WORLD TRADE ORGANIZATION

G/ADP/N/1/MAR/3
G/SCM/N/1/MAR/3
G/SG/N/1/MAR/2

1 March 2013

(13-1137) Page: 1/49

Committee on Anti-Dumping Practices
Committee on Subsidies and Countervailing Measures
Committee on Safeguards

Original: French

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

MOROCCO

The following communication, dated 18 February 2013, has been received from the Permanent Mission of Morocco.

Dahir No. 1-11-44 of 29 Joumada II 1432 (2 June 2011) Promulgating Law No. 15-09 on Trade Defence Measures

Pursuant to this Dahir, Law No. 15-09 on trade defence measures, as adopted by the House of Counsellors and the House of Representatives, is hereby promulgated and will be published in the Official Bulletin.

Done at Oujda, 29 Joumada II 1432 (2 June 2011).

For counter-signature:

The Prime Minister,

ABBAS EL FASSI.

LAW NO. 15-09 ON TRADE DEFENCE MEASURES

TITLE I

GENERAL PROVISIONS

CHAPTER I

Subject matter and definitions

Article 1

This Law establishes the conditions under which the administration may, in compliance with the international commitments of the Kingdom of Morocco, take trade defence measures aimed at correcting or eliminating distortions caused by certain unfair competition practices in relation to imports or by a massive increase in imports of a product.

Such trade defence measures shall be adopted in the form of anti-dumping measures, countervailing duties or safeguard measures, taking account of Morocco's national interests.

Article 2

For the purposes of this Law, the following definitions shall apply:

(1) investigation: the process by which the competent administration, by all means at its disposal, collects and verifies from interested parties the information and data needed for the application or non-application of a trade defence measure;

(2) product under consideration: the imported product alleged to be the subject of dumping, a specific subsidy or a massive increase in the volume of imports;

(3) like product: the product alike in all respects to the product under consideration or, in the absence of such a product, any other product which has characteristics closely resembling those of the product under consideration;

(4) interested parties:

(a) the exporter or foreign producer of the product under consideration or the Moroccan importer of that product, or a trade or business association a majority of the members of which are producers or exporters or importers to Morocco of the said product;

(b) the government of the exporting country of the product under consideration;

(c) the domestic producer of the product alike to the product under consideration or a trade association a majority of the members of which produce the product alike to the product under consideration;

(d) any other domestic or foreign party not included in the aforementioned categories, which demonstrates to the competent administration its status as an interested party in the context of the investigation relating to a trade defence measure.

CHAPTER II

Import Surveillance Commission

Article 3

An "Import Surveillance Commission", hereinafter the "Commission", is hereby established to advise on all matters relating to the trade defence measures provided for in Article 1.

The Commission shall be composed of Members representing the governmental authorities concerned, the Federation of Chambers of Commerce, Industry and Services, the Association of Chambers of Agriculture, the Federation of Chambers of Handicrafts and the Federation of Maritime Fisheries Chambers.

The Commission may seek assistance from any person known for his experience and scientific expertise in the areas covered by this law.

The membership and method of operation of the Commission shall be established by regulation.

Article 4

The Commission shall be responsible for advising on:

(a) the initiation and termination of investigations concerning trade defence measures provided for by this Law;

(b) imposition of a provisional anti-dumping duty, a provisional countervailing duty or a provisional safeguard measure;

(c) imposition of a definitive anti-dumping duty, a definitive countervailing duty or a definitive safeguard measure;

(d) price undertakings;

(e) the revocation, maintenance, revision, prolongation or extension, as the case may be, of a trade defence measure, following a review or circumvention investigation;

(f) any other matter relating to the areas covered by this Law, which may be submitted to it by its Chairperson or by one of its members.

TITLE II

ANTI-DUMPING MEASURES AND
COUNTERVAILING MEASURES

CHAPTER I

Determination of dumping or specific subsidy, injury and causal link

Article 5

Any imported product entered for consumption in Morocco may, following an investigation initiated and conducted in accordance with the provisions of Chapter II of this Title, be made subject to either an anti-dumping duty, or a countervailing duty or both measures simultaneously, where:

(a) the product is the subject of dumping or a specific subsidy, or both at the same time;

(b) importation of the product concerned causes or threatens to cause material injury to the domestic industry producing the like product; and

(c) a causal link exists between the imports that are the subject of dumping or a specific subsidy and the injury.

For the purposes of this chapter, the following definitions shall apply:

(1) Domestic industry: Moroccan producers as a whole of the like product, or those of them whose collective output constitutes a major proportion of the total domestic production of that product, excluding producers demonstrated to be related to the exporters or importers or who are themselves importers of the product under consideration;

(2) Injury: Material damage to a domestic industry, threat of material damage to a domestic industry or material retardation of the establishment of a domestic industry.

Section 1

Determination of dumping or a specific subsidy

Article 6

An imported product shall be considered to be dumped if its export price to Morocco is less than its normal value.

Article 7

The export price of a product referred to in Article 6 above shall be taken to mean the price actually paid or payable for the product under consideration sold for export to Morocco. However, where there is no price actually paid or payable for the product under consideration sold for export to Morocco, or where it appears that the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed:

(1) Either on the basis of the price at which the product under consideration is first resold to an independent buyer in Morocco;

(2) Or on any basis deemed reasonable if the product under consideration is not resold to an independent buyer or not resold in the condition as imported.

Where the normal value of an imported product is determined on the basis of the price in the country of origin in accordance with Article 8(1) below, the export price shall be the price actually paid or payable for the product under consideration when sold for export in the country of origin.

Article 8

The normal value provided for in Article 6 above shall be determined on the basis of:

(1) the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country. However, where the product is merely transhipped through the country of export or where the product is not produced or there is no comparable price for it in the country of export, the normal value may be established on the basis of the price of the like product when intended for consumption in the country of origin.

(2) where no sale of the like product has taken place in the normal course of trade on the domestic market of the exporting country or where, because of the particular market situation or the low volume of sales on that market, such sales cannot provide guidance for determining the normal value, the normal value shall be established on the basis of:

(a) either the comparable price of the like product when it is exported to a third country, provided however that export sales to such a third country are effected under the same conditions;

(b) or the cost of production in the country of origin plus an amount representing administrative, selling and general costs, and a reasonable profit margin.

(3) In the event that the product under consideration is exported from a country with a non-market economy, that is not a Member of the World Trade Organization (WTO), the normal value shall be determined on the basis of:

(a) the comparable price, in the ordinary course of trade, for sales of the like product destined for consumption in a market-economy third country at a comparable level of economic development;

(b) the comparable price in the ordinary course of trade for exports of the like product from an appropriate market-economy country, that are destined for other countries, including Morocco; or

(c) on any other reasonable basis.

Article 9

The dumping margin for a product shall be defined as the difference between the export price and the normal value of the product. The dumping margin shall be established on the basis of a fair comparison between the export price and the normal value of the product under consideration.

It shall be determined individually for each known exporter or producer in the country of export concerned by the product under consideration.

However, in cases where the number of exporters, producers or importers is too large for an individual dumping margin to be determined, the investigation referred to in Chapter II of this Title may be limited either to a representative sample of such exporters, producers or importers, or to the largest percentage of the volume of exports from the country concerned.

Article 10

An imported product shall be considered to be subsidized if:

(1) a direct or indirect financial contribution from the government or any other body or public institution in the country of origin or the country of export of the product under consideration has been extended to the product, or the exporter or producer of the product receives any form of price or income support for the purpose or with the effect of directly or indirectly increasing exports of that product to Morocco; and

(2) the financial contribution or price or income support confers a benefit in relation to the product.

Article 11

A subsidy shall be considered specific in the following cases:

(1) where the legislation or the public authority in the country of origin or of export of the product under consideration expressly limits the granting of the subsidy to an enterprise or an industry, or to a group of enterprises or industries, either at the national level or within a specific geographical region. However, there shall be no specificity if the public authority granting the subsidy or the legislation under which that authority acts makes receipt of the subsidy and the amount thereof conditional on objective criteria or conditions, provided however that the eligibility for the subsidy is automatic and that such criteria and conditions are spelt out in the legislation, regulations or any other official document, so as to be capable of verification and strict application.

(2) where it is observed in practice that:

- a subsidy programme is used by a limited number of enterprises or industries; or

- a subsidy programme is used predominantly by one enterprise, one industry, or one group of enterprises or industries; or

- disproportionately large amounts of subsidy are granted to one enterprise, one industry, or one group of enterprises or industries; or

- the granting authority exercises discretion in the decision to grant a subsidy;

(3) where the subsidy is contingent, in law and in fact, either exclusively or among several other conditions on export performance;

(4) where the subsidy is contingent, either exclusively or among several other conditions, on the use of domestic products in preference to imported products.

Article 12

Where the existence of a specific subsidy is established, its amount shall be calculated in terms of the benefit conferred on the recipient of the subsidy during the period covered by the investigation. This amount shall be set by unit and as a percentage of the value of the subsidized product exported to Morocco, on an individual basis for each exporter or producer known in the country of origin or export concerned by the product under consideration.

However, where the number of exporters, producers or importers is too large for the calculation of the individual subsidy amount to be feasible, the investigation provided for in Chapter II of this Title may be limited to a representative sample of those exporters, producers or importers, or to the largest percentage of the volume of exports from the country concerned.

Section 2

Determination of injury and causal link

Article 13

A determination of injury shall be based on evidence revealed by an objective examination of the following:

(1) the volume of imports of the product under consideration during a specified period of time;

(2) the effect of those imports on the prices of like domestic products on the domestic market;

(3) the impact of the imports on the domestic industry.

In addition, the determination of threat of injury or material retardation of the establishment of a domestic industry, referred to in Article 5 above, must be based on facts and not merely on allegation, conjecture or remote possibility.

Article 14

Proof of a causal relationship between imports of the product under consideration and injury to the domestic industry shall be based on an examination of all available evidence, including known factors other than the imports which, at the same time, might have caused injury to the domestic industry. The injury caused by such other factors shall not be attributed to imports of the product under consideration.

Article 15

The factors and criteria taken into account in determining injury and the causal relationship between imports of the product under consideration and injury shall be established by regulation.

CHAPTER II

The investigation and the application of anti-dumping and countervailing measures

Section 1

Investigation and application of measures

Article 16

For the determination of dumping or specific subsidization, injury and the causal link between the dumping or subsidization and the injury, an investigation shall be initiated and conducted on the basis of a written application to the competent administration made by or on behalf of the domestic industry in the form and under the conditions established by regulation.

The same investigation may, further to an opinion issued by the Commission referred to in Article 3 above, be initiated and conducted in the absence of the above-mentioned application, if the competent administration has sufficient evidence of dumping or a specific subsidy, injury and a causal relationship between such dumping or subsidy and such injury.

The application referred to in the first paragraph of this article shall be accompanied by objective and documented data supporting the allegations of dumping or specific subsidization, injury to a domestic industry, and the causal relationship between imports of the product under consideration and injury.

Only applications meeting the conditions established by this article shall be admissible. The acceptance or inadmissibility of the application shall be notified to the applicant within a period of ten (10) days from the date of receipt of the application. Any notification of inadmissibility of the application shall specify the reasons therefor.

Article 17

Within a period of twenty-one (21) days from the date of acceptance of the application, the competent administration may, in the light of the information contained in the application, decide to initiate an investigation, further to an opinion issued by the Commission referred to in Article 3 above.

The initiation of any investigation shall be notified to all interested parties known to the competent administration, and a notice specifying *inter alia* the identity of the applicant or applicants, the product concerned, the exporting country or countries concerned, the date of initiation of the investigation and the reasons for its initiation, shall be published by the administration in at least two national newspapers authorized to receive legal notices.

