

WORLD TRADE

G/ADP/N/1/MYS/1
G/SCM/N/1/MYS/1
5 April 1995

ORGANIZATION

(95-0833)

Committee on Anti-Dumping Practices

Original: English

Committee on Subsidies and Countervailing Measures

NOTIFICATIONS OF LAWS AND REGULATIONS UNDER
ARTICLES 18.5 AND 32.6 OF THE AGREEMENTS

MALAYSIA

The attached communication, dated 27 February 1995, has been received from the Permanent Mission of Malaysia.

LAWS OF MALAYSIA

Act 504

COUNTERVAILING AND ANTI-DUMPING DUTIES ACT 1993

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LAWS OF MALAYSIA

Act 504

COUNTERVAILING AND ANTI-DUMPING
DUTIES ACT 1993

An Act to make provisions for the investigation and determination of subsidies being provided on, and the dumping of, merchandise imported into Malaysia, the imposition of countervailing and anti-dumping duties to offset such subsidies or dumping, and other matters connected therewith.

]

BE IT ENACTED by the Duli Yang Maha Mulia Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and the Dewan Rakyat in Parliament assembled, and by the Authority of the same, as follows:

PART I

PRELIMINARY

Short title and
commencement

1. (1) This Act may be cited as the Countervailing and Anti-Dumping Duties Act 1993.

(2) This Act comes into force on such date as the Minister may, by notification in the Gazette, appoint.

2. (1) In this Act, unless the context otherwise requires:

"Comparable merchandise" means a merchandise sold in the domestic market of the exporting country or to any third country or countries that the Government considers appropriate for use in the calculation of a dumping margin;

"domestic industry" means:

- (a) The domestic producers as a whole of the like product;
- (b) The domestic producers whose collective output of the like product constitutes a major proportion of the total domestic production of those products; or
- (c) regional producers of the like product,

but does not include:

- (A) Domestic producers who are related to the exporters or importers, or are themselves importers, of the subject merchandise or a like product from other countries unless otherwise determined by the Government; and
- (B) domestic producers who produce the like product primarily for export unless otherwise determined by the Government;

"dumping margin" means the amount by which the normal value of the subject merchandise exceeds its export price;

"export price" means the export price of a merchandise as determined in accordance with Section 17;

"exporting country" means:

- (a) The country of export of the subject merchandise; or
- (b) in cases where the subject merchandise is not exported directly to Malaysia but is transhipped without substantial transformation through an intermediate country, the country of origin of the subject merchandise;

"interested party" means:

- (a) A producer, exporter or importer of the subject merchandise;
- (b) a trade or business association of which a majority of its members are producers, exporters or importers of the subject merchandise;
- (c) the government of a country in which the subject merchandise is produced or from which it is exported;
- (d) a producer of the like product in Malaysia; or
- (e) a trade or business association of which a majority of its members produce a like product in Malaysia;

"like product" means a product which is identical or alike in all respects to the subject merchandise, and may include any other product which has physical, technical or chemical characteristics, applications or uses that resemble those of the subject merchandise as the Government deems appropriate;

"Minister" means the Minister responsible for international trade and industry;

"non-market economy country" means any foreign country that the Government determines does not operate on market principles of cost or pricing structures;

"normal value" means the normal value of a merchandise as determined in accordance with Section 16 or 19;

"officer of customs" has the same meaning as is assigned to that expression

Act 235.

under Section 2 of the Customs Act 1967;

"prescribed" means prescribed by the regulations;

"producer" means producer, manufacturer or processor;

"provisional measures" means:

- (a) In relation to Part II, the requirement to post a security equal to the estimated subsidy found in the preliminary determination; and

- (b) in relation to Part III, the requirement to post a security equal to the estimated dumping margin found in the preliminary determination;

"regional producers" means the domestic producers of the like product located in a specific regional market in Malaysia;

"subject merchandise" means the class or kind of merchandise imported or sold for importation into Malaysia that is the subject of any countervailing or anti-dumping duty action under this Act, as determined by the Government to be appropriate for establishing the scope of the action;

"Tribunal" means the Tribunal established under Section 32;

50. "undertakings" means undertakings as may be prescribed under Section

- (2) A subsidy is deemed to exist where:

- (a) A financial benefit or contribution is provided, directly or indirectly, by a government, whether national, state, or local, or by a public or semi-public body, to:

- (i) A specific enterprise, industry or group of industries; or
(ii) exporters;

- (b) any other conditions as may be prescribed have been met.

(3) Notwithstanding any other provisions of this Act, the Minister may regard such activities as are recognized under Malaysia's international obligations to be activities which shall or shall not be subject to action under this Act.

- (4) Subsidy shall be calculated in the prescribed manner.

- (5) Parties shall be deemed to be related if:

- (a) One of them directly or indirectly controls the other;
(b) both of them are directly or indirectly controlled by a third party; or
(c) together they directly or indirectly control a third party,

unless there are grounds for believing that such related parties will not behave differently from non-related parties.

- (6) One party shall be deemed to control another when the first-mentioned party is legally or operationally in a position to exercise restraint or direction over the latter.

PART II

COUNTERVAILING DUTIES

Imposition of
countervailing
duties

3. (1) The Government may impose a countervailing duty on the subject merchandise imported into Malaysia where it determines:

- (a) That a subsidy is being provided with respect to the subject merchandise; and

- (b) that injury is found to exist in any one of the following ways:
- (i) The domestic industry in Malaysia producing a like product is materially injured by reason of the subject merchandise;
 - (ii) the domestic industry in Malaysia producing a like product is threatened with material injury by reason of the subject merchandise; or
 - (iii) the establishment of such industry in Malaysia is materially retarded by reason of the subject merchandise.

(2) The amount of countervailing duty to be imposed:

- (a) shall be equal to the subsidy determined to be provided with respect to the subject merchandise; or
- (b) if the Government determines that a lower countervailing duty is sufficient to eliminate the injury determined in paragraph (1)(b), may be such lower duty.

(3) Where the country of origin of the subject merchandise is a non-market economy country, the subsidy shall be determined in the prescribed manner.

Initiation of investigation

4. (1) A written petition requesting that a countervailing duty investigation be initiated with regard to merchandise imported into Malaysia may be submitted by a producer, producers or an association of producers of a like product on behalf of the domestic industry producing such product.

(2) A petition shall include evidence of each of the elements specified in Subsection 3(1).

(3) The Government shall, within the period prescribed, review the petition and other available information and determine whether in fact:

- (a) There is sufficient evidence to warrant an investigation into whether the elements necessary for the imposition of a countervailing duty as provided under Subsection 3(1) exist; and
- (b) such an investigation is in the public interest.

(4) Where the Government determines that sufficient evidence does not exist to warrant the initiation of a countervailing duty investigation or that such an investigation is not in the public interest, the Government shall publish a notice stating the reasons for its determination not to initiate an investigation.

(5) If the Government determines that sufficient evidence exists to warrant the initiation of a countervailing duty investigation and that such an investigation is in the public interest, the Government shall notify the appropriate interested parties and publish a notice of initiation of investigation.

(6) The Government may, in special circumstances, initiate a countervailing duty investigation on its own accord where it has sufficient evidence of each of the elements specified in Subsection 3(1).

(7) Where the Government decides to initiate an investigation under Subsection (6), it shall notify the appropriate interested parties and publish a notice of initiation of investigation.

Consultations with interested foreign governments.

5. (1) Before initiating an investigation, the Government shall provide any interested foreign government an opportunity for consultation for the purpose of

clarifying matters relevant to the investigation and arriving at a mutually agreed solution.

(2) The Government shall provide a reasonable opportunity for further consultations throughout the investigation.

Amendments to the petition.

6. A petition requesting a countervailing duty investigation be initiated may be amended subject to such conditions as the Government deems fit.

Duration of investigation.

7. The Government shall conclude a countervailing duty investigation within such period as may be prescribed.

Preliminary determination of subsidy and injury.

8. (1) The Government shall, within such period as may be prescribed, make a preliminary determination regarding:

(a) whether a subsidy is being provided with respect to the subject merchandise; and

(b) Whether injury is found to exist in any one of the following ways:

(i) The domestic industry in Malaysia producing the like product is materially injured by reason of the subject merchandise;

(ii) the domestic industry in Malaysia producing the like product is threatened with material injury by reason of the subject merchandise; or

(iii) the establishment of such industry in Malaysia is materially retarded by reason of the subject merchandise.

(2) If the Government makes a negative preliminary determination with regard to Subsection (1), it shall publish a notice stating the reasons for the negative determination and:

(a) continue the investigation; or

(b) terminate the investigation if the Government deems fit.

(3) If the Government makes an affirmative preliminary determination with regard to Subsection(1), it shall continue the investigation and publish a notice of:

(a) the affirmative preliminary determination, stating the reasons for its determination with respect to paragraphs (1)(a) and (b); and

(b) the provisional measures, applicable,

and apply such provisional measures, if necessary.

