer any price undertakings or does not accept an invitation to do so, shall in no way prejudice the consideration of the case, but the Director-General shall be free to determine that a threat of injury to the Sri Lankan industry is more likely to be realized, if the subsidized imports continue.

Consequences of voluntary undertakings under section 71.

72. In regard to the conditions of acceptance of voluntary undertakings from an exporter under section 71 of this Act, and the consequences of such an acceptance, the provisions of sections 45 to 47 (inclusive both sections) of this Act, shall, *mutatis mutandis* apply to and in relation to the same.

Imposition and collection of countervailing duties etc. under this Part of this Act.

73. (1) In regard to the imposition and collection of countervailing duties, retroactivity, termination of investigations, duration and review of countervailing duties and voluntary undertakings, in an investigation under this Part of this Act, the provisions of sections 48 to 57 (inclusive of both sections) and section 59 of this Act, other than the provisions of section 54, shall *mutatis mutandis* apply to and in relation to the same.

(2) Notwithstanding the provisions of subsection (1), where a countervailing duty has been imposed on products exported by an exporter who was not included in an investigation carried under this Part of this Act, (for a

reason other than the refusal to co-operate), the Director-General shall immediately initiate and promptly review an investigation under this Part of this Act and the provisions of section 58 of this Act shall *mutatis mutandis* apply to and in relation to the same.

Termination for insufficient evidence of an investigation under this Part of this Act.

74. An investigation under this part of this Act shall be terminated at any time, where the Director-General determines that:—

(*a*) the amount of countervailable subsidy is *de minimis* or that the volume of subsidized import, actual or potential, or its injury being caused to the Sri Lankan industry, is negligible; or

(*b*) there is not sufficient evidence to justify continuing with the investigation.

Consultations.

75. (1) Where the Director-General on his own motion or on information provided by any party interested, has reason to believe that a prohibited or actionable subsidy is being granted or maintained by a Member in respect of a product being exported to Sri Lanka, the Director-General shall bring such information to the notice of the Minister.

(2) The Minister may, without prejudice to any other action that may be taken in terms of this Act, request such Member who is alleged to be granting the prohibited or actionable subsidy, for a consultation with a view to clarifying the situation relating to the same and arriving at a mutually acceptable solution, provided, however, that a hearing shall be afforded to the Sri Lankan Industry prior to finalizing any such solution.

(3) Any investigation commenced under Part II of this Act may be terminated upon a solution being arrived at under subsection (2). Provided, however, that no such investigations shall be suspended or terminated merely by the request for or commencement of any consultation under subsection (2).

(4) A request made for a consultation under subsection (1) shall be accompanied by a statement containing all the available evidence with regard to the existence of such prohibited or actionable subsidy and the nature of such subsidy.

PART III

GENERAL

Determination of injury.

76. (1) A determination of injury for the purposes of paragraph (*b*) of section 2 and paragraph (*b*) of subsection (1) of section 64 of this Act, shall be based on positive evidence and would involve an objective examination of —

(*a*) the volume of the dumped or subsidized imports and the effect of the dumped or subsidized imports on prices in the domestic market for like products; and

(*b*) the consequent impact of these imports on domestic producers of such like products.

(2) In examining the impact of the subsidized or dumped imports on the Sri Lankan industry, the Director-General shall base his examination on an evaluation of all relevant economic factors and indices having a bearing on the state of such industry, including:—

(*a*) the actual and potential decline in output, sales, market share, profits, productivity, returns on investments or utilization of capacity;

(*b*) the factors affecting domestic prices;

(*c*) the magnitude of the dumping margin in the case of an anti-dumping investigation;

(*d*) the actual and potential negative effects on cash flow, inventories, employment, wages, growth or ability to raise capital or investment; and

(*e*) in the case of a countervailing duty investigation involving agriculture, whether there has been an increased burden on government support programmes.

(3) The factors and indices listed in subsection (2) shall not be considered as exhaustive, nor shall any such factor or index be necessarily conclusive.

Causation.

77. (1) In order to determine for the purpose of paragraph (*c*) of section 2 or paragraph (*c*) of subsection (1) of section 64 of this Act, whether there exists a causal link between the injury caused to the Sri Lankan industry by the investigated product and the dumping or the granting of a countervailable subsidy, as the case may be, the Director-General shall consider among other factors, whether:—

(*a*) there has been a significant increase in dumped or subsidized imports in absolute terms or relative, to production or consumption in Sri Lanka;

(*b*) there has been significant price undercutting by dumped or subsidized imports, as compared with the price of the domestic like product; and

(c) the effect of the dumped or subsidized imports is such as to depress prices to a significant degree, or to prevent price increases which would otherwise have occurred to a significant degree.