The initiation and conduct of an investigative procedure shall not stand in the way of the customs clearance of the products under investigation.

Article 18

Any person has thirty (30) days from the date of publication of the notice of initiation of the investigation to make themselves known as an interested party and to submit comments concerning the investigation.

Article 19

Upon notification of the admissibility of the application, imports of the product subject to the investigation may be made subject, by the competent administration, in the form and under the conditions established by regulation, to surveillance involving an advance import declaration where appropriate.

Article 20

Upon initiation of the investigation, the competent administration shall send directly, or through the relevant diplomatic missions:

(a) a copy of the application, subject to the protection of confidential information, to the known exporters and foreign producers and to the authorities of the exporting countries, as well as to other interested parties, on request;

(b) questionnaires intended to collect information needed for the investigation to all interested parties known to the competent administration. Such parties shall have a period of thirty (30) days from the date of transmittal of the questionnaire to reply thereto. This period shall be increased by seven (7) extra days for exporters and producers domiciled abroad. In addition, at the request of the interested parties, the aforementioned period of thirty (30) days may be extended by an additional period of not more than twenty-one (21) days, once only, if the circumstances so require. In addition to their replies to the questionnaires, the interested parties may submit in writing any views or comments they deem relevant to the investigation.

Article 21

Following receipt of the responses to the questionnaires, the competent administration shall undertake a preliminary evaluation of the information supplied and, on the basis of that evaluation, may make a preliminary determination of dumping or specific subsidization, injury and causal link.

In the absence of responses to the questionnaires, the evaluation shall be made on the basis of the best information available.

Article 22

The preliminary evaluation and the preliminary determination of dumping or subsidization, injury or causal link shall be published by the competent administration in at least two national newspapers authorized to receive legal notices, in the form of a notice indicating the findings reached by the administration. Such publication shall in all cases take account of the protection of the confidentiality of the information provided. The notice shall be communicated to the interested parties known to the competent administration.

Article 23

In cases where the preliminary evaluation results in a preliminary determination of dumping or specific subsidization, injury and a causal link, the administration may, if it deems necessary and in order to avoid subsequent injury during the period of the investigation, apply a provisional measure, pursuant to the opinion of the Commission, in the form of a provisional anti-dumping duty or a provisional countervailing duty.

In cases where the evaluation has not resulted in a preliminary determination of dumping or specific subsidization, or injury or causal link, no provisional measure shall be imposed on imports of the product under consideration.

In all cases, the competent administration shall continue the investigation, regardless of whether a provisional anti-dumping duty or a provisional countervailing duty is applied.

Any provisional measure shall be published in the Official Bulletin, together with indications of the reasons for the choice of the methodology used in the establishment of the dumping or subsidy margins that led to the application of the measure in question.

Article 24

When the investigation has been concluded, the administration shall undertake a final evaluation of all the information collected, taking account of the results of the verifications effected.

In the event of non-cooperation in the investigation on the part of the interested parties, the evaluation shall be made on the basis of the best information available.

On the basis of such evaluation and prior to the final determination of dumping or specific subsidization and injury and a causal link, the competent administration shall notify the interested parties known to it, in writing, of the results of the investigation constituting the basis of its decision as to whether or not to apply a definitive anti-dumping duty or a definitive countervailing duty. The interested parties shall have a period of twenty-one (21) days, from the date of transmittal of the notification, to submit comments and observations.

Article 25

The final evaluation and the final determination of dumping or specific subsidization, injury and causal link, shall be published and notified under the same conditions as provided for in Article 22 above.

Article 26

Where the investigation results in a final determination of dumping or specific subsidization and injury and a causal link, the administration, further to the opinion of the Commission, may apply a definitive anti-dumping duty or a definitive countervailing duty.

Any definitive measure shall be published in the Official Bulletin, accompanied *inter alia* by an explanation of the reasons for the choice of the methodology used to establish the dumping or subsidy margins that led to the application of the measure.

If the investigation does not result in a final determination of dumping or specific subsidization, injury or causal link, no definitive measure shall be imposed on imports of the product under consideration, and any undertaking made under Article 35 below shall be null and void.

Any negative final determination of dumping or specific subsidization, injury or causal link, shall be published and notified under the conditions established in Article 22 above.

Article 27

Any investigation shall be completed within twelve (12) months from the date of its initiation. However, this period may be extended to eighteen (18) months, in the light of the complexity of the case concerned or the difficulties in obtaining the information necessary for the investigation.

Article 28

The investigation regarding an individual exporter or foreign producer shall be completed without application of an anti-dumping or countervailing duty, further to the opinion of the Commission, when the exporter or producer concerned fulfils one of the following conditions:

(a) its dumping margin is less than two (2) % of the export price referred to in Article 7 above;

(b) the amount of the relevant subsidy, calculated on a per unit basis, represents less than one (1) % of the unit value of the subsidized product when imported into Morocco. This figure is raised to two (2) % for exporters or foreign producers domiciled in a developing country;

(c) the volume of imports of the product under consideration originating in a country in which the said exporter or foreign producer is domiciled accounts for less than three (3) % of total imports of the like product, unless the countries which,

individually, account for less than three (3) % of total imports of the like product collectively account for more than seven (7) %. These figures shall be set at four (4) % and nine (9) %, respectively, for imports originating in developing countries;

The investigation regarding all exporters or foreign producers shall be terminated without application of an anti-dumping or countervailing, further to the opinion of the Commission, if:

(a) the evidence of dumping or subsidization, or injury is not sufficient to justify continuing the investigation;

(b) the domestic industry which submitted the application withdraws it in the form and under the conditions provided for in Article 16.

A notice of termination of the investigation without application of an anti-dumping or countervailing duty shall be published by the competent administration in at least two national newspapers authorized to receive legal notices, and shall be notified to the interested parties known to the competent administration.

Section 2

Particular provisions concerning the anti-dumping duty and the countervailing duty

Article 29

A provisional anti-dumping duty or provisional countervailing duty may be applied only after a period of sixty (60) days has elapsed from the date of initiation of the investigation.

The duration of the duty shall not exceed six (6) months in the case of a provisional anti-dumping duty and four (4) months in the case of a provisional countervailing duty.

However, the duration of a provisional anti-dumping duty may be extended by a period of not more than three (3) months when the provisional anti-dumping duty applied is less than the estimated dumping margin.

Article 30

The duration of the definitive anti-dumping duty or definitive countervailing duty shall be a maximum of five (5) years from the date on which the duty was imposed for the first time, or from the date of publication of the most recent notice of extension of the duty in accordance with the provisions of Article 48 below.

Article 31

Any provisional anti-dumping duty or countervailing duty shall be collected in the form of a deposit.

Article 32

Any provisional or definitive anti-dumping or countervailing duty shall be applied:

- in the form of *ad valorem* or specific duties collected in addition to the duties and charges applicable to imports of the product under consideration;

- individually for each exporter or producer known in the country of export of the dumped or subsidized product, taking account of their cooperation in the investigation, on the basis or criteria established by regulation.

The provisional or definitive anti-dumping or countervailing duty in question shall be applied in a non-discriminatory manner on imports of the dumped or subsidized product, and shall not exceed

the dumping margin or the subsidy amount determined provisionally or definitively, as the case may be.

It shall be assessed and collected as in the manner of an ordinary duty.

Article 33

Where a definitive anti-dumping duty or a definitive countervailing duty is higher, according to the circumstances, than the provisional anti-dumping duty or provisional countervailing duty, the provisional duty may be definitively collected, but the difference between the definitive duty and the provisional duty shall not be collected.

Where a definitive anti-dumping duty or a definitive countervailing duty is lower, according to the circumstances, than the provisional anti-dumping duty or the provisional countervailing duty, the difference shall be refunded within a period of not more than ninety (90) days as from the date of application of the definitive duty.

Where the investigation has not resulted in the determination of dumping or subsidization or of injury or causal link, and a provisional measure has been applied under the first paragraph of Article 23 above, the deposit lodged under the provisional measure shall be refunded within a period not exceeding ninety (90) days as from the date of publication of the definitive final determination referred to in Article 26 above.

Article 34

Any definitive anti-dumping duty or definitive countervailing duty may be collected in respect of imports of dumped or subsidized products ninety (90) days at most before the date of application of the provisional anti-dumping duty or countervailing duty. However, it may not be collected in respect of a period preceding the date of initiation of the investigation.

Section 3

Price undertaking

Article 35

Following the preliminary or final determination of dumping or specific subsidization, injury and causation, the administration may, after receiving the opinion of the Commission, suspend the investigation without applying provisional or definitive measures, or suspend the application of provisional or definitive measures, in the following cases:

(a) where the exporter undertakes, in the manner and under the conditions established by regulation, to review its prices or no longer to export at dumped prices, and if it is considered, as a consequence of that undertaking, that the injurious effects of dumping will be eliminated;

(b) where the public authorities of the exporting country eliminate or satisfactorily limit the specific subsidy or adopt any other measure with regard to its effects, or if the exporter undertakes, in the manner and under the conditions established by regulation, to review its prices so as to eliminate the injury caused by the said subsidy.

The price revisions effected in this framework must be equivalent to the margin of dumping or the amount of the subsidy. However, price revisions lower than the margin of dumping or the amount of the subsidy may be accepted if the competent administration considers that they are sufficient to efface the injury.

In the event of a violation of a price undertaking that has led to the suspension of application of a provisional measure, a provisional anti-dumping duty or countervailing duty, as the case may be, shall immediately be applied on the basis of the best information available. In such cases, the administration shall resume the investigation.

In the event of a violation of an undertaking that has led to the suspension of application of a definitive anti-dumping duty or countervailing duty, the duty in question shall be reinstated immediately.

Article 36

The duration of any price undertaking shall be equal to that of the anti-dumping or countervailing duty concerned by the undertaking.

Article 37

A notice concerning any decision taken by the administration with regard to a price undertaking shall be published by the competent administration in at least two national newspapers authorized to receive local notices and shall be communicated to the parties concerned by the undertaking in question.

Section 4

Miscellaneous provisions

Article 38

Any information provided on a confidential basis by parties to an investigation shall be treated as such and shall not be disclosed without specific permission of the party submitting it.

In that connection, interested parties providing confidential information shall be required to provide non-confidential summaries thereof that are sufficiently clear to be made public. If no such summaries are provided, or if such summaries are not sufficiently clear to permit a reasonable understanding of the substance of the information submitted in confidence, and if the parties concerned have not shown good cause, the administration may disregard such information.

Article 39

Throughout the investigation, public hearings may be organized by the competent administration, in the form and under the procedures established by regulation, either ex officio or on request, to enable the interested parties to defend their interests, to meet parties with opposing interests and to present their opposing views and arguments.

CHAPTER III

Review of anti-dumping duties and countervailing duties

Article 40

No later than ninety (90) days before the date of expiry of the period of application of an anti-dumping duty or a countervailing duty, the competent administration shall publish a notice in at least two national newspapers authorized to receive legal notices, announcing the date of expiry. Such notice shall be notified to the interested parties known to the competent administration.