Provisional measures.

9. (1) The Government shall apply provisional measures with regard to the subject merchandise imported into Malaysia on or after the publication of the notice of affirmative preliminary determination where the Government determines that such measures are necessary to prevent the injury referred to in paragraph 8(1)(b) from occurring during the period of investigation.

(2) Provisional measures shall take the form of provisional countervailing duties guaranteed by a security equal to the amount of the estimated subsidy determined under subsection 8(1).

(3) The provisional measures imposed under this Section shall not exceed such period as may be prescribed.

Final determination
of subsidy and
injury.

10. (1) The Government shall, within such period as may be prescribed, make a final determination regarding:

- (a) Whether a subsidy is being provided with respect to the subject merchandise, and the amount of such subsidy; and
- (b) Whether injury is found to exist in any one of the following ways:
 - (i) the domestic industry in Malaysia producing the like product is materially injured by reason of the subject merchandise;
 - (ii) the domestic industry in Malaysia producing the like product is threatened with material injury by reason of the subject merchandise; or
 - (iii) the establishment of such industry in Malaysia is materially retarded by reason of the subject merchandise.

(2) In making a final determination under Subsection (1), the Government may take into consideration whether the imposition of countervailing duties is in the public interest.

(3) Where the Government makes a negative final determination with regard to Subsection (1), it shall:

- (a) Terminate the investigation;
- (b) terminate the provisional measures applied under Section 9 and release the security required by such measures; and
- (c) publish a notice of the negative final determination, stating the reasons for its negative determination.

(4) Where the Government makes an affirmative final determination with regard to Subsection (1), it shall:

- (a) publish a notice of affirmative final determination stating the reasons for its affirmative determination, the countervailing duties applicable and the subject merchandise on which the countervailing duties apply;
- (b) impose countervailing duties in the amounts determined in accordance with Subsection 3(2) on the subject merchandise imported into Malaysia on or after the date of publication of the final determination; and
- (c) impose countervailing duties in accordance with Subsection (5) and (6) on imports into Malaysia for which provisional measures were applied.

(5) The Government shall impose countervailing duties on the subject merchandise against which provisional measures were applied where:

- (a) the Government makes a determination of material injury under subparagraph (1)(b)(i); or
- (b) the Government makes a determination of threat of material injury under subparagraph (1)(b)(ii), it finds that the subject merchandise, in the absence of the provisional measures, would have led to a finding of material injury under subparagraph (1)(b)(i).

(6) With respect to the imposition of countervailing duties under Subsection (5):

- (a) where the countervailing duty is higher than the amount guaranteed by the security required under the provisional measures, only the amount equal to the security shall be imposed; and
- (b) where the countervailing duty is less than the amount guaranteed by the security required under the provisional measures, the full amount of the countervailing duty shall be imposed and the excess amount of the security shall be reimbursed or released.

(7) Notwithstanding Subsection (4) and (5), the Government may impose countervailing duties on the subject merchandise imported into Malaysia within a period of 90 days prior to the application of provisional measures if:

- (a) the Government finds injury that is difficult to repair;
- (b) such injury is being caused by massive imports of the subject merchandise in a short period of time; and
- (c) export subsidies are being provided with respect to the subject merchandise contrary to the interested foreign government's international obligations.

(8) When a countervailing duty is imposed on the subject merchandise, such countervailing duty shall be imposed in the appropriate amount on a country-wide and non-discriminatory basis on all imports of such merchandise into Malaysia from the country found to be subsidizing the subject merchandise.

Termination of investigation.

11. (1) Notwithstanding any other provisions of this Act, an investigation may be terminated at any time if:

- (a) the petitioner withdraws the petition; or
- (b) there are changed circumstances,

provided that the Government determines that such termination is in the public interest.

(2) If a termination pursuant to Subsection (1) occurs prior to the preliminary determination, the Government shall publish a notice of such termination stating the reasons for the termination.

(3) If a termination pursuant to Subsection (1) occurs after the preliminary determination, the Government shall:

- (a) terminate any provisional measures referred to in Section 9 and release the security required by such measures; and
- (b) publish a notice of such termination, stating the reasons for the termination.

Suspension of investigation.

12. (1) An investigation may be suspended at any time if undertakings are accepted by the Government.

(2) Before accepting the undertakings, the Government shall determine that such undertakings:

- (a) will eliminate the subsidy or the injurious effects caused by the subject merchandise;
- (b) can be monitored effectively; and

(c) are in the public interest.

(3) If the undertakings are accepted by the Government prior to the preliminary determination, the Government shall suspend the investigation and publish a notice stating the reasons for the acceptance of such undertakings.

(4) If the undertakings are accepted by the Government after the preliminary determination, the Government shall:

- (a) suspend the investigation;
- (b) suspend any provisional measures applied under Section 9 and release all or part of the security required by such measures as the Government deems appropriate; and
- (c) publish a notice stating the reasons for the suspension of the investigation and actions under paragraph (b).

(5) Notwithstanding the acceptance of the undertakings, the investigation may be completed upon the written request of the interested foreign government or if the Government so decides.

(6) Where the Government completes the investigation pursuant to Subsection (5) or for any other reason, and makes an affirmative determination, the undertakings shall remain in effect consistent with the provisions of this Act.

(7) Where the Government completes the investigation pursuant to Subsection (5) or for any other reason, and makes a negative determination, the undertakings shall lapse, except in circumstances referred to in Subsection (8).

(8) Where the negative determination referred to in Subsection (7) is due in large part to the existence of the undertakings, the undertakings may be maintained consistent with the provisions of this Act.

(9) The Government may resume a suspended investigation at any time if it determines that the undertakings accepted under Subsection (1) no longer meet the requirements of Subsection (2) or there is a material violation of the undertakings.

(10) If the Government resumes an investigation pursuant to Subsection (9), it shall take expeditious action to:

- (a) make a preliminary determination pursuant to Section 8, if necessary;
- (b) apply provisional measures in conformity with Section 9; and
- (c) make a final determination pursuant to Section 10.

(11) The Government may use the facts available with respect to any determination under Subsection (10) where a material violation of the undertakings occur.

(12) In the cases mentioned in Subsection (9), the Government may impose countervailing duties in conformity with Section 10 on the subject merchandise imported into Malaysia within a period of 90 days prior to the provisional measures applied under Subsection(10):

Provided that such retroactive assessment shall not be applied to subject merchandise imported prior to the violation.

13. (1) Whenever an appropriate interested party provides information to the Government, or the Government otherwise obtains information, that:

- (a) the amount of subsidy has changed substantially;
- (b) the imposition of a countervailing duty is no longer necessary;
- (c) an undertaking is no longer necessary or should be modified; or
- (d) a countervailing duty which is required to be terminated pursuant to Subsection (6) should be maintained, the Government may conduct and administrative review if the Government determines that such review is in the public interest;

Provided that no administrative review shall be undertaken unless the period prescribed has lapsed.

(2) If the Government decides to conduct an administrative review under Subsection (1), the Government shall:

- (a) publish a notice of the initiation of an administrative review; and
- (b) conduct such review, allowing appropriate interested parties an opportunity to provide comments.

(3) Any administrative review conducted pursuant to Subsection (2) shall be completed within such period as may be prescribed.

(4) On the completion of the administrative review, the Government shall publish a final administrative review determination stating the reasons for its determination.

(5) Any determination made pursuant to Subsection (4) shall apply to the subject merchandise imported on or after the date of publication of the administrative review determination.

(6) Countervailing duties shall not be collected on imports made after five years from the date of the publication of the notice of the final determination under Section 10, unless the Government determines on the basis of an administrative review that there is good cause for the continued imposition of such duties.

Appeals to the
Tribunal

14. (1) The appropriate interested parties shall have the right to appeal to the tribunal against:

- (a) an affirmative or negative final determination under Section 10; or
- (b) any final administrative review determination under Subsection 13(4).

(2) An appeal shall be filed within 14 days from the date of the notice of affirmative or negative final determination under Section 10 or from the date of the final administrative review determination under Subsection 13(4).

PART III

ANTI-DUMPING DUTIES

Imposition of
anti-dumping duties.

15.(1) The Government may impose an anti-dumping duty on the subject merchandise imported into Malaysia where it determines:

- (a) That the export price of the subject merchandise is less than its normal value; and

- (b) that injury is found to exist in any one of the following ways:
- (i) The domestic industry in Malaysia producing a like product is materially injured by reason of the subject merchandise;
 - (ii) the domestic industry in Malaysia producing a like product is threatened with material injury by reason of the subject merchandise; or
 - (iii) the establishment of such industry in Malaysia is materially retarded by reason of the subject merchandise.
- (2) The amount of anti-dumping duty to be imposed:
- (a) Shall be equal to the dumping margin determined to exist with respect to the subject merchandise; or
 - (b) if the Government determines that a lower anti-dumping duty will be sufficient to eliminate the injury determined in paragraph (1)(b), may be such lower duty.