(2) The Director-General shall assess the effect of the dumped or subsidized imports in relation to the domestic production of the like product, where available data permits the separate identification of the production in accordance with such criteria, as the production process, producers' sales and profits.

(3) If the separate identification of the production is not possible, the Director-General shall assess the effects of the dumped or subsidized imports by examining the production of the narrowest group or range of products, which includes the domestic like product, for which necessary information can be provided.

(4) In relation to an anti-dumping investigation, the demonstration of a causal link between the dumped imports and the injury to the Sri Lankan Industry shall be based on an examination of all relevant evidence before the Director-General.

(5) The Director-General shall also examine any other known factors, other than the dumped or subsidized imports which, at the same time, are injuring the Sri Lankan industry.

(6) Factors that may be considered by the Director-General under subsection (5) may include, *inter alia*:—

(*a*) the volume and prices of non-subsidized imports of the goods in question or of imports not sold at dumping prices;

(*b*) contraction in demand or changes in the patterns of consumption;

(*c*) trade restrictive practices of, and competition between, the foreign and Sri Lankan producers;

(*d*) developments in technology; and

(*e*) the export performance and productivity of the Sri Lankan industry.

(7) Injury to the Sri Lankan industry caused by factors other than the dumped or subsidized imports shall not be attributed to the dumped or subsidized imports.

Threat of material injury.

78. (1) For the purpose of this Act, a determination of threat of material injury to the Sri Lankan industry shall be based on facts, and not merely on allegation, conjecture or remote possibility, and the change in circumstances which would create a situation in which the dumped or subsidized products would cause injury, shall be clearly foreseen and imminent.

(2) In determining whether a threat of material injury exists, the Director-General shall consider with special care amongst others, factors such as:-

(*a*) a significant rate of increase of dumped or subsidized imports into the Sri Lankan market, indicating the likelihood of substantially increased importation;

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

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

(*d*) inventories of the products being investigated; and

(*e*) in the case of a countervailing duty investigation, the nature of the subsidy or subsidies in question, and the trade effects likely to arise therefrom.

(3) None of the factors referred in subsection (2) by itself shall be considered as necessarily giving any decisive guidance, but the totality of the factors considered shall lead to the conclusion that further imports of the dumped or subsidized products are imminent and that, unless protective action is taken, injury would occur.

Material retardation.

79. (1) A determination of material retardation to the establishment of Sri Lankan industry, for the purposes of this Act, shall be based on a determination by the Director-General that -

(*a*) the Sri Lankan industry producing the like products, is in the process of being established;

(*b*) such an industry is viable;

(*c*) the establishment of such an industry is imminent; and

(*d*) the dumped or subsidized imports are, through the effects of the dumping or countervailable subsidy, materially retarding the establishment of such an industry.

(2) For the purpose of subsection (1), the Director-General shall consider, amongst others, factors such as feasibility studies, negotiated loans and contracts for the purchase of machinery aimed at new investment projects or the expansion of existing plants, and whether there has been significant investment for the establishment of such an industry.

Confidential information not to be disclosed.

80. Information gathered by any person in the course of an investigation conducted under this Act, or thereafter, which is entitled to be treated as confidential information under subsection (2) of section 25, shall be subject to the provisions of Right to Information Act, No. 12 of 2016.

Judicial review.

81. Any party interested who participated in an investigation, review or refund procedure under this Act, may seek judicial review of action in terms of Article 140 of the Constitution.

Constitution of the Inter-Ministerial Committee.

82. (1) The Inter-Ministerial Committee to be constituted for the purpose of this Act shall, subject to the provisions of subsection (2), consist of the following members:—

(*a*) the Secretary to the Ministry of the Minister, who shall be the Chairman of the Inter-Ministerial Committee;

(*b*) the Secretary to the Ministry of the Minister in charge of the subject of Finance or his designated nominee;

(*c*) the Secretary to the Ministry of the Minister in charge of the subject of Industrial Development or his designated nominee;

(*d*) the Secretary to the Ministry of the Minister in charge of the subject of Internal Trade or his designated nominee;

(*e*) the Secretary to the Ministry of the Minister in charge of the subject of Agriculture or his designated nominee;

(*f*) the Secretary to the Ministry of the Minister in charge of the subject of Foreign Affairs or his designated nominee;

(*g*) Director General of Customs or his designated nominee; and

(*h*) a nominee of the Governor of the Central Bank of Sri Lanka.