Article 41

The competent administration may undertake a review of a definitive anti-dumping duty or a definitive countervailing duty in the following cases:

(1) Following expiry of a period of one year as from the date of application of the duty concerned, on its own initiative or at the request of an exporter, an importer or a representative acting on behalf of the domestic industry. Such review shall be effected in the light of the revision, maintenance or elimination of the anti-dumping duty or the countervailing duty applied;

(2) at any time, at the request of the exporter or producer of the country of export of the product under consideration, which did not export that product to Morocco during the period covered by the investigation that led to the application of the duty, and whose exports of that product are subject to the duty in question. Such review shall be effected in order to determine the individual anti-dumping duty, or the specific countervailing duty for that exporter or producer;

(3) within ninety (90) days prior to the expiry of the period of application of the anti-dumping duty or the countervailing duty, on its own initiative or at the request of a representative acting on behalf of the domestic industry. Such review shall be effected in the light of the extension of the period of application of the anti-dumping duty or the countervailing duty applied and shall cover both dumping or subsidization and injury.

Article 42

Only applications accompanied by a file comprising objective and documented data showing good cause for the requested review shall be admissible. In addition, in the case of the applicants referred to in paragraph (2) of Article 41 above, the latter shall be required to demonstrate that they are not related to the exporters or producers of the exporting country whose product is subject to the anti-dumping duty or the countervailing duty.

Article 43

Admissible requests for review shall be the subject of an enquiry under the same conditions and procedures as those provided for in Chapter II of this Title for the initial investigation. The duration of the review investigation shall be a maximum of twelve (12) months as from the date of publication of the notice of initiation of the investigation. This duration shall be reduced to nine (9) months for investigations concerning the review referred to in paragraph (2) of Article 41 above.

Article 44

Throughout the period of the review investigation, collection of the anti-dumping duty or the countervailing duty shall be suspended and replaced by the levying of an equivalent amount collected in the form of a deposit.

Article 45

At the conclusion of the review investigation, the competent administration shall decide, as appropriate and after receiving the opinion of the Commission, on the maintenance, revision, elimination or extension of the anti-dumping duty or the countervailing duty concerned.

Article 46

In the case of the review provided for in paragraph (3) of Article 41 above, the competent administration may, if the purposes of the investigations so require, decide, in the light of the information at its disposal, provisionally to maintain the duty concerned, pending the outcome of the review investigation.

Article 47

Where the anti-dumping duty or countervailing duty revised in consequence of the review is less than the anti-dumping duty or countervailing duty held in deposit during the period of the review investigation, in accordance with the provisions of Article 44 above, the difference between the duty held in deposit and the revised duty shall be refunded to the importers within a period not exceeding ninety (90) days as from the date of publication referred to in Article 48 below.

Where the anti-dumping duty or countervailing duty revised in consequence of the review is higher than the anti-dumping or countervailing duty held in deposit, the duty held in deposit shall be

assessed and the difference between the revised duty and the duty held in deposit shall not be collected.

Article 48

Any maintenance, suppression, revision or extension of the period of application of an anti-dumping duty or a countervailing duty in the wake of its review, shall be published in the Official Bulletin and notified to the interested parties known to the competent administration.

Chapter IV

Provisions applicable in the event of circumvention of anti-dumping measures

Article 49

Where the competent administration determines that a definitive anti-dumping duty is being circumvented, the definitive anti-dumping duty applied to the product under consideration shall be extended, further to the opinion of the Commission, to imports:

(1) of the modified product alike to the product subject to the definitive anti-dumping duty consigned by exporters subject to the anti-dumping duty, provided that the modification concerned does not entail a change in the essential characteristics of the product;

(2) of the product alike to the product subject to the definitive anti-dumping duty, whether or not modified, consigned by exporters established in a third country, provided that the product concerned has not acquired origin from the said third country;

(3) of the parts and components of the product subject to the anti-dumping duty, destined for assembly of a product alike to the product subject to the definitive anti-dumping duty, when consigned by exporters that are themselves subject to the anti-dumping duty.

The following practices, operations or processes shall be considered circumventions of an anti-dumping measure:

(a) modification of the product subject to a definitive anti-dumping duty in order to remove it from the scope of that duty;

(b) exportation of the product subject to a definitive anti-dumping duty through a third country;

(c) reorganization by exporters or foreign producers subject to the definitive anti-dumping duty of their sales channels, in order to export to Morocco the product subject to the anti-dumping duty through producers eligible for an anti-dumping duty rate lower than the rate that is applied to them; or

(d) assembly of the product subject to the definitive anti-dumping duty in Morocco or in a third country.

Article 50

The assembly operation referred to in Article 49(d) above shall be considered an operation aimed at circumventing the anti-dumping duty only if the following conditions are met:

- the assembly operation has been started or significantly expanded and imports of parts or components needed for the operation have increased significantly since the initiation of the anti-dumping investigation;

- the parts or components concerned are exported by the exporter or foreign producer subject to the definitive anti-dumping duty;

- the assembly operation is effected by a party related to an exporter or producer whose exports to Morocco are subject to the definitive anti-dumping duty or a party acting on behalf of such exporter or producer;

- the value of the parts or components constitutes a percentage higher than the maximum regulatory limit for the total value of the parts of the assembled product;

- the value added by the assembly operation is lower than the maximum regulatory percentage of the ex-factory price for the like assembled product;

- the ex-factory price for the like assembled product is lower than the normal value of the product under consideration referred to in Article 8 of this Law.

Article 51

Circumvention of the anti-dumping duty shall be shown to have occurred when there is found to be a change in the pattern of trade between third countries and Morocco or between the exporters subject to the definitive anti-dumping duty and Morocco, as a result of practices, operations or processes referred to in Article 49 above for which there are no sufficient grounds or economic justification other than circumvention of the anti-dumping duty.

For the purpose of determining such circumvention, the competent administration shall initiate and conduct an investigation on its own initiative or at the request of the domestic industry.

Only requests accompanied by a file containing objective and documented data providing clear grounds for the initiation of the investigation shall be admissible.

The investigations provided for in this article shall be subject to the terms and conditions laid down in Chapter II of this Title for the initial investigation. However, the duration of the circumvention investigation shall be nine (9) months at the most as from the date of publication of the notice of its initiation.

TITLE III

SAFEGUARD MEASURES

CHAPTER I

General Provisions

Article 52

Any imported product entered for consumption in Morocco may be made subject to a safeguard measure, following an investigation initiated and conducted in accordance with the provisions of Chapter II of this Title, if it is determined that, as a consequence of an unforeseen change in circumstances, there has been a massive increase in imports of the product in question, either in absolute terms or relative to domestic production, and under such conditions that the increase in question causes or threatens to cause serious injury to the domestic industry for products alike to or directly competitive with the product under consideration.

For the purposes of this Title, the following definitions shall apply:

(1) massive increase in imports: a significant and sharp increase in the volume of imports of the product under consideration;

(2) serious injury: a significant overall impairment in the position of a domestic industry;

(3) threat of serious injury: serious injury that is clearly imminent. The determination of a threat of serious injury shall be based on facts and not merely on allegation, conjecture or remote possibility;

(4) domestic industry: all Moroccan producers of the product alike to or directly competitive with the product under consideration or those of them whose collective output of the product alike to or directly competitive with the product under consideration constitutes a major proportion of the total domestic production of that product.

Article 53

In order to determine whether a massive increase in imports has caused or threatens to cause serious injury to the domestic industry, the competent administration shall evaluate all relevant factors of an objective and quantifiable nature that have a bearing on the situation of that industry, and in particular:

- the rate and amount of the increase in imports of the product concerned, in absolute terms and relative to domestic production of the like or directly competitive product;

- the share of the domestic market taken by increased imports; and

- changes in the level of sales, production, productivity, utilization of production capacity, profits and losses, and employment.

Article 54

Where factors other than a massive increase in imports cause or threaten to cause serious injury to the domestic industry at the same time as the above-mentioned increase, the injury caused by those other factors shall not be attributed to the massive increase in the imports concerned.

CHAPTER II

Procedures for the implementation of safeguard measures

Article 55

In order to determine the existence of a massive increase in imports of a product, serious injury or a threat of serious injury and a causal link between such massive increase in imports of the product under consideration and the serious injury or threat of serious injury, an investigation shall be initiated and conducted on the basis of a written application submitted by or on behalf of the domestic industry and addressed to the administration in the form and under the conditions established by regulation.

The application shall be accompanied by objective and documented data in support of the claims of a massive increase in imports of the product under consideration, the serious injury caused or the threat of serious injury to the domestic industry for the product alike to or directly competitive with the product under consideration, and the causal link between that massive increase in imports and the injury or threat of injury concerned.

Article 56

Only applications meeting the conditions established in Article 55 above shall be admissible. The applicant shall be notified of the acceptance or in admissibility of the application within a period of ten (10) days from the date of receipt of the application. Any notification of inadmissibility of the application shall specify the grounds therefor.

Article 57

Within a period of twenty-one (21) days from the date of acceptance of the application, the competent administration may, in the light of the information contained in that application, decide to initiate an investigation, after receiving the opinion of the Commission.

A notice of initiation of the investigation, indicating *inter alia* the identity of the applicant or applicants, the product under consideration, the date of initiation of the investigation and the reasons for its initiation, shall be published by the administration in at least two national newspapers authorized to receive legal notices.

Article 58

Any interested persons shall have a period of thirty (30) days from the date of publication of the notice of initiation of the investigation to make themselves known as interested parties and to make comments concerning the investigation.

Article 59

Upon acceptance of the application, imports of the product under consideration may be made subject to surveillance involving, where appropriate, the prior declaration of imports in the form and in accordance with the procedures prescribed by regulation.

Article 60

Upon initiation of the investigation, the competent administration, either directly or through diplomatic missions, shall transmit questionnaires for the collection of information necessary to the investigation to all interested parties, domestic or foreign, known to the competent administration.

The parties concerned shall have a period of thirty (30) days from the date of issue of the questionnaire to respond thereto. This period shall be increased by seven (7) extra days for exporters and producers domiciled abroad. In addition, at the request of the interested parties, the above-mentioned period of thirty (30) days may be extended by a further period not exceeding twenty-one (21) days, once only, if the circumstances so require.

Apart from replies to the questionnaires, the interested parties may submit in writing any opinion or comment that they deem useful to the investigation.

Article 61

Following receipt of replies to the questionnaires, the competent administration shall undertake an evaluation of the information provided and may, in its preliminary determination that a massive increase in imports caused or threatened to cause serious injury to the domestic industry for the like product or the product directly competitive with the product under consideration, impose a preliminary safeguard measure on imports of the said product, after receiving the opinion of the Commission.

In the absence of replies to the questionnaires, the preliminary evaluation shall be made on the basis of the best information available.

However, in the event that any delay in the adoption of measures could cause damage difficult to repair, the administration may impose a provisional safeguard measure, after receiving the opinion of the Commission, without awaiting receipt of replies to the questionnaires, if it has sufficient evidence that the massive increase in imports of the product under consideration has caused or threatens to cause serious injury to the domestic industry for the like product or the product directly competitive with the product concerned.

Article 62

If the evaluation has not resulted in the preliminary determination that a massive increase in imports of the product under consideration has caused or threatens to cause serious injury, no provisional safeguard measure shall be applied against imports of the product concerned.

However, the non-application of a provisional safeguard measure shall not terminate the investigation.

Article 63

Any provisional safeguard measure shall be published in the Official Bulletin, with an indication of the duration of its application, which may not exceed two hundred (200) days.

The competent administration shall publish a notice, in at least two national newspapers authorized to receive legal notices, indicating the findings and conclusions reached by the administration and the reasons for the application of the provisional safeguard measure.

Article 64

At the conclusion of the investigation, the competent administration shall undertake an evaluation of the information collected, taking account of the results of the verifications effected, and may decide, further to the opinion of the Commission, to apply a definitive safeguard measure.

In the event of failure by the interested parties to cooperate in the investigation, the evaluation shall be made on the basis of the best information available.