Normal value.

16.(1) For the purpose of this Act, the normal value shall be the comparable price actually paid or payable in the ordinary course of trade for comparable merchandise sold for consumption in the domestic market of the exporting country.

(2) When there are no sales in the domestic market of the exporting country under Subsection (1), or when such sales do not permit a proper comparison, normal value shall be either:

- (a) The comparable price actually paid or payable in the ordinary course of trade for comparable merchandise exported to any third country or countries; or
- (b) the construction value of the subject merchandise, determined by adding cost of production and a reasonable margin of profit.

(3) Whenever there are reasonable grounds for believing or suspecting that the prices at which comparable merchandise is actually sold for consumption under Subsection (1) or paragraph (2)(a) are less than the cost of producing that merchandise, sales at such prices may be considered as not having been made in the ordinary course of trade.

(4) For the purpose of determining the cost of production referred to in paragraph (2)(b) and Subsection (3), the cost of production shall be computed on the basis of all fixed and variable costs of materials and manufacturing in the ordinary course of trade in the exporting country, plus a reasonable amount for selling, administrative and other general expenses.

(5) In the circumstances described in Subsection (3), the normal value may be determined on the basis of:

- (a) The remaining sales in the domestic market made at a price which is not less than the cost of production, provided that such remaining sales are in sufficient quantities;
- (b) the remaining sales in the third country market made at a price which is not less than the cost of production, provided that such remaining sales are in sufficient quantities; or
- (c) the constructed value as described in paragraph (2)(b).

(6) For the purpose of determining normal value, transactions among related parties, or among parties which appear to have compensatory arrangements with

each other, may be considered as not being in the ordinary course of trade, unless the Government is satisfied that the price and costs involved are comparable to those involved in transactions among parties which are not related or do not have compensatory arrangements.

Export price.

17.(1) The export price shall be the price actually paid or payable for the subject merchandise.

(2) In the cases where it appears that the exporter and the importer or a third party are related, or that there is a compensatory arrangement between the exporter and the importer or a third party, or that for other reasons the price actually paid or payable for the subject merchandise is unreliable, the export price may be constructed on the basis of the price at which the subject merchandise is first resold to an independent buyer, or if the subject merchandise is not resold to an independent buyer, not resold in the condition imported, on any reasonable basis.

(3) If the export price is constructed as described in Subsection (2), allowance shall be made for all costs incurred between importation and resale.

Comparison of normal value and export price.

18.(1) The export price and the normal value shall be examined on a comparable basis to account for different physical characteristics of the merchandise, different selling conditions in each market and any other differences affecting price comparability and adjusted accordingly.

(2) The normal value and the export price shall be compared as nearly as possible on sales made during the same period of time.

(3) Where an exporter or importer claims for an adjustment under Subsection (1), it must prove that its claim is justified.

Subject merchandise from a non-market economy country.

19. Where the country of origin of the subject merchandise is a non-market economy country, the normal value shall be determined in the prescribed manner.

Initiation of investigation.

20.(1) A written petition requesting that an anti-dumping duty investigation be initiated with regard to merchandise imported into Malaysia may be submitted by a producer, producers or an association of producers of a like product on behalf of the domestic industry producing such product.

(2) A petition shall include evidence of each of the elements specified in Subsection 15(1).

(3) The Government shall, within the period prescribed, review the petition and other available information and determine whether in fact:

(a) There is sufficient evidence to warrant an investigation into whether the elements necessary for the imposition of an anti-dumping duty as provided under Subsection 15(1) exist; and

(b) such an investigation is in the public interest.

(4) Where the Government determines that sufficient evidence does not exist to warrant the initiation of an anti-dumping duty investigation or that such an investigation is not in the public interest, the Government shall publish a notice stating the reasons for its determination not to initiate an investigation.

(5) If the Government determines that sufficient evidence exists to warrant the initiation of an anti-dumping duty investigation and that such an investigation is in the public interest, the Government shall notify the appropriate interested parties and publish a notice of initiation of investigation.

(6) The Government may, in special circumstances, initiate an anti-dumping

duty investigation on its own accord where it has sufficient evidence of each of the elements specified in Subsection 15(1).

(7) Where the Government decides to initiate an investigation under Subsection (6), it shall notify the appropriate interested parties and publish a notice of initiation of investigation.

Amendments to the petition.

21. A petition requesting an anti-dumping duty investigation be initiated may be amended subject to such conditions as the Government deems fit.

Duration of investigation.

22. The Government shall conclude an anti-dumping duty investigation within such period as may be prescribed.

Preliminary determination of dumping and injury.

23.(1) The Government shall, within such period as may be prescribed, make a preliminary determination regarding:

(a) Whether a dumping margin exists with respect to the subject merchandise; and

(b) whether injury is found to exist in any one of the following ways:

(i) The domestic industry in Malaysia producing the like product is materially injured by reason of the subject merchandise;

(ii) the domestic industry in Malaysia producing the like product is threatened with material injury by reason of the subject merchandise; or

(iii) the establishment of such industry in Malaysia is materially retarded by reason of the subject merchandise.

(2) If the Government makes a negative preliminary determination with regard to Subsection (1), it shall publish a notice stating the reasons for the negative determination and:

(a) Continue the investigation; or

(b) terminate the investigation if the Government deems fit.

(3) If the Government makes an affirmative preliminary determination with regard to Subsection (1), it shall continue the investigation and publish a notice of:

(a) The affirmative preliminary determination, stating the reasons for its determination with respect to paragraphs (1)(a) and (b); and

(b) the provisional measures applicable,

and apply such provisional measures, if necessary.

Provisional measures.

24.(1) The Government shall apply provisional measures with regard to the subject merchandise imported into Malaysia on or after the publication of the notice of affirmative preliminary determination where the Government determines that such measures are necessary to prevent the injury referred to in paragraph 23 (1)(b) from occurring during the period of investigation.

(2) Provisional measures shall take the form of provisional anti-dumping duties guaranteed by a security equal to the amount of estimated dumping margin determined under Subsection 23(1).

(3) The provisional measures imposed under this section shall not exceed such period as may be described.

Final determination
of dumping and
injury.

25.(1) The Government shall, with such period as may be prescribed, make a final determination regarding:

- (a) Whether a dumping margin exists with regard to the subject merchandise; and
- (b) whether injury is found to exist in any one of the following ways:
 - (i) The domestic industry in Malaysia producing the like product is materially injured by reason of the subject merchandise;
 - (ii) the domestic industry in Malaysia producing the like product is threatened with material injury by reason of the subject merchandise; or
 - (iii) the establishment of such industry in Malaysia is materially retarded by reason of the subject merchandise.

(2) In making a final determination under Subsection (1), the Government may take into consideration whether the imposition of anti-dumping duties is in the public interest.

(3) Where the Government makes a negative final determination with regard to Subsection (1), it shall:

- (a) Terminate the investigation;
- (b) terminate the provisional measures applied under Section 24, and release the security required by such measures; and
- (c) publish notice of the negative final determination, stating the reasons for its negative determination.

(4) Where the Government makes an affirmative final determination with regard to Subsection (1), it shall:

- (a) Publish a notice of affirmative final determination stating the reasons for its affirmative determination, the anti-dumping duties applicable and the subject merchandise on which the anti-dumping duties apply;
- (b) impose anti-dumping duties in the amounts determined in accordance with Subsection 15(2) on the subject merchandise imported into Malaysia on or after the date of publication of the final determination; and
- (c) impose anti-dumping duties in accordance with Subsections (5) and (6) on imports into Malaysia for which provisional measures were applied.

(5) The Government shall impose anti-dumping duties on the subject merchandise against which provisional measures were applied where:

- (a) The Government makes a determination of material injury under Subparagraph (1)(b)(i); or
- (b) the Government makes a determination of threat of material injury under Subparagraph (1)(b)(ii), it finds that the subject merchandise, in the absence of the provisional measures, would have led to a finding of material injury under subparagraph (1)(b)(i).

(6) With respect to the imposition of anti-dumping duties under Subsection (5):

- (a) Where the anti-dumping duty is higher than the amount guaranteed by the

security required under the provisional measures, only the amount equal to the security shall be imposed; and

- (b) where the anti-dumping duty is less than the amount guaranteed by the security required under the provisional measures, the full amount of the anti-dumping duty shall be imposed and the excess amount of the security shall be reimbursed or released.

(7) Notwithstanding Subsections (4) and (5), the Government may impose anti-dumping duties on the subject merchandise imported into Malaysia within a period of 90 days prior to the application of provisional measures if:

- (a) The Government finds injury that is difficult to repair;
- (b) such injury is being caused by massive imports of the subject merchandise in a short period of time; and
- (c) there is a history of dumping which caused injury, or the importer was or should have been aware that the exporter practices dumping and that such dumping would cause injury.