(2) Notwithstanding the provisions of subsection (1), where, considering the nature of the proposal being submitted for his consideration under this Act, the Chairman may, in consultation with the members referred to in

paragraphs (*b*) and (*c*) of subsection (1), where he considers it appropriate, co-opt not more than two other members to the Inter-Ministerial Committee.

(3) The Chairman shall, if present, preside at all meetings of the Inter-Ministerial Committee, and in the absence of the Chairman from any such meeting, the members present shall nominate one of the members present to preside at such meeting.

(4) The *quorum* for any meeting of the Inter-Ministerial Committee shall be four members and the procedure in regard to the conduct of meetings and the transaction of its business, shall be regulated by the Inter-Ministerial Committee.

Delegation by the Director-General.

83. (1) The Director-General may delegate any of his functions and powers under this Act, to any officer not below the rank of Deputy Director of Commerce.

(2) An officer to whom any function or power is delegated under subsection (1), shall discharge or exercise such function or power, subject to such directions as may be given by the Director-General.

(3) The Director-General shall, notwithstanding any delegation made under subsection (1), have the right to discharge or exercise any function or power so delegated.

Regulations.

84. (1) The Minister may make regulations in respect of all matters required by this Act to be prescribed or in respect of which regulations are authorized to be made.

(2) Every regulation made by the Minister shall be published in the *Gazette*, and shall come into operation on the date of such publication or on such later date as may be specified in the regulation.

(3) Every regulation made by the Minister shall, as soon as convenient after its publication in the *Gazette*, be brought before Parliament for approval. Any regulation which is not so approved shall be rescinded as from the date of such disapproval, but without prejudice to anything previously done thereunder.

(4) Notification of the date on which any regulation is deemed to be rescinded shall be published in the *Gazette*.

Interpretation.

85. In this Act unless the context otherwise requires —

"actionable subsidy" means a subsidy –

(*a*) that is specific within the meaning of section 66 of this Act;

(*b*) the grant of which results in the receipt of a benefit as referred to in subsection (1) of section 67 of this Act; and

(*c*) that is not referred to in the Third Schedule to this Act;

"country" includes a customs union or customs territory;

"Department" means the Department of Commerce;

"Director-General" means the Director-General of Commerce;

"Director-General of Customs" shall have the same meaning as given in the Customs Ordinance (Chapter 235);

"domestic like product" means the product produced in Sri Lanka which is a "like product" to the investigated product, and includes any agricultural product or livestock product;

"dumping" means introduction to the commerce of Sri Lanka a product at a price which is less than its normal value;

"dumping margin" means the difference between the export price and the normal value, expressed as a percentage of the export price, as it results from the comparison of the two in accordance with the provisions of this Act;

"injury" unless otherwise specified, means material injury to a Sri Lankan industry, threat of material injury to a Sri Lankan industry or material retardation of the establishment of a Sri Lankan industry;

"investigated product" means a product subject to an anti-dumping investigation or subsidized imports, as described in the notice of initiation of the investigation;

"like product" means a product which is identical, that is to say alike in all respects, to the investigated product, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the investigated product;

"Member" means a Member Country of the World Trade Organization established by Marrakesh Agreement entered into on the 15th of April, 1994;

"Minister" means the Minister in charge of the subject of Trade;

"non-actionable subsidy" means a subsidy which is not subject to a countervailing duty as determined by the Director-General under subsection (2) of section 65 of this Act;

"party interested" means —

(i) the exporter or foreign producer of the investigated product;

(ii) the importer of the investigated product;

(iii) trade or business associations, a majority of the members of which are producers, exporters or importers of the investigated product;

(iv) the government of the exporting country;

(v) the producer of the domestic like product in Sri Lanka;

(vi) trade and business associations a majority of the members of which produce the domestic like product in Sri Lanka;

"prohibited subsidy" means —

(*a*) subsidies contingent, in law or in fact (where the facts demonstrates that the granting of the subsidy is in fact, tied to actual or anticipated exportation or export earnings) whether solely or as one of several other conditions, upon export performance, including those specified in the Fourth Schedule to this Act;

(*b*) subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods;

"provisional measures" means —

(*a*) in relation to Part I of this Act, the requirement to pay the provisional duty or furnish a security equal to the estimated dumping margin found in the preliminary determination; or