Any definitive safeguard measure shall be published in the Official Bulletin.

The competent administration shall publish a notice, in at least two national newspapers authorized to receive legal notices, indicating the findings and conclusions reached by the administration and the reasons for the application of the definitive safeguard measure.

Article 65

The definitive safeguard measure may be applied only during the period necessary to prevent or remedy the serious injury and to facilitate adjustment of the domestic industry for the product alike to or directly competitive with the product under consideration, which period may not exceed four (4) years, except in the case of an extension on the terms provided for in Article 69 below.

After the first year of application, the definitive safeguard measure shall be gradually phased out at regular intervals over the course of the period of its application.

The overall period of application of a safeguard measure, comprising the period of application of the provisional measure, the initial period of application of the definitive measure and any extension thereof, may not exceed ten (10) years.

Article 66

The investigation must be closed, pursuant to the opinion of the Commission, without any safeguard measure being applied, in the following cases:

(a) where the evaluation provided for in Article 64 above has not resulted in the determination of a massive increase in imports or injury or threat of serious injury or causal link; or

(b) where the domestic industry that submitted the application withdraws the latter in the manner prescribed in Article 55 above.

Publication of a notice of termination of the investigation, without any measure being applied, shall be effected by the competent administration in two national newspapers authorized to receive legal notices.

Article 67

Any safeguard investigation must be concluded within nine (9) months from the date of its initiation. However, this period may be extended to twelve (12) months in the light of the complexity of the case concerned or the difficulties in obtaining the information necessary to the investigation.

Article 68

The application of a provisional or definitive safeguard measure may be suspended for a specified period on the basis of the opinion of the Commission.

Notice of such suspension shall be published in the Official Bulletin, with an indication of the reasons therefor.

CHAPTER III

Review of safeguard measures

Article 69

The period of application of a definitive safeguard measure may be extended upon application made in writing by or on behalf of the domestic industry, under the same conditions as those prescribed for the initial application. The safeguard measure shall be extended when the competent administration determines, after an investigation conducted under the conditions prescribed in Chapter II of this Title:

(1) that the safeguard measure continues to be necessary to remedy or prevent serious injury; and

(2) that there is evidence demonstrating that the domestic industry on behalf of which the safeguard measure was adopted is making adjustments and improving its competitiveness.

The application for extension must be addressed to the competent administration six (6) months at the latest before the date of expiry of the safeguard measure concerned. It shall be accompanied by evidence to show that the safeguard measure continues to be necessary to remedy or prevent serious injury caused to the said domestic industry and that the industry concerned is undertaking adjustments and improving its competitiveness.

At the conclusion of the review investigation, the administration may decide, after receiving the opinion of the Commission, to extend the safeguard measure up to the maximum of ten (10) years provided for in Article 65 above.

The decision to extend the measure shall be published in the Official Bulletin under the conditions prescribed in Article 64 above.

Article 70

Where the period of application of a safeguard measure exceeds three (3) years, the administration shall undertake ex officio, as from the second year of application of the measure, a review thereof based on an investigation conducted under the conditions provided for in Chapter II of this Title.

Following that review, the administration may decide, after consulting with the Commission, to maintain the measure as it stands, to eliminate it or to speed up its dismantlement.

In no event may such review lead to a strengthening of the safeguard measure in force.

Article 71

A new safeguard measure may be imposed against an imported product which has already been subject to such a measure only after the expiry of a period corresponding to half the period for which the previous measure had been applied, and provided that the safeguard measure in question expired at least two (2) years earlier.

However, a new safeguard measure of a maximum duration of one hundred and eighty (180) days may be applied to imports of a product if:

- at least one (1) year has elapsed since the date of implementation of a safeguard measure affecting the importation of the product concerned; and if

- such safeguard measure has not been applied to the said product more than twice during the period of five (5) years immediately preceding the date of implementation of the measure.

CHAPTER IV

Miscellaneous provisions

Article 72

Any provisional or definitive safeguard measure may be applied in the form of an additional *ad valorem* or specific duty, collected in addition to the duties and taxes applicable to imports of the product under consideration.

Such additional duty shall be assessed and collected as in the manner of an ordinary customs duty.

In addition, a definitive safeguard measure may take the form of a quantitative import restriction. Such restriction shall be applied by making imports of the product concerned subject to an import licence issued by the administration in the form and under the conditions established by regulation.

The additional duty shall be collected in the form of a deposit when the safeguard measure is a provisional one.

Article 73

The additional duty applied under a provisional or definitive safeguard measure may not be set at a level higher than is necessary to prevent or remedy serious injury.

Article 74

A quantitative import restriction applied pursuant to a definitive safeguard measure must not reduce the quantities imported below the average level of imports of the product concerned over the last three years preceding the finding of a massive increase in imports of that product.

Article 75

When the definitive additional duty is higher than the provisional additional duty, as paid in deposit under Article 72 above, the amounts of the provisional duty shall be definitively collected. The difference between the definitive additional duty and the provisional additional duty shall not be collected.

When the definitive additional duty is less than the provisional additional duty, as paid in deposit under Article 72 above, the difference between the provisional additional duty and the definitive additional duty shall be refunded within a period of not more than ninety (90) days from the date of application of the definitive additional duty.

When it is determined, at the close of the investigation, that the conditions for the application of a definitive safeguard measure have not been met and a provisional safeguard measure has been applied, the deposit lodged pursuant to the provisional measure concerned shall be refunded within a period of not more than ninety (90) days from the date of publication of the notice of termination provided for in Article 66 above.

Article 76

Any provisional or definitive safeguard measure on imports of the product under consideration shall be applied without any discrimination, regardless of the source of those imports.

However, no safeguard measure shall be applied on imports of the product concerned originating from developing countries which individually account for not more than three (3) % of total imports of the product concerned, and provided that the collective share of such developing countries does not exceed nine (9) % of total imports of the said product.

Article 77

Any information provided on a confidential basis by parties to an investigation shall be treated as such and shall not be disclosed without specific permission of the party submitting it, in accordance with Article 38 above.

Article 78

Throughout the investigation, public hearings may be organized by the competent administration, in accordance with Article 39 above.

CHAPTER V

Special provisions on preferential safeguard measures

Article 79

Where, as a consequence of the total or partial abolition of a customs duty under a preferential agreement concluded with a country or group of countries, it is found that a product originating in the country or countries concerned is being imported in such increased quantities, absolute or relative to domestic production, and under such conditions as to cause or threaten to cause serious injury to a domestic industry for the product alike to directly competitive with the imported product, the administration may apply a preferential safeguard measure.

Such a preferential safeguard measure shall be applied in the form of an *ad valorem* or specific duty collected in addition to the preferential customs duty as long as its amount in combination with the preferential customs duty does not exceed the rate of the non-preferential customs duty applied to third countries.

Article 80

The safeguard measures referred to in Article 79 above shall be implemented in accordance with the rules and procedures prescribed for that purpose by the preferential agreement concerned.

If the agreement concerned does not contain such rules and procedures, the provisions of this Law shall apply.

TITLE IV

AREAS OF COMPETENCE

Article 81

Authority to conduct anti-dumping, countervailing and safeguard investigations shall be vested in the officials of the competent administration appointed for that purpose on the basis of their competence and their experience in the fields covered by this Law.

Such officials shall be responsible for:

(a) processing the applications provided for in Articles 16 and 55 above, and the requests for review of measures taken, provided for in Articles 41, 51, 69 and 70 above;

(b) undertaking any on-the-spot documentary verification of information provided in the investigation, in relation to the interested parties, and performing cross-checks if necessary;

(c) initiating investigations outside Moroccan territory, in agreement with the exporters or producers of the country of export and the authorities of the countries concerned by the product under investigation.

For the purposes of the investigation, they may have access to all useful information relating to the subject-matter of the investigation that is held by the parties concerned and by any organization or other entity.

Article 82

The officials referred to in Article 81 above shall be bound by professional secrecy, in accordance with the legislation in force.

In the exercise of their duties, they must maintain strict neutrality and impartiality.

The documents collected in the course of the investigations and those produced by the administration at the conclusion of those investigations shall be archived and preserved in accordance with the legislation in force.

TITLE V

FINAL AND TRANSITIONAL PROVISIONS

Article 83

The time-limits established under Articles 16, 17, 18, 20, 24, 56, 57, 58 and 60 of this Law comprise working days.

Article 84

This Law shall enter into force as from the date of publication in the Official Bulletin of the decree enacted for its implementation.

As from that date, all provisions contrary to those of this law or bearing on the same subject-matter, including in particular the provisions of Article 15, paragraphs 1, 2 and 3 of Law No. 13-89 on foreign trade enacted by Dahir No. 1-91-261 of 13 Joumada I 1413 (9 November 1992), as amended and supplemented, shall be repealed.

Nevertheless, the safeguard measures adopted in the framework of Article 15, paragraphs 1, 2 and 3 of the above-mentioned Law shall remain in force until the date of their expiry.

Any reference, in any legislation or regulation in force, to the provisions of Article 15, paragraphs 1, 2 and 3 of Law No. 13-89 is a reference to the similar provisions of this Law.

The measures necessary for the application of the provisions of this Law shall be established by regulation.

_____

DECREE NO. 2-12-645 OF 13 SAFAR 1413 (27 DECEMBER 2013) IMPLEMENTING LAW NO. 15-09 ON TRADE DEFENCE MEASURES

THE HEAD OF GOVERNMENT,

Having regard to Law No. 15-09 on trade defence measures enacted by Dahir No. 1-11-44 of 29 Joumada II 1432 (2 June 2011).

After review by the Government Council meeting on 06 Safar 1434 (20 December 2012)

HEREBY DECREES:

CHAPTER I

ANTI-DUMPING MEASURES AND COUNTERVAILING MEASURES

Section I

Determination of dumping

Article 1

In determining the export price referred to in Article 7 of the above-mentioned Law No. 15-09, the governmental authority responsible for foreign trade shall take into account the prices for sales effected over a period of twelve months immediately preceding the initiation of the investigation, for which data are available.

Where the export price is established on the basis of the price at which the product under consideration is first resold to an independent buyer, in accordance with Article 7, paragraph 1 of the above-mentioned Law No. 15-09, the governmental authority responsible for foreign trade shall take account of:

(a) all costs and import duties and taxes incurred between importation and resale;

(b) and a reasonable amount for profits accruing.

Where the product under consideration is not resold to an independent buyer or is not resold in the condition as imported, in accordance with Article 7, paragraph 2 of the above-mentioned Law No. 15-09, account shall be taken of all kinds of costs and charges incurred by the importer between the importation and resale of the product under consideration in a condition other than the condition as imported.

Such costs and charges shall be determined on the basis of data obtained in the course of the investigation, from the replies to questionnaires and the importer's records, taking account of the fair distribution of costs associated with the importation and resale of the product under consideration.

Article 2

Association between the exporter and the importer or a third party, as provided for in Article 7, paragraph 2 of the above-mentioned Law No. 15-09, shall be deemed to exist when one of the following conditions is met:

(c) they are officers, directors or members of the supervisory board of one another's businesses;

(d) they are legally recognized partners in business;

(e) they are employer and employee;

(f) any person directly or indirectly controls or holds 5% or more of the outstanding voting stock or shares of both of them;

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

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

(i) together they directly or indirectly control a third person.

Article 3

In order to establish the normal value on the basis of the comparable price in the ordinary course of trade for the product alike to the product under consideration, when destined for consumption in the exporting country, in accordance with Article 8, paragraph 1 of the above-mentioned Law No. 15-09, the governmental authority responsible for foreign trade shall take into account the sales prices for all transactions involving the product alike to the product under consideration, effected on the domestic market of the exporting country over a period of 12 months immediately preceding the initiation of the investigation, for which data are available.