(8) When an anti-dumping duty is imposed on the subject merchandise, such anti-dumping duty shall be imposed in the appropriate amount on a company specific basis, where practicable, and on a non-discriminatory basis on all imports of such merchandise into Malaysia from the country found to be dumping the subject merchandise.

Termination of investigation.

26.(1) Notwithstanding any other provisions of this Act, an investigation may be terminated at any time if:

- (a) The petitioner withdraws the petition; or
- (b) there are changed circumstances,

provided that the Government determines that such termination is in the public interest.

(2) If a termination pursuant to Subsection (1) occurs prior to the preliminary determination, the Government shall publish a notice of such termination stating the reasons for the termination.

(3) If a termination pursuant to Subsection (1) occurs after the preliminary determination, the Government shall:

- (a) Terminate any provisional measures referred to in Section 24 and release the security required by such measures; and
- (b) publish a notice of such termination, stating the reasons for the termination.

Suspension of investigation.

27.(1) An investigation may be suspended at any time if undertakings are accepted by the Government.

(2) Before accepting the undertakings, the Government shall determine that such undertakings:

- (a) Will eliminate the dumping margin or the injurious effects caused by the subject merchandise;
- (b) can be monitored effectively; and
- (c) are in the public interest.

(3) If the undertakings are accepted by the Government prior to the preliminary determination, the Government shall suspend the investigation and publish a notice stating the reasons for the acceptance of such undertakings.

(4) If the undertakings are accepted by the Government after the preliminary determination, the Government shall:

- (a) Suspend the investigation;
- (b) suspend any provisional measures applied under Section 24 and release all or part of the security required by such measures as the Government deems appropriate; and
- (c) publish a notice stating the reasons for the suspension of the investigation and actions under paragraph (b).

(5) Notwithstanding the acceptance of the undertakings, the investigation may be completed upon the written request of the interested foreign government or if the Government so decides.

(6) Where the Government completes the investigation pursuant to Subsection (5), or for any other reason, and makes an affirmative determination, the undertakings shall remain in effect consistent with the provisions of this Act.

(7) Where the Government completes the investigation pursuant to Subsection (5), or for any other reason, and makes a negative determination, the undertakings shall lapse, except in circumstances referred to in Subsection (8).

(8) Where the negative determination referred to in Subsection (7) is due in large part to the existence of the undertakings, the undertakings may be maintained consistent with the provisions of this Act.

(9) The Government may resume a suspended investigation at any time if it determines that the undertakings accepted under Subsection (1) no longer meet the requirements of Subsection (2) or there is a material violation of the undertakings.

(10) If the Government resumes an investigation pursuant to Subsection (9), it shall take expeditious action to:

- (a) Make a preliminary determination pursuant to Section 23, if necessary;
- (b) apply provisional measures in conformity with Section 24; and
- (c) make a final determination pursuant to Section 25.

(11) The Government may use the facts available with respect to any determination under Subsection (10) where a material violation of the undertakings occur.

(12) In the cases mentioned in Subsection (9), the Government may impose anti-dumping duties in conformity with Section 25 on the subject merchandise imported into Malaysia within a period of 90 days prior to the provisional measures applied under Subsection (10);

Provided that such retroactive assessment shall not be applied to subject merchandise imported prior to the violation.

28.(1) Whenever an appropriate interested party provides information to the Government, or the Government otherwise obtains information, that:

- (a) The dumping margin has changed substantially;

- (b) a refund of an anti-dumping duty is no longer necessary;
- (c) the imposition of an anti-dumping duty is no longer necessary;
- (d) an undertaking is no longer necessary or should be modified; or
- (e) an anti-dumping duty which is required to be terminated pursuant to Subsection (6) should be maintained,

the Government may conduct an administrative review if the Government determines that such review is in the public interest:

Provided that no administrative review shall be undertaken unless the period prescribed has lapsed.

(2) If the Government decides to conduct an administrative review under Subsection (1), the Government shall:

- (a) Publish a notice of the initiation of an administrative review; and
- (b) conduct such review, allowing appropriate interested parties an opportunity to provide comments.

(3) Any administrative review conducted pursuant to Subsection (2) shall be completed within such period as may be prescribed.

(4) On the completion of the administrative review, the Government shall publish a final administrative review determination, stating the reasons for its determination.

(5) Except in the case of an administrative review for a refund under paragraph (1)(b), any determination made pursuant to Subsection (4) shall apply to the subject merchandise imported on or after the date of publication of the administrative review determination.

(6) Anti-dumping duties shall not be collected on imports made after five years from the date of publication of the notice of the final determination under Section 25, unless the Government determines on the basis of an administrative review that there is good cause for the continued imposition of such duties.

Appeals to the Tribunal.

29.(1) The appropriate interested parties shall have the right to appeal to the Tribunal against:

- (a) An affirmative or negative final determination under Section 25; or
- (b) any final administrative review determination under Subsection 28(4).

(2) An appeal shall be filed within 14 days from the date of the notice of affirmative or negative final determination under Section 25 or from the date of the final administrative review determination under Subsection 28(4).

PART IV

ADMINISTRATION

Administrative matters.

30.(1) Any petition to be submitted under Parts II and III shall be submitted to the Minister.

(2) Subject to the provisions of this Act, any action to be conducted or taken under this Act shall be conducted or taken by any person or officer authorized in writing in that behalf by the Minister.

(3) Any finding of an investigation, whether for the purpose of a preliminary or final determination, or an administrative review, under this Act, shall be forwarded to the Minister.

(4) The Minister shall make a recommendation to the Minister of Finance who shall make a determination for a decision.

(5) The collection of any countervailing or anti-dumping duty imposed under this Act shall be conducted by an officer of customs.

(6) If any question arises as to whether any particular product is or is not included in any notification given under this Act, such question shall be referred to the Minister who shall make a decision on the matter.

Protection of officers and persons acting under direction of officers.

31. No action or prosecution shall be brought, instituted or maintained in any court against any person or officer authorized under this Act for or on account of or in respect of any act ordered or done for the purpose of carrying into effect this Act, and no suit or prosecution shall lie in any court against any other person for or on account of or in respect of any act done or purported to be done by him under the order, direction or instruction of any such person or officer if the act was done in good faith and in a reasonable belief that it was necessary for the purpose intended to be served thereby.

Establishment of the Tribunal.

32.(1) There shall be established a Tribunal to perform the functions specified in Sections 14 and 29.

(2) The Minister shall appoint the Chairman of the Tribunal and not more than two other persons as members of the Tribunal.

(3) The Chairman and members of the Tribunal shall hold office for a period not exceeding three years, after which they shall be eligible to be reappointed.

(4) The Minister shall determine the remuneration and other terms and conditions of the appointment of the Chairman and members of the Tribunal.

(5) The Minister may declare the office of any member of the Tribunal vacant on the grounds that the member is found to be unfit to continue in office or unable to perform the duties thereof.

(6) The Chairman or any members of the Tribunal may at any time resign from his office by giving notice in writing to the Minister.

F.M.S. Cap. 45.

(7) The Chairman and members of the Tribunal shall be deemed to be public servants within the meaning of the Penal Code.

(8) The Minister may make such rules as may be necessary or expedient for the purpose of enabling the Tribunal to carry out its functions, and in particular, without prejudice to the generality of the foregoing, such rules may provide for the constitution, officers and proceedings of the Tribunal.

Regulations in respect of specified areas.

33. The Minister of Finance may, in respect of certain areas to be specified in regulations made under this Section, make special provision to regulate those specified areas for the purposes of this Act.

Applications of the Customs Act 1967.

34.(1) This Act shall be construed as one with the Customs Act 1967.

(2) In the event of any inconsistency occurring between the provisions of the

Customs Act 1967 and the provisions of this Act, the provisions of this Act shall prevail.