(*b*) in relation to part II of this Act, the requirement to pay the provisional duty or furnish a security equal to the estimated subsidy found in the preliminary determination;

"Sri Lankan industry" means the domestic producers as a whole of the domestic like product or products or those of them whose collective output of that product or products constitutes a major proportion of the total domestic production of that product or products, except that when producers are related to the exporters or importers or are themselves importers of the allegedly dumped investigated product, the term "Sri Lankan industry" may be interpreted as referring to the rest of the producers. For the purposes of this definition, producers shall be deemed to be related to exporters or importers only if —

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

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

(iii) together they directly or indirectly control a third person,

Provided, 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 purposes 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; and

"subsidy" means in relation to products that are imported into Sri Lanka —

(*a*) a financial contribution by the government or a public body that is made, including —

(i) a direct transfer of funds including grants, loans, equity, infusion from that government or public body;

(ii) a potential direct transfer of funds or liabilities (loan guarantees etc.) from that government or public body;

(iii) a foregoing or non-collection of revenue (fiscal incentives such as tax credits etc.) due to that government or public body;

(iv) the provision by that government or public body of goods or services otherwise than in the course of providing normal infrastructure facilities;

(v) the purchase by that government or public body of products; or

(vi) the payments to a funding mechanism or entrusting or directing a private body to carry out any one or more of the functions referred to in paragraphs (i) to (v) above, which would normally be vested in the government and the practice in no real sense, differs from practices normally followed by governments; or

(*b*) any form of income or price support in the sense referred to in Article XVI of the General Agreement on Tariffs and Trade 1994, that is received from such government or public body, and a benefit is thereby conferred, but an exemption of any export product from duties and taxes born by the like product when destined for domestic consumption, or the remission of such duties and taxes in amounts not in excess of those which have accrued, by that government, shall not be deemed to be a "subsidy" within the meaning of this definition.

Sinhala text to prevail in case of inconsistency.

86. In the event of any inconsistency between the Sinhala and Tamil texts of this Act, the Sinhala text shall prevail.

FIRST SCHEDULE

[section 26 (1)]

RELIANCE ON INFORMATION AVAILABLE

1. As soon as possible after the initiation of the investigation, the Director-General shall specify in detail the information required from any interested party, and the way in which that information shall be structured by the interested party in its response. The Director-General shall also ensure that the party is aware that if information is not supplied within the time period mentioned in the request for information, the Director-General shall 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 Sri Lankan industry.

2. The Director-General may also request that an interested party provide its response in a particular medium (e.g. computer tape) or computer language. Where such a request is made, the Director-General shall consider the reasonable ability of the interested party to respond in the preferred medium or computer language, and may not request the company to use for its response a computer system other than that used by the firm. The Director-General shall not maintain a request for a computerized response, if the interested party does not maintain computerized accounts and if presenting the response as requested would result in an unreasonable extra burden on the interested party, e.g. it would entail unreasonable additional cost and trouble. The Director-General shall not maintain a request for response in a particular medium or computer language if the interested party does not maintain its computerized accounts in such medium or computer language and if presenting the response as requested would result in an unreasonable extra burden on the interested party, e.g., it would entail unreasonable additional cost and trouble.

3. All information which is verifiable, which is appropriately submitted so that it can be used in the investigation without undue difficulties and which is supplied in a timely fashion, and, where applicable, supplied in a medium or computer language requested by the Director-General shall be taken into account when determinations are made. If a party does not respond in the preferred medium or computer language, but the Director-General finds that the circumstances set out in paragraph 2 have been satisfied, this shall not be considered to significantly impede the investigation.

4. Where the Director-General does not have the ability to process information if provided in a particular medium (e.g. computer tape) the information shall be supplied in the form of written material or any other form acceptable to the Director-General.

5. Even though the information provided may not be ideal in all respects, this shall not justify the Director-General 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 shall be informed forthwith of the reasons thereof and 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 Director-General as not being satisfactory, the reasons for rejection of such evidence or information shall be given in any published findings.

7. If the Director-General has to base its determinations, 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 shall do so with special circumspection. In such cases, the Director-General shall, where practicable, check the information from other independent sources at their disposal, such as published price lists, official import statistics and customs returns, and from the information obtained form other interested parties during the investigation. However, if an interested party does not co-operate and thus relevant information is being withheld from the authorities, this situation could lead to a result which is less favourable to the party than if the party did co-operate.