However, transactions effected at prices below per unit costs of production plus administrative, selling and general costs shall be excluded because they are deemed not to be in the ordinary course of trade, provided that such transactions:

(a) account for twenty % (20%) or more of the volume of sales of the product alike to the product under consideration on the domestic market of the exporting country;

(b) are effected over a period of more than six months; and

(c) are effected at prices below the weighted average per unit cost for the above-mentioned period of 12 months.

Transactions effected with parties related to the exporter or foreign producer may also be excluded, unless that exporter or foreign producer informs the governmental authority responsible for foreign trade of the prices for such transactions at the time of resale to an independent buyer on its domestic market. The exporter of foreign producer shall be considered to be related to another party in the domestic market of the exporting country if one of the conditions listed in Article 2 of this Decree is met.

Article 4

Sales of the like product when destined for consumption in the domestic market of the exporting country cannot provide guidance for determining the normal value in accordance with the conditions referred to in Article 8, paragraph 2 of Law No. 15-09, in cases where:

(a) all sales are effected at prices below per unit cost plus administrative, selling and general costs;

(b) the volume of such sales constitutes less than 5% of exports of the product to the Moroccan market; or

(c) the domestic market situation of the exporting country is characterized by the presence of distortions having the effect of keeping prices at a level lower than the level that might have existed in the absence of such distortions.

Article 5

Where the normal value is established on the basis of the price of the like product when exported to a third country, in accordance with Article 8, paragraph 2(a) of Law No. 15-09, the choice of the third country shall be determined on the basis of the following criteria:

(a) the like product exported to such third country is more alike to the product under consideration exported to Morocco than is the like product exported to other third countries; and

(b) the volume of sales from the exporting country to the third country concerned is analogous to the volume of sales from that country to Morocco.

Article 6

The amounts for administrative, selling and general costs and profits referred to in Article 8, paragraph 2(b) of the above-mentioned Law No. 15-09 shall be based on actual data pertaining to production and sales of the product under consideration, in the ordinary course of trade, by the exporter or foreign producer under investigation. When such amounts cannot be determined on this basis, they may be determined on the basis of:

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

(b) the weighted average of the actual amounts incurred or realized by other exporters or foreign producers under investigation in respect of production and sales of the like product in the domestic market of the country of origin; or

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

Article 7

The administrative, selling and general costs shall be calculated on the basis of accounting records kept by the exporter or foreign producer under investigation, provided that such records are in accordance with the generally accepted accounting principles of the exporting country and reflect the costs associated with the production and sale of the product under consideration.

In this regard, account shall be taken of all available evidence concerning the proper allocation of costs, including that which is made available to the governmental authority responsible for foreign trade by the exporter or foreign producer in the course of the investigation, provided that such allocations have been historically utilized by the exporter or producer in relation to establishing appropriate amortization and depreciation periods and allowances for capital expenditures and other development costs.

Article 8

In order to establish the dumping margin, a fair comparison between the export price and the normal value referred to in Article 9, paragraph 1 of the above-mentioned Law No. 15-09 shall be made at the same level of trade, preferably at the ex-factory level, and in respect of sales made at as nearly as possible the same time.

The governmental authority responsible for foreign trade shall in each case make the necessary adjustments for differences which affect the comparison between the export price and normal value, including in particular:

(a) differences in conditions and terms of sale;

(b) differences in taxation;

(c) differences in levels of trade;

(d) differences in quantities sold;

(e) differences in product characteristics; and

(f) any other differences which are demonstrated to affect the comparability of the export price and normal value.

When the comparison between the normal value and the export price requires a conversion of currencies, such conversion shall be made at the daily rate of exchange applicable on the date of sale. However, when a sale of foreign currency on forward markets is directly linked to the export sale involved, the conversion shall be made at the rate of exchange used in the forward sale.

The date of sale shall be the date of contract, purchase order, order confirmation or invoice, whichever establishes the material terms of trade.

If the exchange rate undergoes significant fluctuations, the governmental authority responsible for foreign trade shall use, for the purposes of the comparison, the moving average of the daily exchange rates for the 60 days preceding the date of the sale.

Article 9

The margin of dumping shall be established on the basis of:

(a) a comparison of a weighted average of normal values with a weighted average of prices of all export transactions;

(b) a comparison of normal values and export prices on a transaction-to-transaction basis; or

(c) a comparison of a weighted average of normal values with transaction-to-transaction export prices, if there is found to be a pattern of export prices which differs significantly among different purchases, regions or time periods, and if an explanation is provided as to why such differences cannot be taken into account appropriately by the use of the methods of comparison referred to in paragraphs (a) and (b) of this article.

The percentage margin of dumping shall be calculated as the ratio of the absolute dumping margin to the weighted average export price of the product under consideration.

Article 10

In the case where products are not imported directly from the country of origin, but are exported to Morocco from an intermediate country, the export price shall be compared with the comparable price in the country of export.

However, comparison may be made with the price in the country of origin if the products concerned are merely transhipped through the country of export, or such products are not produced in the country of export, or there is no comparable price for them in the country of export.

Article 11

Where the investigation is limited to a representative sample, in accordance with the third paragraph of Article 9 of the above-mentioned Law No. 15-09, the governmental authority responsible for foreign trade shall establish:

(a) individual dumping margins for selected exporters or foreign producers in the representative sample that have collaborated in the investigation, on the basis of data supplied by them in the course of the investigation;

(b) a weighted average margin of dumping for exporters or foreign producers that have provided the requested data but have not been selected within the representative sample. Such average shall be calculated on the basis of the individual dumping margins established for those selected within the sample;

(c) the highest margin of dumping for exporters or foreign producers that have refused to cooperate in the investigation and unknown exporters or foreign producers. Such margin shall be calculated on the basis of the data supplied by those included in the sample.

In calculating the weighted average dumping margin provided for in paragraph (b) of this article, no account shall be taken of zero margins or margins of less than 2% or margins established on the basis of the best information available, in accordance with Articles 21 and 24 of the above-mentioned Law No. 15-09.

In this regard, the selection of exporters, producers or importers shall be made in consultation with exporters, producers or importers concerned, and with their consent.

Section II

Determination of a subsidy

Article 12

There shall be shown to be a financial contribution by the government or any other body or public institution referred to in Article 10, paragraph 1 of the above-mentioned Law No. 15-09, in cases where:

(a) a government practice involves a direct transfer of funds (in the form of grants, loans, and equity infusion) or potential direct transfers of funds or liabilities (in the form of loan guarantees);

(b) government revenue that is otherwise due is forgone or not collected;

(c) the government provides goods or services other than general infrastructure, or purchases goods; or

(d) 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 illustrated in paragraphs (a) to (c) of this article, which would normally be vested in the government, and the practice in no real sense differs from practices normally followed by governments.

Article 13

A benefit is conferred on the recipient, pursuant to Article 10, paragraph 2 of the above-mentioned Law No. 15-09, when the terms or conditions of the financial contribution are more favourable than those that the recipient could have obtained on the market or would have had to fulfil under the rules of ordinary law.

The benefit shall be the difference between the amount paid by the recipient or the favourable terms provided by the government and the amount that the recipient would have had to pay under market conditions.

In establishing the amount of the subsidy in terms of the benefit conferred on the product under consideration, the following items shall be deduced from the total amount of the subsidy:

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

(b) export taxes, duties or other charges levied on the export of the product concerned to Morocco, and specifically intended to offset the subsidy.

The interested party requesting such deductions shall be required to provide evidence to justify the items referred to in paragraphs (a) and (b) of this article.

The percentage amount of the subsidy shall be calculated as the ratio between the amount of the subsidy and the value of sales of the product concerned eligible for the subsidy during the 12-month period immediately preceding initiation of the investigation.

Article 14

Pursuant to Article 11, paragraph 1 of the above-mentioned Law No. 15-09, objective criteria or conditions shall be understood to mean criteria or conditions which are neutral, which do not favour certain enterprises over others, and which are economic in nature and horizontal in application.

In order to determine whether the granting authority exercises discretion in its decision to grant a subsidy, as referred to in the fourth point of Article 11, paragraph 2 of the above-mentioned Law No. 15-09, the governmental authority responsible for foreign trade shall take into account information on the frequency with which applications for a subsidy are refused or approved and the reasons for such decisions.

Pursuant to Article 11, paragraph 3 of the above-mentioned Law No. 15-09, a subsidy shall be considered to be contingent in fact upon export performance when the facts demonstrate that the granting of the subsidy in question, without having been made legally contingent upon export performance, is in fact tied to actual or anticipated exportation or export earnings.

Article 15

In cases where the investigation is limited to a representative sample, in accordance with Article 12, paragraph 2 of the above-mentioned Law No. 15-09, the governmental authority responsible for foreign trade shall establish:

(a) individual subsidy amounts for selected exporters or foreign producers in the sample, that have collaborated in the investigation, on the basis of data supplied by them in the course of the investigation;

(b) a weighted average subsidy amount for exporters or foreign producers that have provided the data requested but have not been selected within the representative sample. The average amount shall be calculated on the basis of individual amounts established for those selected within the sample;

(c) the highest subsidy amount for exporters or foreign producers that have refused to cooperate in the investigation and unknown exporters or foreign producers. Such amount shall be calculated on the basis of data supplied by those selected within the sample.

To that end, the choice of exporters, producers or importers shall be made in consultation with the exporters, producers or importers concerned and with their consent.

Section III

Determination of injury and causal link

Article 16

Pursuant to Article 13, paragraph 1 of Law No. 15-09, the governmental authority responsible for foreign trade shall consider whether there has been a significant increase in the volume of dumped or subsidized imports, whether absolute or relative to domestic production or domestic consumption of the like product during a period of 12 months immediately preceding the date of initiation of the investigation, and for which data are available.

Article 17

Pursuant to Article 13, paragraph 2 of the above-mentioned Law No. 15-09, the governmental authority responsible for foreign trade shall consider whether there has been significant price undercutting by imports of the product concerned as compared with the price of the like domestic product or whether the effect of such imports is to depress prices to a significant degree or prevent price increases, which would otherwise have occurred, to a significant degree.

Price undercutting shall be deemed to exist when the product under consideration is placed on sale in the Moroccan market at a price below the selling price of the like domestic product.

In order to assess price undercutting, the governmental authority responsible for foreign trade shall compare, on an equitable basis, the selling price for all transactions involving the like domestic product with the selling price for all transactions involving the product under consideration over the 12-month period taken into account for the determination of dumping. Such comparison shall be made at the same level of trade, which shall be the ex-factory level for the like domestic product and the ex-importer's store level for the product under consideration.

No account shall be taken of transactions with related parties, except when the importer or the domestic producer, as the case may be, provides the authority responsible for foreign trade with the resale prices for independent buyers. A relationship between the domestic producer or the importer and another party shall be deemed to exist if one of the conditions listed in Article 2 of this Decree is met.

Price depression shall exist when the governmental authority responsible for foreign trade determines that the selling price of the like domestic product has declined over the above-mentioned 12-month period.

Price suppression shall be deemed to exist when the governmental authority responsible for foreign trade determines that the ratio between the cost of production and the ex-factory price of the like domestic product on the Moroccan market has increased during the above-mentioned 12-month period.

Article 18

Pursuant to Article 13, paragraph 3 of Law No. 15-09, the examination of the impact of imports of the product under consideration on the domestic industry shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including:

(a) actual and potential decline in sales, profits, output, market share, productivity, return on investment and utilization of production capacity;

(b) actual or potential influence on domestic prices;

(c) magnitude of the dumping margin; and

(d) actual and potential negative effects on cash flow, inventories, employment, wages, growth, and financing and reinvestment capacity.