PART V

GENERAL

- Cumulation. 35. Where imports of merchandise from more than one country are simultaneously subject to countervailing or anti-dumping duty investigations or both, the Government may cumulatively assess the effects of subsidized and dumped merchandise or both on the domestic industry.
- False statements. 36. Any information provided which is false or materially inaccurate shall be rejected without prejudice to whatever penalties that may be applicable under regulations made under this Act or any other written law.
- Anti-circumvention measures. 37. The Government may take action to prevent circumvention of the application of countervailing and anti-dumping duties as may be prescribed.
- Notice of information and opportunities to present evidence. 38. (1) All interested parties in a countervailing or anti-dumping duty investigation shall be given notice of the information required by the Government and opportunities to present all evidence they consider relevant.
- (2) The Government shall, whenever practicable, provide an opportunity for all interested parties to see information submitted that is not confidential which is relevant to the presentation of their case.
- Confidential information from interested parties. 39. (1) Any information which is by its nature confidential, or any information which is provided on a confidential basis by parties to an investigation, shall for good cause shown, be treated as such by the Government.
- (2) The confidential nature of a document shall not be used as a reason for refusing to provide it to the Government.
- (3) The Government shall be responsible for ensuring the confidentiality of such documents.
- (4) Confidential information shall not be disclosed without specific written permission from the party submitting the confidential information.
- (5) The Government shall require parties providing confidential information to furnish non-confidential summaries that are sufficient in detail to permit reasonable understanding of the substance of the confidential information.
- (6) In the event of such parties indicate that such information is not susceptible of summary, a statement of reasons why summarization is not possible shall be provided.
- (7) the Government may disregard information presented if:
- (a) The Government finds that a request for confidentiality under Subsection (1) is not warranted and the supplier of the information nevertheless is unwilling to make the information public;
- (b) the non-confidential summaries as required under Subsection (5) are not in sufficient detail; or

- (c) the reasons given for not providing non-confidential summaries under Subsection (6) are not deemed adequate and the party supplying the information nevertheless refuses to provide non-confidential summaries.

Verification of information.	40. The Government may decide to verify the accuracy for any information submitted during an investigation or administrative review using any reasonable method to conduct the verification.
Use of facts available.	41. Where any interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes an investigation, including refusal to allow verification of its information, preliminary and final determinations or either subsidization or dumping may be made on the basis of the facts available.
Other practices discovered during the investigation.	42. If in the course of an investigation the Government discovers practices which appear to be subsidies or dumping, but were not included in the matters alleged in the petition, then the Government may, if there is sufficient time, investigate the practices.
Conduct of investigation where no international obligations apply.	43. (1) When no applicable international obligation on countervailing and anti-dumping duties exist between Malaysia and the interested foreign government: <ul style="list-style-type: none">(a) Countervailing and anti-dumping duties may be imposed without regard to an investigation referred to in Sections 4 and 20; and(b) the Government shall be entitled to use any administrative and legal definition, methodology and procedure it deems appropriate, with regard to the investigations. <p>(2) When applying the provisions of Subsection (1), consideration shall be given to the laws and regulations of the interested foreign Government and their application to Malaysian exports.</p>
Transshipment.	44. In cases where merchandise is not imported into Malaysia directly from the country of origin, but is exported to Malaysia from an intermediate country, the provisions of the Act shall be fully applicable and the transaction, for the purposes of this Act, shall be regarded as having taken place between the country of origin and Malaysia.
Publication of notices.	45. All notices required to be published under this Act shall be published in the Gazette, unless otherwise specified.
Double counting not permitted.	46. No merchandise shall be subject to both anti-dumping and countervailing duties to compensate for the same situation of dumping or subsidization.
Customs clearance not to be hindered.	47. Any investigation conducted under this Act shall not hinder the procedure for customs clearance.
Public servants. F.M.S. Cap. 45.	48. Any person acting for and on behalf of or under the direction of the Government under this Act shall be deemed to be a public servant within the meaning of the Penal Code.
Obligation of secrecy.	49. (1) No person who has access to any statement, accounts, record, correspondence, document, information or any other material obtained pursuant to the provisions of this Act shall disclose such statement, accounts, record, correspondence, document, information or other material to any other person unless: <ul style="list-style-type: none">(a) Such disclosure is authorized by the Minister; or(b) such disclosure is made for the purposes of this Act.

(2) Any person who contravenes Subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding one year or to both.

Power to make regulations.

50. (1) The Minister may make such regulations as may be necessary or expedient for giving full effect to the provisions of this Act, for carrying out the purposes of this Act or any provisions thereof, or for the further, better or more convenient implementation of the provisions of this Act.

(2) Without prejudice to the generality of Subsection (1), regulations may be made:

- (a) To prescribe the time periods for any action to be taken under this Act;
- (b) to provide for extensions of time for any action to be taken and the circumstances when extensions may be granted;
- (c) to provide for the form and content of notices required for the purposes of this Act and the procedures related to the giving of such notices;
- (d) to provide for anti-circumvention measures;
- (e) to provide for the procedures of investigations, administrative reviews and appeals;
- (f) to provide for any fee to be charged in respect of any matter or things required for the purposes of this Act;
- (g) to provide for the forms of undertakings which may be accepted by the Government and the procedures related thereto; and
- (h) to provide for all matters which are required to be prescribed or which are necessary or expedient to give effect to this Act.

(3) Regulations made under this Section:

- (a) May provide that any act or omission in contravention of any provisions thereof shall be an offence; and
- (b) may provide for the imposition of penalties which shall not exceed three hundred thousand ringgit for such offence.

Repeal of the Customs (Dumping and Subsidies) Act 1959. Act 361.

51. The Customs (Dumping and Subsidies) Act 1959 is hereby repealed.

COUNTERVAILING AND ANTI-DUMPING DUTIES ACT 1993

COUNTERVAILING AND ANTI-DUMPING DUTIES REGULATIONS 1994

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COUNTERVAILING AND ANTI-DUMPING DUTIES ACT 1993

COUNTERVAILING AND ANTI-DUMPING DUTIES REGULATIONS 1994

Act 504. In exercise of the powers conferred by Section 50 of the Countervailing and Anti-Dumping Duties Act 1993, the Minister makes the following regulations:

PART I

PRELIMINARY

Citation and commencement. 1. These regulations may be cited as the **Countervailing and Anti-Dumping Duties Regulations 1994** and shall be deemed to have come into force on 28 April 1994.

PART II

PETITIONS

Contents of petition. 2. (1) A petition requesting that a countervailing or an anti-dumping duty investigation be initiated shall contain the name and address of the petitioner and, to the extent reasonably available to the petitioner, the following particulars:

- (a) the identity of the domestic industry on behalf of which the petition is submitted, including the names and addresses of the other producers of the like product in the domestic industry, and in the case where the petition is submitted on behalf of the regional producers of the like product, information and details to support the carrying out of an investigation on a regional basis;
- (b) a detailed description of the merchandise that defines the requested scope of the investigation, including technical characteristics and uses of such merchandise and its current Malaysian tariff classification;
- (c) the name of the country in which the merchandise is produced and, if such merchandise is imported from a country other than that in which it is produced, the name of the intermediate country;
- (d) the name and address of each party the petitioner believes is producing the merchandise for export or is exporting to Malaysia and:
 - (i) in relation to a countervailing duty petition, is receiving a subsidy; or
 - (ii) in relation to an anti-dumping duty petition, is selling the merchandise at prices below the normal value;
- (e) any factual information, particularly documentary evidence, relevant to the alleged subsidy or dumping, including:
 - (i) in relation to a countervailing duty petition, the authority which provided the subsidy and the manner in which the subsidy is provided and an estimate of the value of the subsidy to producers or exporters of the merchandise; or
 - (ii) in relation to an anti-dumping duty petition, information

relevant to the calculation of the normal value and export price of the merchandise;

- (f) the volume and value of the merchandise imported into Malaysia during the most recent two year period and during any other recent period that the petitioner believes to be more representative or, if the merchandise was not imported into Malaysia during the two-year period, information as to the likelihood of its sale for importation into Malaysia;
- (g) the name and address of each party who the petitioner believes is importing or, if there were no importations, is likely to import the merchandise;
- (h) evidence of injury to the domestic industry by reason of the merchandise included in the petition;
- (i) if the petitioner believes that the circumstances described in Subsections 10(7) and 25(7) of the Act may occur, factual information regarding:
 - (i) material injury which is difficult to repair;
 - (ii) massive imports of the merchandise in a short period of time prior to the submission of the petition; and
 - (iii) in relation to a countervailing duty petition, information about an export subsidy which is inconsistent with the international obligations of the foreign government, if applicable; or
 - (iv) in relation to an anti-dumping duty petition, evidence of a history of dumping by the exporters or evidence that the importer was aware or should have been aware that the merchandise was being sold in Malaysia at prices less than the normal value; and
- (j) any other factual information on which the petitioner relies.

(2) In relation to paragraph (1)(h), a petitioner should include factual information on relevant economic factors and indices which have a bearing on the condition of such domestic industry, such as actual and potential decline in output, sales, market share, profits, productivity, returns or investments, factors affecting domestic prices and actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital and investment.

(3) The petitioner shall submit, together with the petition, a non-confidential version of such petition which can be released publicly.

(4) The Government shall not consider any factual information in the petition for which the petitioner requests confidential treatment unless the petitioner meets the requirements of Section 39 of the Act.

Notification of receipt of countervailing duty petition and consultations.

3. (1) On receipt of a countervailing duty petition, the Government shall, as soon as practicable, notify representative of the interested foreign government in Malaysia of such receipt of petition for the purpose of Subsection 5(1) of the Act.

(2) The provision of an opportunity for consultations as provided in the Act shall not prevent the Government from proceeding expeditiously with regard to initiating the investigation, reaching preliminary or final determinations or applying provisional or final measures in accordance with the provisions of the Act and these Regulations.