SECOND SCHEDULE

[section 33 (3)]

PROCEDURES FOR ON-THE-SPOT INVESTIGATION PURSUANT TO SECTION 33

1. Upon initiation of an investigation, the authorities of the exporting country and the firms known to be concerned shall be informed of the intention of the Director-General to carry out an on-the-spot investigation.

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 shall be so informed. Such non-governmental experts shall be subject to sanctions for breach of confidentiality requirements provided, as for in section 80 of this Act.

3. It shall 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 Director-General shall notify the authorities of the exporting country of the names and addresses of the firms to be visited and the dates agreed.

5. The Director-General shall give sufficient advance notice to the firms in question before the visit is made.

6.Visits to explain the questionnaire shall only be made at the request of an exporting firm. Such a visit may only be made if the Director-General notifies the representatives of the government of the country in question, and unless 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 shall 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 Director-General of the anticipated visit and does not object to it; further, it shall be standard practice prior to the visit to advice 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 shall not preclude requests to be made on the spot for further details to be provided, in the light of information obtained.

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

THIRD SCHEDULE

[section 65 (2) (*b*)]

NON-ACTIONABLE SUBSIDIES

1. Assistance for research activities conducted by any body of persons, whether incorporated or unincorporated, or by any higher educational or research establishments on a contract basis with such body of persons, where —

(*a*) the assistance covers not more than seventy-five *per centum* of the costs of industrial research or fifty *per centum* of the costs of pre-competitive development activity; and

(*b*) the assistance is limited exclusively to cover —

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

(ii) cost of instruments, equipment, land and buildings used exclusively and permanently for the research activity and not disposed of on a commercial basis;

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

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

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

2. Assistance to disadvantaged regions within the territory of a Member given pursuant to a general framework of regional development, and not specific (within the meaning of section 66) within eligible regions, provided that —

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

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

(*c*) the criteria includes a measurement of economic development which shall be based on at least one of the following factors:—

(i) one of either income per capita or household income per capita, or GDP per capita, which must not be above eighty five *per centum* of the average for the territory concerned;

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

3. Assistance to promote adaptation of existing facilities to new environmental requirements imposed by any law or regulations, which result in greater constraints and financial burden on firms, provided that the assistance —

(*a*) is a one-time non-recurring measure;

(*b*) is limited to twenty *per centum* of the cost of adaptation;

(*c*) does not cover the cost of replacing and operating the assisted investment, which must be fully borne by firms;

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

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

Director-General may refer to the World Trade Organization "AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES" for any verification of non-actionable subsidies specified in this Schedule, and may consider, among others, modifications made by the World Trade Organization "Committee on Subsidies and Countervailing Measures" in the identification of non-actionable subsidies.

FOURTH SCHEDULE

[section 85]

PROHIBITED SUBSIDIES

1. Illustrative List of Export Subsidies —

(*a*) The provision by governments of direct subsidies to anybody of persons whether incorporate or unincorporate or an industry, contingent upon export performance;

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

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

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

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

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

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

(*h*) The exemption, remission or deferral of prior-stage cumulative indirect taxes on goods or services used in the production of exported products in excess of the exemption, remission or deferral of like prior-stage cumulative indirect taxes on goods or services used in the production of like products when sold for domestic consumption:

Provided that, prior-stage cumulative indirect taxes may be exempted, remitted or deferred on exported products even when not exempted, remitted or deferred on like products when sold for domestic consumption, if the prior-stage cumulative indirect taxes are levied on inputs that are consumed in the production of the exported product (making normal allowance for waste). The provisions of this paragraph shall be interpreted in accordance with the "Guidelines on Consumption of Inputs in the Production Process" referred to in item 2 of this Schedule;

(*i*) The remission of drawback of import charges in excess of those levied on imported inputs that are consumed in the production of the exported product (making normal allowance for waste):

Provided that, in particular cases anybody of persons incorporated or unincorporated may use a quantity of home market inputs equal to, and having the same quality and characteristics as, the imported inputs as a substitute for them in order to benefit from this provision, if the import and the corresponding export operations both occur within a reasonable time period, not exceeding two years. The provisions of this paragraph shall be interpreted in accordance with the "Guidelines on Consumption of Inputs in the Production Process" specified in item 2 of this Schedule and the "Guidelines in the Determination of Substitution Drawback Systems as Export Subsidies" specified in item 3 of this Schedule;

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

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

Provided that, if a Member is a party to an international undertaking on official export credits to which at least twelve original Members to the World Trade Organization "AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES" are parties as of 1 January 1979 (or successor undertaking which has been adopted by those original Members), or if in practice a Member applies the interest rates provisions

of the relevant undertaking, an export credit practice which is in conformity with those provisions shall not be considered an export subsidy prohibited by the World Trade Organization "AGREEMENT ON SUBSIDIES AND COUNTERVAILING MEASURES";

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

2. Guidelines on Consumption of Inputs in the Production Process —

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

(2) Similarly, drawback schemes can allow for the remission or drawback of import charges levied in inputs that are consumed in the production of the exported product (making normal allowance for waste).