No one or several of these factors can necessarily give decisive guidance.

Such evaluation shall be based on data obtained in the course of the investigation from the replies to questionnaires and the accounting records of domestic producers for a period covering at least the last three (3) years immediately preceding the initiation of the investigation, and for which data are available.

Article 19

Where imports of a product from more than one country are simultaneously subject to an investigation, the governmental authority responsible for foreign trade may cumulatively assess the effects of such imports in the light of the conditions of competition between imports of the product under consideration from different origins and the conditions of competition between the imported product and the like domestic product.

However, the cumulative assessment shall take no account of imports of the product under consideration from an exporter or foreign producer meeting the conditions referred to in subparagraphs (a), (b) and (c) of the first paragraph of Article 28 of the above-mentioned Law No. 15-09.

Article 20

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

Article 21

The determination of a threat of material injury, provided for in Article 13, paragraph 2 of the above-mentioned Law No. 15-09, shall be based on facts and not merely on allegation. The change in circumstances which would create a situation in which the dumping or subsidization would cause injury must be clearly foreseen and imminent. In that regard, the governmental authority responsible for foreign trade shall base such a determination on the examination of certain factors, such as:

(a) the factors referred to in Article 18, paragraph 3 of this Decree;

(b) a significant rate of increase of imports of the product under consideration into the domestic market, indicating the likelihood of substantially increased importation of the product;

(c) the likely increase in demand for imports of the product under consideration on account of their low price, to the detriment of the like domestic product;

(d) the existence of sufficient freely disposable production capacity of the exporter or foreign producer, or an imminent, substantial increase in the capacity of the exporter or foreign producer, indicating the likelihood of substantially increased exports of the product under consideration to Morocco, taking into account the availability of other markets to absorb any additional exports;

(e) available stocks held by the exporter or foreign producer of the product under consideration; and

(f) the nature of a subsidy or subsidies and their likely effects on exports of the product under consideration to Morocco.

No one of these factors by itself can necessarily give decisive guidance but the totality of the factors concerned must lead to the conclusion that further imports of the product under

consideration are imminent in the immediate future and that material injury would occur unless an anti-dumping duty or countervailing duty or a price undertaking were applied.

Such an examination shall be based on data collected by the governmental authority responsible for foreign trade in the course of the investigation.

Article 22

Known factors other than imports of the product under consideration, as provided for in Article 14 of the above-mentioned Law No. 15-09, shall include *inter alia*:

(a) contraction in demand or changes in the pattern of consumption;

(b) the volume and prices of imports not sold at dumped prices or not subsidized;

(c) trade-restrictive practices of foreign and domestic producers;

(d) competition between foreign and domestic producers and between domestic producers themselves;

(e) developments in technologies related to the production and marketing of the product under consideration in the light of the technologies applied in respect of the like domestic product;

(f) export performance of the domestic industry;

(g) productivity of the domestic industry; and

(h) any other factors that may be indicated by an interested party, in the course of the investigation, as being responsible for injury or threat of injury.

Section IV

Investigation relating to anti-dumping measures and countervailing measures

Article 23

For the purposes of the definition of the domestic industry provided for in Article 5, paragraph 2, subparagraph 1 of the above-mentioned Law No. 15-09:

(a) A Moroccan producer shall be considered to be related to an exporter or importer when one of the conditions listed in Article 2 of this Decree is met, and provided that there are grounds for believing that the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers.

(b) a producer shall be considered himself to be an importer of the product under consideration when:

- the volume of its imports of the product under consideration exceeds a specified percentage of its output of the like product, as established by joint Order of the minister responsible for foreign trade and the minister or ministers concerned;

- it is a lawful importer of the product concerned;

- the turnover on sales of such imports exceeds a specified percentage of the turnover on its production of the like product, as established by joint order of the minister responsible for foreign trade and the minister or ministers concerned;

- the product is imported on grounds other than satisfaction of demand by a different product range in terms of quality or technical specifications in relation to the like domestic product that it produces.

Article 24

The application referred to in Article 16 of the above-mentioned Law No. 15-09 shall be submitted to the governmental authority responsible for foreign trade in two versions, one confidential and the other non-confidential.

The non-confidential version shall contain non-confidential summaries of information submitted in confidence, in accordance with the provisions of Article 38 of the above-mentioned Law No. 15-09.

The application must contain at least the following information:

(a) identification of the applicant producers, with an indication of their names, business names and domiciles;

(b) detailed description of the domestic product alike to the product under consideration, a description of the volume and value of production of the product by the applicant producers;

(c) description of the volume and value of total domestic production of the product alike to the product under consideration;

(d) where the application is made on behalf of the domestic industry, it must identify the domestic industry concerned and, to the extent practicable, a list of all domestic producers of the like product or of their associations or professional groups that are known to the applicant and a description of the volume and value of domestic production of the like product accounted for by such producers or such associations or professional groups;

(e) detailed description of the product under consideration and of the names of the country or countries of origin or export to Morocco of the product;

(f) identity of the exporters or foreign producers of the product under consideration and the importers of the product or their associations or professional groups known to the applicant;

(g) documented data, where dumping is alleged, on the normal value and price of export to Morocco of the product under consideration.

(h) documented data, where subsidization is alleged, on the nature and per unit amount of the subsidy and the legislation, regulations or any official document under which the subsidy is granted in the country of origin or export;

(i) information on trends in the volume of imports of the product under consideration; and

(j) description of the injury caused to the domestic industry and the causal link between such injury and imports of the product under consideration.

In addition to the information referred to above, the application must be signed by or on behalf of the producers that support it, as evidence of their commitment and accountability with regard to the information provided and their collaboration in the investigation.

Article 25

The application referred to above shall be considered to have been made by or on behalf of the domestic industry, in accordance with Article 5 of the above-mentioned Law No. 15-09, if:

(a) it is supported by those domestic producers whose collective output constitutes more than fifty per cent (50%) of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application; and

(b) the producers expressly supporting the application account for more than twenty-five per cent (25%) of total production of the like product produced by the domestic industry.

The above percentages shall be calculated on the basis of production for the last year or the last season immediately preceding the date of submission of the application, for which data are available.

Article 26

The notice of initiation of the investigation referred to in Article 17 of the above-mentioned Law No. 15-09 shall contain, as a minimum, the following information:

(a) a full description of the product under consideration, including its technical characteristics and uses;

(b) the name of the exporting country or countries of the product under consideration;

(c) the date of initiation of the investigation;

(d) the basis of the allegation of dumping or subsidization in the application;

(e) a summary of the factors on which the allegation of injury and causal link is based;

(f) the address to which data and information should be directed by the interested parties;

(g) the time-limit allowed for interested parties to make themselves known and submit their points of view in writing;

(h) the data collection period for the purpose of determining the existence of dumping; and

(i) the data collection period for the assessment of injury.

Article 27

The notice concerning assessment and the preliminary or final determination, whether affirmative or negative, referred to in Articles 22, 25 and 26 of the above-mentioned Law No. 15-09, shall set forth, or otherwise make available through a separate report, in sufficient detail the findings and conclusions reached on all of the following points:

(a) the names of the exporters or, where appropriate, of the countries of export of the product under consideration;

(b) a description of the product under consideration and its tariff classification;

(c) the margins of dumping established and an explanation of the reasons for the methodology used in the establishment and comparison of the export price and the normal value in the case of a dumping investigation;

(d) the amount of the subsidy and the basis on which the existence of a subsidy was determined in the case of a subsidy investigation;

(e) explanations relevant to the determination of injury and causal link;

(f) the main reasons leading to the preliminary or final determination, whether affirmative or negative;

(g) an account of the arguments put forward by the interested parties and the reasons for the acceptance or rejection of those arguments; and

(h) the form and amount of the anti-dumping duty or countervailing duty, whether provisional or definitive, to be applied if such application is provided for.

Article 28

The notice of termination of the investigation without application of an anti-dumping duty or countervailing duty, referred to in Article 28 of the above-mentioned Law No. 15-09, shall contain the following information:

(a) identification of the applicant producers;

(b) description of the product under consideration;

(c) name of the country or countries exporting the product under consideration to Morocco;

(d) date of initiation of the investigation;

(e) considerations and reasons leading to the decision to initiate the investigation;

(f) considerations and reasons leading to the decision to terminate the investigation without the application of measures;

(g) date of termination of the investigation.

Section V

Application of anti-dumping and countervailing duties

Article 29

Pursuant to Articles 23 and 26 of the above-mentioned Law No. 15-09, an anti-dumping or countervailing measure, whether provisional or definitive, shall be established by joint order of the minister responsible for foreign trade, the minister responsible for finance and the minister or ministers concerned.

Article 30

In cases where the governmental authority responsible for foreign trade limits the investigation to a representative sample, in accordance with Articles 9 and 12 of Law No. 15-09, the anti-dumping or countervailing duty shall be applied in the following manner:

(a) individual anti-dumping duties or individual countervailing duties not exceeding the individual dumping margins or individual subsidy amounts obtained pursuant to Articles 11 and 15 of this Decree for exporters or foreign producers selected within the representative sample;

(b) an anti-dumping duty or countervailing duty not exceeding the weighted average of the dumping margins or subsidy amounts established in accordance with Articles 11 and 15 of this Decree in respect of exporters or foreign producers which cooperate in the investigation but have not been selected within the representative sample used in the investigation;

(c) an anti-dumping duty or a countervailing duty not exceeding the highest margin of dumping or the highest subsidy amount established in accordance with Articles 11 and 15 of this Decree for exporters or foreign producers that declined to cooperate in the investigation or unknown exporters.

Article 31

For the purpose of applying a definitive anti-dumping duty or a definitive countervailing duty under the conditions referred to in Article 34 of Law No. 15-09, the governmental authority responsible for foreign trade must determine:

(a) that there is a history of dumping or specific subsidization causing injury; and

(b) that the injury is caused by dumped or subsidized imports in a relatively short time which, in the light of the timing and the volume of those imports and the build-up of inventories with importers, is likely to seriously undermine the remedial effect of the definitive anti-dumping duty or countervailing duty that is to be applied. In this case, the importers are given the opportunity to comment.

Section IV

Price undertaking

Article 32

The price undertakings referred to in Article 35 of the above-mentioned Law No. 15-09 may be deliberately offered by exporters on their own initiative or at the request of the authority responsible for foreign trade.

Undertakings must be submitted in writing to the governmental authority responsible for foreign trade by exporters that have collaborated in the investigation, and must provide all relevant information in support of the undertaking offered and its implementation, including a non-confidential version of such information which may be communicated, on request, to the parties concerned by the investigation.

The governmental authority responsible for foreign trade shall have a period of 30 days, from the date of receipt of the offer of an undertaking, to notify the exporter of the acceptance or refusal of the offer and to inform the exporter, in the event of acceptance of the undertaking, of its obligation periodically to provide information on the fulfilment of the undertaking to the ministry responsible for foreign trade and to permit verification of that information.

Article 33

Price undertakings shall not be accepted in cases where such undertakings:

(a) do not permit the elimination of the injurious effects of dumping or subsidies;

(b) do not lend themselves to verification or their implementation is uncertain; or

(c) involve an agreement or scheme which is inconsistent with free competition or in any other way hinders free competition.

The governmental authority responsible for foreign trade shall communicate the reasons for the rejection of the undertaking to the exporters or foreign producers concerned, and shall give them the opportunity to make comments on the subject.