Amendments to the petition.

4. (1) Subject to Subregulation (2), a petitioner may make amendments to the petition submitted under Subsection 4(1) or 20(1) of the Act prior to the preliminary determination unless exceptional circumstances justify an amendment to be made after the preliminary determination.

(2) The Government shall be entitled to refuse to accept any amendments where it determines that the amendments would seriously impede or disrupt the investigation or would adversely affect the rights of interested parties under the Act.

PART III

INVESTIGATION PROCEDURES

Scope of the investigation to be determined.

5. (1) Upon receipt of the countervailing or anti-dumping duty petition, the Government shall review the petition and determine the class of merchandise that is to be the scope of the investigation and whether the petitioner is submitting the petition on behalf of the domestic industry in respect of that class of merchandise.

(2) Where there are more than one class of merchandise specified or described in the petition, the Government may decide to segregate the investigation into two or more categories of subject merchandise, where appropriate.

Adequacy of petition.

6. (1) The Government shall make a determination as to the adequacy of the countervailing or anti-dumping duty petition within 14 days from the date of receipt of a properly submitted petition.

(2) Where the Government determines that the petition is inadequate, the Government will reject the petition and notify the petitioner of the reasons for such rejection.

Initiation of investigation.

7. Where the Government is satisfied that:

- (a) sufficient evidence has been presented with regard to the elements necessary for the imposition of countervailing or anti-dumping duties;
- (b) the petition is submitted on behalf of the domestic industry producing the like product; and
- (c) such an investigation would be in the public interest,

the Government shall initiate an investigation.

Notice of initiation of investigation.

8. A notice of initiation of investigation to be published under Subsection 4(5) or (7) and subsection 20(5) or (7) of the Act shall contain the following information:

- (a) the name of the country in which the subject merchandise is produced or, if the merchandise is imported from a country other than in which it is produced, the name of the intermediate country;
- (b) a description of the subject merchandise which is the scope of the investigation;
- (c) a brief description of the alleged subsidy or dumping to be investigated;
- (d) a brief summary of the elements on which the allegations of injury are based;
- (e) the address where information and comments may be submitted;
- (f) the date of initiation of the investigation; and

(g) the proposed time-limits for the investigation.

Gathering of
information and
questionnaires.

9. (1) The Government may prepare and distribute questionnaires to any party relevant to the countervailing or anti-dumping duty investigation within a reasonable period from the date of publication of the notice of initiation of investigation in order to obtain information which it deems necessary for making a determination under the Act.

(2) A party receiving a questionnaire shall be given at least 30 days to reply.

(3) An extension of the time period specified in Subregulation (2) may be granted by the Government if requested by a party in writing and if the Government is satisfied with the reasons given for the request.

(4) Any reply to the questionnaires submitted to the Government after the due date shall not be considered by the Government.

(5) For the purpose of this regulation, a questionnaire shall be deemed to have been received by a party one week from the day on which it was sent to the party or to the appropriate representatives of the interested foreign government in Malaysia, as the case may be.

Preliminary determination.

10. (1) The Government shall make a preliminary determination under Section 8 or 23 of the Act within 90 days from the date of publication of the notice of initiation of investigation.

(2) In special circumstances, the Government may extend the time period for making a preliminary determination by an additional 30 days.

Negative preliminary determination.

11. Where the Government makes a negative preliminary determination under Subsection 8(3) or 23(3) of the Act, the Government shall continue the investigation unless it is satisfied that the elements necessary for the imposition of countervailing or anti-dumping duties will not be found to exist even if the investigation is continued.

Affirmative preliminary determination.

12. (1) Where the Government makes an affirmative preliminary determination under Subsection 8(3) or 23(3) of the Act, the Government shall continue the investigation and publish a notice of affirmative preliminary determination and application of provisional measures which shall set forth adequate reasons for the affirmative determination regarding the elements necessary for the imposition of provisional duties, and shall also refer to matters of fact and law that have led to arguments being accepted or rejected.

(2) Without prejudice to the generality of Subregulation (1), the notice shall contain:

- (a) the names of the exporters, where practical, and the name of the country in which the subject merchandise is produced or any intermediate country involved;
- (b) a description of the subject merchandise that is sufficient for customs purposes, including the current Malaysian tariff classification;
- (c) the amount of subsidy or dumping found to exist and the basis for determination;
- (d) factors that have led to the injury determination, including information on factors other than subsidized or dumped imports that have been taken into account when the injury determination was made;
- (e) any other reasons leading to the preliminary determination;
- (f) the reasons why provisional measures are necessary; and
- (g) the proposed time-limits for making a final determination.

Provisional measures.

13. (1) Provisional measures may be taken only after the publication of the notice of affirmative preliminary determination and shall not be applied earlier than 60 days from the date of the initiation of the investigation.

(2) Unless the Government grants an extension of time that is consistent with Malaysia's international obligations in such matter, the period for the application of provisional measures shall not exceed 120 days from the date of the publication of the notice of the affirmative preliminary determination.

Request for retroactive imposition of countervailing and anti-dumping duties.

14. (1) With respect to Subsections 10(7) and 25(7) of the Act, a petitioner may make a written request to the Government at any time prior to 30 days before the final determination for the retroactive imposition of countervailing and anti-dumping duties.

(2) Such request shall contain factual information of:

- (a) material injury to the domestic industry which is difficult to repair;
- (b) massive imports of the subject merchandise in a short period of time; and
- (c) in relation to the imposition of countervailing duties, export subsidy which is inconsistent with the international obligations of the foreign government; or
- (d) in relation to the imposition of anti-dumping duties, the history of dumping by the exporters or evidence that the importer was aware or should have been aware that the exporter practises dumping and that such dumping would cause injury to the domestic industry.

Final determination.

15. (1) A final determination under Sections 10 and 25 of the Act shall be made within 120 days from the date of the publication of the notice of the preliminary determination.

(2) A notice of a final determination, affirmative or negative, shall include all relevant information on the matters of fact and law and reasons that have led to the determination, due regard being given to the requirement for the protection of confidential information, and in particular:

- (a) The names of the exporters and producers of the subject merchandise, where practical, and of the country in which the subject merchandise is produced or of any intermediate country involved;
- (b) a description of the subject merchandise that is sufficient for customs purposes, including the current Malaysian tariff classification;
- (c) the amount of subsidy or dumping found to exist and the basis for such determination;
- (d) factors that have led to the injury determination, including information on factors other than subsidized or dumped imports that have been taken into account when the injury determination is made;
- (e) any other reasons leading to the final determination;
- (f) the countervailing or anti-dumping duties to be imposed;
- (g) the reason why final countervailing or anti-dumping duties should be collected with regard to the subject merchandise for which provisional measures were applied; and
- (h) the reason for the retroactive imposition of duties under Subsection 10(7) or 25(7) of the Act, if applicable.

(3) The Government shall make a negative final determination whenever it determines that any one of the elements required under Section 10 or 25 of the Act does not exist or where the amount of subsidy or dumping or the volume of subsidized or dumped imports, actual or potential, is negligible.

Corrections of administrative errors.

16. (1) Interested parties may submit comments regarding administrative errors within 10 days from the date of publication of the notice of final determination.

(2) If the Minister is satisfied that administrative errors exist, the final determination shall be amended within 30 days from the date of the publication of the notice of final determination.

Mutually agreed solution through consultations.

17. (1) Without prejudice to any other provisions of the Act, a mutually agreed solution may be reached through consultations under Section 5 of the Act.

(2) Where a mutually agreed solution is reached, the Government shall publish a notice setting forth the terms of the mutually agreed solution.

Undertakings and suspension of investigation.

18. (1) The Government may consult the domestic industry before accepting any undertaking and suspending a countervailing or anti-dumping duty investigation under Sections 12 and 27 of the Act.

(2) The Government may accept the following forms of undertakings:

(a) in relation to a countervailing duty investigation:

- (i) the government of the exporting country agrees to eliminate, offset or limit the subsidy;
- (ii) the exporters agree to renounce the subsidy;
- (iii) the exporters agree to revise their prices to eliminate the injurious effect of the subsidy; or
- (iv) the government of the exporting country or the exporters agree to take such other action so as to eliminate the injurious effects of the subsidy; and

(b) in relation to an anti-dumping duty investigation:

- (i) the exporters agree to revise their prices to eliminate the injurious dumping; or
- (ii) the government of the exporting country or the exporters agree to take such other action so as to eliminate the injurious effects of the dumping.

(3) Except in extraordinary circumstances, undertakings may not be offered later than 60 days before the final determination.

(4) With respect to Subsections 12(3) and 27(3) of the Act, the Government shall publish the notice of preliminary determination at the time the notice stating the reasons for the acceptance of such undertakings is published.