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

(4) In examining whether inputs are consumed in the production of the exported product, as part of a

countervailing duty investigation conducted under Part II of this Act, the Director-General shall proceed on the following basis:—

(*a*) where it is alleged that an indirect tax rebate scheme, or a drawback scheme, conveys a subsidy by reason of over-rebate or excess drawback of indirect taxes or import charges on inputs consumed in the production of the exported product, the Director-General shall first determine whether the government of the exporting Member has in place and applies a system or procedure to confirm which inputs are consumed in the production of the exported product and in what amounts. Where such a system or procedure is determined to be applied, the Director-General shall then examine the system or procedure to see whether it is reasonable, effective for the purpose intended, and based on generally accepted commercial practices in the country of export. The Director-General may, in accordance with section 33 of this Act, carry out certain practical tests in order to verify information or to satisfy itself that the system or procedure is being effectively applied;

(*b*) where there is no such system or procedure, where it is not reasonable, or where it is instituted and considered reasonable but is found not to be applied or not to be applied effectively, a further examination by the exporting Member based on the actual inputs involved would need to be carried out in the context of determining whether an excess payment occurred. If the Director-General deems it necessary, a further examination may be carried out in accordance with paragraph (*a*);

(*c*) the Director-General shall treat inputs as physically incorporated if such inputs are used in the production process and are physically present in the product exported. The Members note that an input need not be present in the final product in the same form in which it entered the production process;

(*d*) in determining the amount of a particular input that is consumed in the production of the exported product, a "normal allowance for waste" shall be taken into account, and such waste shall be treated as consumed in the production of the exported

product. The term "waste" refers to that portion of a given input which does not serve an independent function in the production process, is not consumed in the production of the exported product (for reasons such as inefficiencies) and is not recovered, used or sold by the same manufacturer;

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

3. Guidelines in the Determination of Substitution Drawback Systems as Export Subsidies —

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

(2) In examining any substitution drawback system as part of a countervailing duty investigation conducted under Part II of this Act, the Director-General shall proceed on the following basis:—

(*a*) paragraph (*i*) of the Illustrative List of Export Subsidies specified in the Schedule, stipulates that home market inputs may be substituted for imported inputs in the production of a product for export, provided such inputs are equal in quantity to, and have the same quality and characteristics as, the imported inputs being substituted. The existence of a verification system or procedure is important, because it enables the government of the exporting Member to ensure and demonstrate that the quantity

of inputs for which drawback is claimed does not exceed the quantity of similar products exported, in whatever form, and that there is no drawback of import charges in excess of those originally levied on the imported inputs in question;

(*b*) where it is alleged that a substitution drawback system conveys a subsidy, the Director-General shall first proceed to determine whether the government of the exporting Member has in place and applies a verification system or procedure. Where such a system or procedure is determined to be applied, the Director-General shall then examine the verification procedures to see whether they are reasonable, effective for the purpose intended, and based on generally accepted commercial practices in the country of export. To the extent that the procedures are determined to meet this test and are effectively applied, no subsidy shall be presumed to exist. The Director-General may in accordance with section 33 of this Act, carry out certain practical tests in order to verify information or to satisfy itself that the verification procedures are being effectively applied;

(*c*) where there are no verification procedures, or where they are not reasonable, or where such procedures are instituted and considered reasonable but are found not to be actually applied or not applied effectively, there may be a subsidy. In such cases, a further examination by the exporting Member, based on the actual transactions involved would need to be carried out to determine whether an excess payment occurred. If the Director-General deems it necessary, a further examination would be carried out in accordance with paragraph (*b*);

(*d*) the existence of a substitution drawback provision under which exporters are allowed to select particular import shipments on which drawback is claimed, shall not of itself be considered to convey a subsidy;

(*e*) an excess drawback of import charges in the sense of paragraph (*i*) of the Illustrative List of Export Subsidies specified in this Schedule, shall be deemed to exist, where governments paid interest on any moneys refunded under their drawback schemes, to the extent of the interest actually paid or payable.

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