Article 34

The public notice concerning acceptance of a price undertaking or its expiry, provided for in Article 37 of the above-mentioned Law No. 15-09, shall contain, as appropriate, the following information:

(a) a description of the product under consideration;

(b) the name of the exporter or foreign producer concerned by the undertaking and the name of the country of export;

(c) the nature and level of the undertaking having regard to the dumping margins or subsidy amounts determined;

(d) the duration of the undertaking and the date from which it takes effect;

(e) the decision to suspend or continue the investigation in the event of acceptance of the undertaking following a preliminary determination;

(f) the reasons for acceptance of the undertaking;

(g) the procedures agreed for implementation of the undertaking and its verification;

(h) the date of expiry of the undertaking.

Section VII

Review of the Anti-Dumping or Countervailing Duty

Article 35

Any application for review, as referred to in Article 41 of the above-mentioned Law No. 15-09, must be submitted to the governmental authority responsible for foreign trade and shall contain, in addition to the information specific to each application, as provided for in Articles 36, 38 and 39 of this Decree, the following information:

(a) identification of the applicant producers;

(b) description of the product under consideration;

(c) the anti-dumping or countervailing duty in force;

(d) the nature of the review requested.

Such applications shall be submitted to the governmental authority responsible for foreign trade in two versions, one confidential and the other non-confidential.

The non-confidential version shall contain non-confidential summaries of the information provided in confidence. Such summaries must be in sufficient detail to permit a reasonable understanding of the substance of the confidential information.

Article 36

The applications for review referred to in Article 41, paragraph 1 of the above-mentioned Law No. 15-09 must contain objective and documented data which demonstrate, according to the circumstances, that:

(a) continued imposition of the entire definitive anti-dumping or countervailing duty is no longer necessary to offset dumping or subsidization, or that continued imposition of a portion of the duty is sufficient;

(b) the injury would be likely to continue or recur if the anti-dumping or countervailing duty were removed or reduced; or

(c) the existing duty is not or is no longer sufficient to offset the dumping or subsidization which has caused the injury.

Article 37

The governmental authority responsible for foreign trade shall undertake the review referred to in Article 36 above only where the party requesting the review provides proof of a significant change in circumstances justifying the purpose of such review.

However, the willingness of an importer, an exporter or a producer that has not cooperated in the initial investigation to provide information for the review of the existing anti-dumping or countervailing duty cannot be considered a change in circumstances.

Article 38

The application for review referred to in Article 41, paragraph 2 of the above-mentioned Law No. 15-09 must be submitted by a new exporter which has not exported the product under consideration to Morocco in the course of the initial period of investigation. An exporter which has exported the product under consideration to Morocco during the period of initial investigation but has not made itself known during the investigation shall not be considered a new exporter.

The application must be accompanied by evidence demonstrating that:

(a) the new exporter in question was not and is not related to the exporters subject to the definitive anti-dumping duty for the definitive countervailing duty;

(b) the new exporter actually exported the product under consideration to Morocco after the application of the definitive anti-dumping duty or the definitive countervailing duty; and

(c) the new exporter entered into an irrevocable contractual obligation to export a reasonable quantity of the product under consideration to Morocco.

Article 39

The application for review to extend the duration of the anti-dumping or countervailing duty, referred to in Article 41, paragraph 3 of the above-mentioned Law No. 15-09, must include objective and documented data substantiating a presumption that the dumping or subsidy and injury will continue or recur if the duty is terminated. In this connection, the elements of the application must demonstrate:

(a) the continuation of dumping or subsidization and injury;

(b) that the elimination of the injury is wholly or partially attributable to the anti-dumping or countervailing duty;

(c) that the circumstances of the exporters or market conditions are such that they would indicate the likelihood of further injurious dumping or subsidization.

The application for review must be submitted to the ministry responsible for foreign trade within a period of thirty days from the date of publication of the notice concerning expiry of the period of application of the anti-dumping or countervailing duty referred to in Article 40 of the above-mentioned Law No. 15-09.

Section VIII

Circumvention of anti-dumping duties

Article 40

The governmental authority responsible for foreign trade shall consider that modifications do not entail a change in the essential characteristics of the product concerned, as provided for in Article 49, paragraph (1) of the above-mentioned Law No. 15-09, where the product exported subsequently to Morocco:

(a) retains the same characteristics and follows the same channels of trade as the product under consideration;

(b) uses essentially the same production process and the same raw materials as the product under consideration;

(c) has the same end uses as the product under consideration.

The export of the product subject to the definitive anti-dumping duty through a third country shall be the subject of circumvention, as provided for in Article 49, paragraph 2 of the above-mentioned Law No. 15-09, when it is found that such export is effected by an exporter related to the exporter subject to the definitive dumping duty. That relationship shall be established when one of the conditions referred to in Article 2 of this Decree is met.

Article 41

The percentage figures provided for under the fourth and fifth points, respectively, of Article 50 of the above-mentioned Law No. 15-09 shall be established by joint order of the Minister of Foreign Trade and the minister or ministers concerned.

Article 42

The application for the initiation of an investigation in order to determine circumvention, as referred to in Article 51, paragraph 2 of the above-mentioned Law No. 15-09, must be submitted to the governmental authority responsible for foreign trade and accompanied by objective and documented data which demonstrate:

(a) the appearance of changes in the pattern of trade in the product subject to the anti-dumping duty between the exporting country concerned and Morocco or between third countries and Morocco;

(b) that the changes in the pattern of trade are the result, as applicable, of one of the practices, operations or processes referred to in points (a), (b), (c) and (d) of Article 49 of the above-mentioned Law No. 15-09;

(c) that there are no economic justifications and reasons for the practices, operations or processes applied to the product under consideration, other than circumvention of the anti-dumping duty; and

(d) that the changes in the pattern of trade occurred after the application of the anti-dumping duty or after initiation of the investigation that gave rise to the anti-dumping duty in force.

CHAPTER II

SAFEGUARD MEASURES

Section I

Determination of a massive increase in imports, serious injury and threat of serious injury

Article 43

In order to determine the existence of a massive increase in imports, in accordance with the provisions of Article 52 of the above-mentioned Law No. 15-09, the governmental authority responsible for foreign trade shall consider trends in the volume of imports of the product under consideration over a period of at least three (3) successive years immediately preceding the initiation of the investigation and shall consider to what extent those trends reflect a significant and sudden increase in such imports during a recent period immediately preceding the date of initiation of the investigation.

Article 44

For the purpose of determining a threat of serious injury referred to in Article 52 of the above-mentioned Law No. 15-09, the establishment of the facts must be based on events which, although they have not yet occurred, must be clearly foreseen and imminent. Accordingly, the governmental authority responsible for foreign trade shall consider, in addition to the factors mentioned in Article 3 of the above-mentioned Law No. 15-09, the following factors:

(a) a significant rate of increase in imports of the product under consideration on the domestic market, indicating the likelihood of substantially increased importation;

(b) the likely increase in demand for imports of the product under consideration to the detriment of the like domestic product or directly competitive product;

(c) the existence of sufficient freely disposable production capacity of the exporter, or an imminent and substantial increase in the exporter's capacity, indicating the likelihood of a substantial increase in exports of the product under consideration to Morocco, taking into account the availability of other export markets to absorb any additional exports; and

(d) inventories of the product under consideration available to foreign exporters.

Article 45

For the purpose of assessing serious injury or threat of serious injury in accordance with Article 53 of the above-mentioned Law No. 15-09, the governmental authority responsible for foreign trade shall in the course of the investigation collect the information required for such assessment relating to a period covering at least the last three (3) years immediately preceding the date of initiation of the investigation, for which data are available.

Article 46

Pursuant to Article 54 of the above-mentioned Law No. 15-09 and in order to determine whether factors other than a massive increase in imports are the cause of serious injury to the domestic industry at the same time as the aforementioned increase in imports, the governmental authority responsible for foreign trade shall take account of the following factors:

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

(b) trends in domestic prices and production costs of the like or directly competitive domestic product;

(c) competition between foreign and domestic producers and between the domestic producers themselves;

(d) technological developments;

(e) export performance of the domestic industry;

(f) developments affecting the productivity of the domestic industry; and

(g) any other factors that may be indicated by an interested party, in the course of the investigation, as being the cause of injury or threat of injury.

Section II

Investigation procedure relating to safeguard measures

Article 47

The application referred to in Article 55 of the above-mentioned Law No. 15-09 shall be submitted to the governmental authority responsible for foreign trade in two versions, one confidential and the other non-confidential.

The non-confidential version shall contain non-confidential summaries of the information provided in confidence in accordance with the provisions of Article 38 of the above-mentioned Law No. 15-09.

The application must contain at least the following information:

(a) identification of the applicant producers with an indication of their names, business names and domiciles;

(b) a detailed description of the like or directly competitive product produced by the applicant producers;

(c) a description of the volume and value of production of the like or directly competitive product produced by the applicant producers;

(d) a description of the volume and value of total domestic production of the like or directly competitive product;

(e) when the application is submitted on behalf of the domestic industry, it must specify the domestic industry and, to the extent possible, provide a list of all domestic producers of the like or directly competitive product or their associations or professional groups known to the applicant and a description of the volume and value of production of the product in question, accounted for by those producers or those associations or professional groups;

(f) a detailed description of the product under consideration and a list of importers of that product known to the applicant;

(g) data indicating the existence of a massive increase in imports;

(h) information on the unforeseen circumstances responsible for increased imports; and

(i) a description of the serious injury caused or the threat of serious injury to the domestic industry and the causal link between such injury or threat of serious injury and imports of the product under consideration.

In addition to the aforementioned information, the application must bear the signatures of the producers supporting it or those acting on their behalf, attesting to their commitment and their accountability *vis-à-vis* the procedure and the information supplied.

Article 48

The above-mentioned application shall be deemed to be submitted by or on behalf of the domestic industry if it is supported by those domestic producers whose collective output constitutes a major proportion of total domestic production of the product alike to or directly competitive with the product under consideration.

Article 49

The notice of initiation of an investigation referred to in Article 57, paragraph 2 of the above-mentioned Law No. 15-09 shall include *inter alia* the following information:

(a) identification of the applicant domestic industry;

(b) full description of the product under consideration, including its technical characteristics and uses, as well as its customs heading;

(c) date of initiation of the investigation;

(d) the basis of the allegation of a massive increase in imports;

(e) summary of the factors on which the allegation of serious injury or threat of serious injury to the domestic industry and of a causal link is based;

(f) the address to which information and comments may be submitted by the interested parties;

(g) the period of time allowed to the interested parties to make themselves known and submit their views in writing.

Article 50

The public notice concerning application of a provisional safeguard measure, provided for in Article 63, paragraph 2 of the above-mentioned Law No. 15-09, shall include or indicate the existence of a report setting forth the findings and reasoned conclusions on the following points:

(a) description of the product under consideration;

(b) preliminary finding of a massive increase in imports of the product under consideration;

(c) preliminary finding of the existence of serious injury or a threat of serious injury to the domestic industry;

(d) preliminary finding of a causal link between the massive increase in imports and the serious injury or threat of serious injury;

(e) duration of application of the provisional additional duty; and

(f) rate of the provisional additional duty;

(g) reasons for the application of the provisional measure.

Article 51

The public notice concerning imposition of a definitive safeguard measure, provided for in Article 64, paragraph 3 of Law No. 15-09, shall include or indicate the existence of a report setting forth the findings and reasoned conclusions on the following points:

(a) description of the product under consideration;

(b) definitive finding of a massive increase in imports of the product under consideration;

(c) definitive finding of serious injury or threat of serious injury to the domestic industry;

(d) definitive finding of a causal link between the massive increase in imports of the product under consideration and the serious injury or threat of serious injury;

(e) description of the definitive safeguard measure planned; and

(f) duration of application of the measure and the timetable established for its liberalization;

(g) reasons for the adoption of the definitive safeguard measure.