(5) The Government may require any interested foreign government or exporter from whom undertakings have been accepted to provide, from time to time, information relevant to the fulfilment of such undertakings, and to permit verification of pertinent data.

(6) A request to complete the investigation under Subsection 12(5) or 27(5) of the Act shall be made in writing by the interested foreign government within 14 days from the date of publication of the notice of suspension of investigation.

(7) Where the Government receives the request for the completion of investigation within the time specified under Subregulation (6) and decides to complete the investigation, the Government shall publish a notice of the continuation of the investigation, and shall make the final determination within 180 days from the date of the request for the completion of investigation.

(8) Where a material violation of the undertakings occurs before the final determination can be completed under Subregulation (7), the Government shall

immediately apply provisional measures based upon the preliminary determination or on any other reasonable basis.

(9) Where a material violation of the undertakings occurs after the final determination has been completed under Subregulation (7), the Government shall immediately impose countervailing or anti-dumping duties based upon that final determination.

(10) Where applicable, the amount of duties to be imposed under Subsections 12(12) and 27(12) of the Act shall be based upon information available.

PART IV

INJURY DETERMINATIONS

- Meaning of injury. 19. For the purpose of Regulations 20 and 21, the term "injury" means:
- (a) material injury to a domestic industry producing a like product;
 - (b) threat of material injury to a domestic industry producing a like product; or
 - (c) material retardation of the establishment of such domestic industry.
- Determination of injury. 20. (1) In order to determine injury to the domestic industry for the purpose of paragraphs 3(1)(b) and 15(1)(b) of the Act, the Government shall base its determination on an evaluation of relevant economic factors and indices having a bearing on the condition of such industry.
- (2) The factors and indices referred to in Subregulation (1) shall include:
- (a) actual and potential decline in output, sales market share, profits, productivity, returns or investments;
 - (b) factors affecting domestic prices; and
 - (c) actual and potential negative effects on cash flow, inventories, employment, investment, wages, growth or ability to raise capital.
- (3) The factors and indices mentioned in Subregulation (2) shall not be exhaustive nor shall one or several of such factors or indices be necessarily conclusive.
- Causation. 21. (1) In order to determine whether injury to the domestic industry is by reason of the subject merchandise under paragraphs 3(1)(b) and 15(1)(b) of the Act, the Government shall consider, among other factors:
- (a) whether there has been a significant increase in subsidized or dumped imports, in absolute or relative terms;
 - (b) whether there has been significant price undercutting by subsidized or dumped imports; and
 - (c) whether there has been significant price suppression or depression by subsidized or dumped imports.
- (2) The Government shall assess the effect of subsidized or dumped imports in relation to the domestic production of the like product where available data permit the separate identification of production in accordance with such criteria as the production process and producer's sales and profits.

(3) Where the domestic production of the like product has no separate identity as described in Subregulation (2), the Government shall assess the effects of the subsidized or dumped imports by examining the production of the narrowest group or range of products, which includes the like product, for which necessary information can be provided.

(4) The Government shall also consider whether there are other factors which, at the same time, are injuring the domestic industry. Injury to the domestic industry caused by other factors shall not be attributed to the subsidized or dumped imports. The expression "by reason of" in Subregulation (1) shall be interpreted to mean that the merchandise under investigation must be a cause of injury to the domestic industry.

(5) The Government shall also consider as one factor the amount of the subsidy or the margin of dumping found to exist.

(6) The Government shall provide an explanation as to how the factors in Subregulation (1) have been considered in any determination of injury under paragraphs 3(1)(b) and 15(1)(b) of the Act.

Threat of material injury.

22. (1) For the purpose of subparagraphs 3(1)(b)(ii) and 15(1)(b)(ii) of the Act, a determination of threat of material injury to the domestic industry shall be based on facts and not merely allegation, conjecture or remote possibility, and that such material injury is imminent.

(2) When determining threat of material injury, the Government shall consider, among other factors:

- (a) contracts for future shipment of the subject merchandise to Malaysia;
- (b) capacity utilization in the foreign country under investigation;
- (c) price undercutting by the subject merchandise;
- (d) recent import trends of the subject merchandise; and
- (e) the existence of significant inventories in the country under investigation.

Material retardation.

23. (1) In order to determine whether material retardation of a domestic industry exists under subparagraphs 3(1)(b)(iii) and 15(1)(b)(iii) of the Act, the Government shall base its determination on:

- (a) whether a domestic industry producing the like product may be established;
- (b) the possible viability of such an industry; and
- (c) the time period required for the establishment and development of such an industry.

(2) For the purposes of Subregulation (1), the Government shall consider, among other factors, feasibility studies, negotiated loans and contracts for the purchase of machinery aimed at new investment projects or the expansion of existing plants.

PART V

SUBSIDIES AND DUMPING

Forms of subsidy.

24. (1) The following forms of financial benefit or contribution shall be considered

as subsidy by the Government:

- (a) where government practice involves a direct or potential direct transfer of funds or liabilities;
- (b) where government revenue that is otherwise due, is foregone or not collected;
- (c) where the Government provides goods or services, other than general infrastructure, or purchases goods;
- (d) where the Government makes payments to a funding mechanism or entrusts or directs a private body to carry out one or more of the type of functions mentioned in paragraphs (a) to (c) which would normally be vested in the Government and the practice does not differ from practices normally followed by governments; or
- (e) there is any form of income or price support.

(2) If no cash flow effect can be calculated, the Government may make an estimate of the financial benefit.

(3) The Government shall consider a financial benefit or contribution as an export subsidy where the eligibility for, or the amount of, benefit or contribution under a programme is associated, in law or in fact, to actual or anticipated exportation or to export earnings.

(4) The Government shall consider a financial benefit or contribution as a domestic subsidy where the eligibility for the benefit or contribution is limited, in law or in fact, to a specific enterprise, industry or group of enterprises or industries.

Basis for calculation of subsidy.

25. (1) The Government shall calculate the amount of subsidy provided with respect to the subject merchandise based upon the following principles:

- (a) the Government will calculate the total subsidy provided with respect to the subject merchandise during the designated period of investigation;
- (b) the Government will regard a subsidy to be received at the time when there is a cash flow effect on the enterprise, industry or exporters receiving the subsidy:

Provided that where this methodology will significantly distort the subsidy level, the Government may use any other reasonable method to determine when a subsidy is received;

- (c) the Government will either calculate the entire subsidy received by the enterprise, industry or exporters as to be expended in a single year or on an annual basis for two or more years, as it deems appropriate;
- (d) the Government will allocate the subsidy to those products to which the subsidy is associated;
- (e) the Government will calculate a weighted average subsidy applicable to the product on a country-wide basis;
- (f) the amount of subsidy shall be determined per unit, on an ad valorem basis, or on any other reasonable basis;
- (g) the Government may subtract the amount of:

- (i) any application fee, deposit or similar payment paid in order to qualify for, or to receive, the subsidy; and
- (ii) export taxes, duties or other charges collected on the export of the merchandise to Malaysia specifically intended to offset the subsidy received.

Determining normal value by examining sales in anti-dumping duty investigation.

26. (1) For the purpose of determining normal value under Section 16 of the Act, the Government will normally examine any sale of the comparable merchandise in the domestic market of the exporting country during the six-month period preceding the initiation of an investigation or any additional or alternative period that the Government deems relevant or necessary if such sales permit a proper comparison.

(2) Sales of the comparable merchandise in the domestic market do not permit a proper comparison where:

- (a) the quantity of merchandise sold for consumption in the domestic market during the period being examined is so small in relation to the quantity sold for exportation to Malaysia or to total export that it is an inadequate basis for the normal value of the merchandise; or
- (b) the sales in the domestic market are not in the ordinary course of trade.

Normal value where sales do not permit a proper comparison

27. Where sales of the comparable merchandise do not permit a proper comparison as specified in Subregulation 26(2), the Government shall consider the normal value to be:

- (a) the comparable price actually paid or payable in the ordinary course of trade for comparable merchandise exported to any third country; or
- (b) the constructed value of the subject merchandise.

Basis for selection of a third country.

28. (1) The Government generally will select the third country for the purposes of paragraph 27(a) based on the following criteria:

- (a) the merchandise exported to the third country is similar to the merchandise exported to Malaysia and the Government determines that the value of sales to the country is adequate;
- (b) the market in the third country, in terms of structure and development, is similar to the Malaysian market;
- (c) the sales in the third country are in the ordinary cause of trade; and
- (d) any other criteria the Government deems relevant based on the circumstances of a particular industry.

(2) The Government may aggregate sales to more than a single third country in order to find adequate volume of sales for the purpose of paragraph (1)(a).

Constructed value of subject merchandise.