Article 52

The published notice of suspension of a safeguard measure referred to in Article 68 of the above-mentioned Law No. 15-09, shall contain the following information:

(a) description of the product under consideration;

(b) duration of application of the provisional or definitive safeguard measure;

(c) duration of suspension of application of the measure; and

(d) considerations and reasons that gave rise to the suspension of the safeguard measure.

Article 53

The notice of termination of the investigation without any measure being applied, as provided for in Article 66 of the above-mentioned Law No. 15-09, must contain the following information:

(a) identification of the applicant producers;

(b) description of the product under consideration;

(c) date of initiation of the investigation;

(d) considerations and reasons that gave rise to the decision to initiate the investigation;

(e) considerations and reasons that gave rise to the decision to terminate the investigation; and

(f) date of termination of the investigation.

Section III

Application of safeguard measures

Article 54

When the provisional or definitive safeguard measure referred to in Articles 61 and 64 of the above-mentioned Law No. 15-09 takes the form of an additional duty under Article 72 of that law, the duty in question shall be established by joint order of the minister responsible for foreign trade, the minister responsible for finance and the minister or ministers concerned.

Article 55

When the safeguard measure takes the form of a quantitative import restriction, under Article 72 of the above-mentioned Law No. 15-09, the import licence specific to the safeguard measure shall be applied by joint order of the minister responsible for foreign trade, the minister responsible for finance and the minister or ministers concerned.

Import licences specific to safeguard measures shall be issued by the minister responsible for foreign trade after receiving the opinion of the minister responsible for finance and the minister or ministers concerned.

The procedures for the issue of import licences specific to safeguard measures and the relevant specimen form shall be established by joint order of the minister responsible for foreign trade, the minister responsible for finance and the minister or ministers concerned.

CHAPTER III

Provisions common to anti-dumping, countervailing and safeguard investigations

Section I

Verification of information

Article 56

For the purpose of verification of data supplied in the course of investigation, as provided for in paragraph 1 of Article 24 and Article 64 of the above-mentioned Law No. 15-09, the officials of the governmental authority responsible for foreign trade referred to in Article 81 of Law No. 15-09, may carry out on-the-spot verification visits to the production premises or administrative offices of domestic producers, importers and exporters or foreign producers, in order to verify whether the data in question are consistent with the accounting records and documents, and whether the manufacturing process established corresponds to the descriptions relating to the project under investigation.

The officials concerned may request the enterprise concerned to provide any type of information, data, and accounting documents and may request other details on the spot in the light of the information obtained. In addition, they may request third persons that have maintained business relations with the enterprise concerned, including suppliers, buyers and agents, to provide information and data enabling them to establish the veracity of the information supplied by the enterprise under investigation.

Article 57

When the governmental authority responsible for foreign trade plans to undertake the verification visit referred to above:

(a) it shall provide sufficient advance notice in writing to the enterprise concerned of the intention to carry out a verification visit,

(b) it shall notify the authorities of the exporting country or the foreign producer of the visit in question, unless that country objects and after obtaining the agreement of the exporters or foreign producers. The governmental authority responsible for foreign trade shall notify the authorities of the exporting country of the names and addresses of the enterprises to be visited, as well as the dates agreed;

(c) 15 days before the proposed date for the visit, the governmental authority responsible for foreign trade shall notify the enterprise concerned of the programme for the verification visit, the nature of the information, the documents to be verified and any other information to be supplied.

(d) following conclusion of the verifications, the governmental authority responsible for foreign trade shall draw up a report indicating all the information verified and the facts ascertained by its officials, as well as the legal consequences of those facts for the enterprise visited.

(e) the verification report shall be made available to the enterprise visited, within a period of 21 days from the date of completion of the verification visit. The enterprise concerned shall have seven days to make known to the Ministry its comments and objections concerning the report. In the absence of a reply, the facts recorded in the verification report shall be deemed to have been recognized and the definitive version of the report shall be communicated to the enterprise concerned.

(f) the governmental authority responsible for foreign trade shall produce a non-confidential version of the report which shall be made available, on request, to the other interested parties.

Article 58

In the event that an importer, a domestic producer, an exporter or a foreign producer refuses to receive a verification visit by the governmental authority responsible for foreign trade, refuses access to accounting records or other documents supporting the information provided in the course of the investigation, fails to provide the information requested during the verification, fails to provide explanations concerning the calculations contained in its communications or acts in such a way as to impede the conduct of the verifications, the governmental authority responsible for foreign trade shall consider that there has been a failure to cooperate giving rise to the treatment referred to in the second paragraph of Article 24 of the above-mentioned Law No. 15-09.

Article 59

When it is envisaged to include a third person among the officials of the governmental authority responsible for foreign trade appointed to carry out the verification visit, the enterprises concerned and the authority of the exporting country shall be so informed. The third person in question shall be required to respect the confidentiality of the information provided, subject to penalties provided for in Article 446 of the Criminal Code.

Section II

Public hearings

Article 60

Requests for the organization of public hearings, provided for in Articles 39 and 78 of Law No. 15-09, must be submitted in writing to the ministry responsible for foreign trade.

Such requests may be submitted by complainant producers, importers, exporters or representatives of the exporting country which have made themselves known under the conditions established in Article 18 of the above-mentioned Law No. 15-09.

Any party requesting the organization of a public hearing is required to submit in writing to the ministry responsible for foreign trade the points that it wishes to be included in the agenda of the public hearing.

The governmental authority responsible for foreign trade may extend or restrict the scope of the subjects to be dealt with at the public hearing and organize the hearing in the manner it deems relevant and useful for the investigation.

Article 61

All interested parties that have made themselves known, as well as the members of the Import Surveillance Commission, shall be invited to the public hearing; the governmental authority responsible for foreign trade shall communicate the final agenda to them ten days before the date of the meeting. No interested party shall be required to attend a hearing and the absence of a party shall not be prejudicial to its case.

Parties other than those that have made themselves known as interested parties may, on request, participate in the public hearing as observers.

If, in the course of the public hearing, a party wishes to make comments containing confidential information, it may ask to submit them in private and the governmental authority responsible for foreign trade may grant such treatment if it is justified. In such cases, the governmental authority responsible for foreign trade shall take account of the need to safeguard the confidential nature of the information provided.

All information submitted during the public hearing must be transcribed and communicated to the ministry responsible for foreign trade together with a non-confidential version, within a period of seven days from the date of the hearing.

Article 62

Public hearings shall be presided over by the representative of the governmental authority responsible for foreign trade.

Section III

Miscellaneous provisions

Article 63

Upon notification of the admissibility or acceptance of the application, and pursuant to Article 19 or Article 59 of the above-mentioned Law No. 15-09, the governmental authority responsible for foreign trade shall establish, by decision, import surveillance of the product forming the subject of the application, by virtue of which importers of the product in question shall be obliged to declare to the said authority any operation involving importation of that product.

To that end, the importers in question shall be required, prior to effecting such import operations, to file an import undertaking, drawn up in accordance with the regulations in force, with the governmental authority responsible for foreign trade, for advance approval.

The *pro forma* invoice accompanying the import undertaking must contain a clear and distinct statement of the volume, value and price per unit of the product under consideration.

The governmental authority responsible for foreign trade shall have a period of ten days from the date of filing of the import undertaking to grant its approval.

Article 64

The best information available, as provided for in Articles 21, 24, 61 and 64 of the above-mentioned Law No. 15-09, shall be data relating to facts which the governmental authority responsible for foreign trade has at its disposal in order to carry out an assessment, and may be:

(a) data communicated by other exporters or foreign producers, or by importers in the course of the investigation; or

(b) data communicated by the domestic industry in the application that gave rise to the investigation, or subsequently communicated in the course of the investigation.

(c) data from other independent and objective sources which may become available to the ministry during the investigation.

CHAPTER IV

IMPORT SURVEILLANCE COMMISSION AND COMPETENT AUTHORITY

Section I

Import Surveillance Commission

Article 65

The Import Surveillance Commission referred to in Article 3 of the above-mentioned Law No. 15-09 shall be set up by the governmental authority responsible for foreign trade.

The Commission shall be composed of:

(a) a representative of the governmental authority responsible for foreign trade who shall preside over the Commission;

(b) a representative of the governmental authority responsible for foreign affairs and cooperation;

(c) a representative of the governmental authority responsible for finance;

(d) a representative of the government authority responsible for home affairs;

(e) a representative the governmental authority or authorities concerned;

(f) a representative of the governmental authority responsible for economic and general affairs;

(g) a representative of the customs and excise administration;

and, according to the nature of the product concerned:

(a) a representative of the Federation of Chambers of Commerce, Industry and Services;

(b) a representative of the Association of Chambers of Agriculture;

(c) a representative of the Federation of Chambers of Handicrafts; or

(d) a representative of the Federation of Maritime Fisheries Chambers.

Representation within the Commission shall be assured on a permanent basis by a director of the central administration or his representative in the case of ministerial departments, and by the Chairman or his representative in the case of the federations or association of Chambers.

The Chairman may, after consulting the Commission and when the matter at issue so requires, seek advisory assistance from one or more experts whose views he deems to be useful.

The governmental authority responsible for foreign trade shall provide secretariat services for the Commission.

Article 66

The Commission shall issue advisory opinions which must be reasoned in relation to the matter at issue, having due regard for the relevant provisions of the above-mentioned Law No. 15-09 and this Decree for implementation of the Law.

The Commission's opinions shall be recorded in a report signed by its members and may be consulted by interested parties, subject to the need to protect confidential information.

Article 67

The Import Surveillance Commission shall draw up and adopt rules of procedure defining its operating procedures, particularly as regards:

(a) the conditions and procedures for the organization of its work;

(b) the periodicity and timelines for holding its meetings under an investigation procedure concerning a trade defence measure; and

(c) the conditions of access to confidential information in the context of the investigation.

The rules of procedure shall be approved by order of the minister responsible for foreign trade after receiving the opinion of the ministers concerned.

Section II

Competent authority

Article 68

The officials authorized to conduct investigations, referred to in Article 81 of the above-mentioned Law No. 15-09, shall be appointed by order of the minister responsible for foreign trade.

They shall be appointed from among the officials of the governmental authority responsible for foreign trade employed at no lower than grade 10 of the salary scale, who have at least four (4) years of experience in the areas of responsibility relating to trade defence investigations.

CHAPTER V

FINAL PROVISIONS

Article 69

The provisions of Articles 22, 23, 24, 25, 26, 27, 28, 29 and 30 of Decree No. 2-93-415 of 11 Moharrem 1414 (2 July 1993) implementing Law No. 13-89 on foreign trade, as amended and supplemented, shall be rescinded as from the date of publication of this Decree in the Official Bulletin.

Article 70

The Minister of the Economy and Finance, the Minister of Industry, Trade and New Technologies, and the Minister of Agriculture and Maritime Fisheries, shall be responsible, each within his own domain, for implementing this Decree, which shall be published in the Official Bulletin.

Rabat, 13 Safar 1434 (27 December 2012)

The Head of Government: ABDELILAH BENKIRANE

For countersignature:

Ministry of Industry, Trade and New Technologies,
ABDELKADAR AMARA

Minister of the Economy and Finance,
NIZAR BARAKA

Minister of Agriculture and Maritime Fisheries,
AZIZ AKHANNOUCH

_____