29. (1) For the purpose of paragraph 27(b), the constructed value of a subject merchandise shall be the sum of:

- (a) the cost of materials and of fabrication or other processing method employed in producing such or similar merchandise;
- (b) an amount for general expenses which is equal to the actual expenses incurred on sales of the general class or kind of merchandise; and

(c) an amount for profit which is equal to:

- (i) the actual profit earned by the exporter;
- (ii) an amount usually earned by the producers in the same country of exportation on sales of the same general category; or
- (iii) any other reasonable method of calculating profit.

(2) A transaction directly or indirectly between related parties or among parties which appear to have compensatory arrangements with each other may be disregarded.

(3) If a transaction is disregarded under Subregulation (2) and there are no other transactions available for consideration, then the determination of the amount required to be considered under Subregulation (1) shall be based on the best information available as to what the amount would have been if the transaction had occurred between unrelated parties or parties without the compensatory arrangements.

Adjustment of export price.

30. In calculating the export price under Section 17 of the Act, the Government will deduct the amount of any anti-dumping duty that the producer or reseller:

- (a) has paid directly on behalf of the importer; or
- (b) has reimbursed to the importer.

Calculating dumping margins.

31. As a general matter, a specific company export price and normal value will be calculated on a weighted average basis.

Adjustments to ensure of fair comparison between normal value and export price.

32. (1) The Government will make the following adjustments to ensure a fair comparison between the normal value and the export price of a merchandise:

- (a) the Government will make reasonable allowances for transport expenses such as freight, shipping, insurance or other similar expenses to ensure the prices are comparable normally at an ex-factory level;
- (b) the Government will make reasonable allowances for differences in the physical characteristics of merchandise compared if the Government is satisfied that the amount of any price difference is wholly or partly due to such physical differences;
- (c) the Government will make reasonable allowances for a bona fide difference in the selling conditions of the sales compared if the Government is satisfied that the amount of any price difference is wholly or partly due to such differences in the selling conditions such as commissions, credit terms, guarantees, warranties, technical assistance and servicing;
- (d) the Government will make reasonable allowances for differences in selling costs incurred by the producer or reseller but only to the extent that such costs are assumed by the producer or reseller on behalf of the purchaser;
- (e) the Government will calculate normal value and export price based on comparable quantities of merchandise, but where the quantities are not comparable and the Government is satisfied that the amount of any price difference is wholly or partly due to such difference

in quantities, the Government may make a reasonable allowance for the difference;

- (f) the Government will calculate normal value and export price based on sales at the same commercial level of trade, but where the levels of trade are different and the Government is satisfied that the amount of any price difference is wholly or partly due to such difference, the Government may make a reasonable allowance for the difference; and
- (g) the Government will make any other adjustments it deems necessary to ensure a fair price comparison.

(2) Any price used to establish either normal value or export price shall be net of all discounts and rebates directly linked to the sales under consideration, provided that the exporter furnishes sufficient evidence that any such reduction from the gross price has actually been granted.

(3) The Government may recognize deferred discounts if they are directly linked to the sales under consideration and if evidence is produced to show that the discounts were based:

- (a) on consistent periods; or
- (b) on an undertaking to comply with the conditions required to qualify for the deferred discount.

(4) The Government may disregard adjustments to normal value or export price which are insignificant in nature.

Calculation of amount of subsidy and normal value of subject merchandise from a non-market economy country.

33. Where the country of origin of the subject merchandise is a non-market economy country, the Government shall:

- (a) in the case of subsidy, deem the amount of subsidy to be the difference between the ex-factory price of the like product sold by domestic manufacturers in the Malaysian market and the ex-factory price of the subject merchandise imported from the non-market economy country; and
- (b) in the case of dumping, calculate the normal value of the subject merchandise based on:
 - (i) the prices of comparable merchandise sold in the ordinary course of trade in a surrogate country;
 - (ii) the cost to make and sell comparable merchandise in the ordinary course of trade in a surrogate country;
 - (iii) the prices of comparable domestically produced merchandise sold in Malaysia in the ordinary course of trade; or
 - (iv) any other appropriate method.

PART VI

REVIEWS

Administrative review.

34. (1) An administrative review to be conducted by the Government under Sections 13 and 28 of the Act shall be undertaken only after one year has lapsed from the date of publication of the decision of which the review is sought.

(2) An administrative review undertaken by the Government shall normally be completed within 180 days.

Extension review.

35. (1) The Government shall publish a notice of the impending termination of the imposition of countervailing or anti-dumping duties at least six months prior to the end of the five-year period referred to in Subsections 13(6) and 28(6) of the Act.

(2) The Government shall specify in the notice of the period within which any interested party may present their views on such termination of imposition of duties.

(3) Where an interested party provides evidence or the Government otherwise obtains information that the termination of the imposition of duties would lead to injury to the domestic industry, the Government shall publish a notice of its intention to initiate an administrative review to extend the imposition of duties.

(4) An extension review under this regulation shall normally be completed in 180 days.

(5) The imposition of countervailing or anti-dumping duties shall continue pending the outcome of this review.

Refund review in anti-dumping duty investigations.

36. (1) An importer may request for a refund review for any 12-month period after the final determination of an anti-dumping duty investigation.

(2) The Government shall conduct a refund review as requested by the importer under subregulation (1) only if the importer has:

- (a) filed a refund application with the Customs Department within 30 days of entry of the merchandise into Malaysia; and
- (b) submitted sufficient and complete evidence to show that the amount of anti-dumping duties collected during that 12-month period exceeds the dumping margin determined.

(3) All requests for a refund review shall be submitted in writing to the Government and shall contain a list of all entries for which a refund application was submitted and positive evidence to show that the importer is entitled to a refund on each such entry.

(4) A refund review shall be completed within 180 days from the date the Government decides to conduct such a review.

(5) The results of the refund review shall determine the final anti-dumping duty applicable for each entry for which the appropriate refund was requested and shall also be the basis for the anti-dumping duty rate applicable to all entries made after the review is completed.

(6) If the margin of dumping is found to be less than the anti-dumping duty paid, the difference shall be refunded.

(7) If the margin of dumping is found to be greater than the anti-dumping duty paid, the importer shall pay the difference.

PART VII

GENERAL

Submission of oral or written information

37. (1) Any interested party may submit any information that they consider relevant to a countervailing or anti-dumping duty investigation or reviews in writing.

(2) An interested party may submit any relevant information orally only if permitted to do so by the Government.

(3) Where an interested party is permitted to submit information orally, he must reduce such oral information to writing and properly submit it to the Government within seven days from the date of the oral submission.

(4) An interested party shall provide five copies of the confidential version of the submission and three copies of the non-confidential version.

(5) Any document submitted which is in a foreign language shall be accompanied by a translation in the national language of Malaysia or in English, unless the Government waives in writing this requirement for an individual document.

(6) The Government may require submission of factual information on computer tape or discs compatible with the computer systems used by the Government unless the Government is satisfied that the party submitting the information does not maintain records in computerized form or cannot supply the requested information in computer format without unreasonable additional burden in time and expense.

(7) All information submitted to the Government for consideration must be certified as accurate and complete and shall be in a format as may be specified by the Government.

(8) Subject to Section 39 of the Act, written information submitted by an interested party shall be made available to other interested party involved in the investigation.

(9) Any party submitting information may apply to the Government to treat such information as confidential if its disclosure is likely to have a significant adverse effect upon the supplier of the information or other interested party.

Verification of
information.

38. (1) Where the Government decides to verify the accuracy of any information submitted during an investigation or a review, the Government shall notify the interested foreign government that authorized representatives from the Government will visit the interested foreign government, interested parties or any other party deemed relevant for an on-site verification in order to verify the accuracy and completeness of submitted factual information.

(2) The authorized representatives of the Government may request access to all files, records and personnel that they consider relevant to the investigation or review.

(3) Where the Government decides that, because of the large number of parties under investigation, it is impractical to verify relevant factual information for each party, the Government may select and verify a sample and apply the results of the verification of the sample to all the parties included in the investigation.

(4) Where the Government decides not to conduct an on-site verification, the Government may request for the interested party to submit copies of the original documents of which the information was based or statements from the independent auditors as to the accuracy and completeness of the submitted factual information or may use any other method it deems reasonable.

Hearings.

39. (1) Any interested party may, within 10 days from the date of the publication of the preliminary determination, submit a written request for a hearing to be held at which they may present their views.

(2) The Government shall grant the request for a hearing if:

- (a) the written request is submitted within the time specified in subregulation (1); and
- (b) the Government determines that the party has provided a valid justification for holding such a hearing.

(3) If a hearing is granted, the interested parties will be notified of the time and place of the hearing at least 14 days before the hearing takes place.

(4) Any party proposing to attend the hearing shall submit a written request at least seven days prior to the hearing date and shall provide a valid justification for participating in the hearing.

Made the 28 April 1994.
[BPA (P)0.2:109:5 SJ 10 Jld.4; PN. (PU²)529.]

Dato' Seri Rafidah Aziz,
Minister of International Trade and Industry