

Development Support Program

**ASSESSMENT OF EGYPT'S COMPLIANCE
WITH THE WTO'S ANTI-DUMPING
AGREEMENT**

April 30, 2003

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Executive Summary

The purpose of this report is to assess Egypt's compliance with the World Trade Organization (WTO) Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, also known as the Anti-Dumping Agreement (ADA).

Under the ADA, a country can impose an anti-dumping duty to offset the dumping of imports by foreign exporters, where such practices are causing, or threatening to cause, material injury to the domestic industry producing like goods. Consistent with Egypt's rights under the WTO and the Government of Egypt's (GOE) responsibility to provide means to protect the national industry from unfair trade practices and sudden surges of imports, the GOE established an institutional framework to implement the provisions of the concerned agreements on anti-dumping, safeguards, and subsidies and countervailing measures. Implementation of these agreements is the responsibility of the Central Department of International Trade Policies (also known as the Subsidies, Anti-Dumping, and Safeguards Department) at the Ministry of Foreign Trade.

The Department began conducting anti-dumping investigations immediately after Egypt joined the WTO in 1995, as the agreement concluded in the final act of the Uruguay Round had become part of local legislation. Nevertheless, it was necessary to issue local legislation specifying the competent authorities and setting the rules governing anti-dumping investigations. Therefore, Egypt issued Law No.161 for the year 1998, and set out the specific regulations and procedures for examining dumping, subsidy, and safeguard complaints.

Anti-dumping investigations are conducted in five stages; application for investigation, acceptance, initiation, determining essential facts, and final report. Specific procedures and timelines apply to each stage of the investigation.

Between June 1998 and January 2003 Egypt took 30 anti-dumping actions. Anti-dumping duties were applied to 12 products imported from 21 different countries. Slightly more than half of these actions covering eight of the products applied only to non-WTO members, including China, Latvia, Saudi Arabia, Ukraine, Russia, Kazakhstan, and Syria. The remaining anti-dumping actions cover four products imported from 14 different WTO countries.

Based on Egypt's laws and its implementation of its laws, Egypt is, to a great extent, in compliance with its WTO obligations. Beyond compliance, there are some innovations and improvements, especially in the area of transparency, that can be introduced. These include making non-confidential information about cases and blank questionnaires accessible to the public (including through a website), and establishing a docket system to track active cases.

Finally, certain implementation issues were raised in Turkey's WTO steel re-bar dispute against Egypt's anti-dumping practices. The Ministry of Foreign Trade is currently taking steps, partly with the support of the Assistance for Trade Reform (ATR) project, to address these issues. Measures being taken relate mostly to training new investigators in WTO-compliant procedures. In addition, the Ministry is working with the ATR project to automate several trade remedy processes, which will improve transparency and WTO compliance.

ASSESSMENT OF EGYPT'S COMPLIANCE WITH THE WTO'S ANTI-DUMPING AGREEMENT

INTRODUCTION

In the context of the U.S. Government's DSP II program and the Government of Egypt's commitment to comply with its WTO obligations, the Foreign Trade Policies Sector at the Ministry of Foreign Trade is assessing Egypt's compliance with five WTO agreements. The agreements targeted for these assessments are those addressing Technical Barriers to Trade, Sanitary and Phytosanitary measures, Anti-Dumping, Trade Related Investment Measures, and Rules of Origin. Following these assessments, the GOE will focus on areas of non-compliance to bring them in full conformity with Egypt's international commitments.

This report assesses Egypt's compliance with the Anti-Dumping Agreement (ADA). It first summarizes the main provisions of the ADA and details the Egyptian context for conducting anti-dumping investigations, including the Egyptian competent authority, local legislation, regulatory timeline, and stages of investigation. The report then assesses the compliance of Egyptian legislation with ADA provisions and summarizes critical aspects of the dispute settlement case brought by Turkey on Egypt's definitive anti-dumping measures on steel rebar from Turkey. Finally, the report sets out recommendations that could improve certain procedural aspects of conducting anti-dumping investigations. Report appendices include a manual of procedures used by investigators at the Subsidies, Anti-Dumping, and Safeguards Department to conduct anti-dumping investigations (Appendix A); Decree No. 549 of 1998 and Egyptian Law No.161 of 1998 that sets out the specific regulations and procedures for examining dumping, subsidy, and safeguard complaints (Appendix B); the latest notification provided to the WTO (Appendix C); a sample final report conducted by the department (Appendix D); and the Anti-Dumping-Agreement (Appendix E).

THE WTO ANTI-DUMPING AGREEMENT

Under the WTO Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, (more commonly referred to as the "Anti-Dumping Agreement"), a country can impose an anti-dumping duty to offset the dumping of imports by foreign exporters, where such practices are causing, or threatening to cause, material injury to the domestic industry producing like goods. In this regard, dumping occurs when foreign producers export goods at prices below those that are charged in the home market, or below the full cost of production of the goods.

The Anti-Dumping Agreement (ADA) provides greater clarity and more detailed rules than its predecessor negotiated during the Tokyo Round. The ADA outlines the methodology for determining when a product is dumped, the criteria to be taken into account in a determination that dumped imports cause injury to a domestic industry, the procedures to be followed in initiating and conducting anti-dumping investigations, and the implementation and duration of anti-dumping measures. In addition, the agreement clarifies the role of dispute settlement panels in disputes relating to anti-dumping actions taken by domestic authorities.

The Agreement provides for the right of contracting parties to apply anti-dumping measures, i.e. measures against imports of a product at an export price below its "normal value" (usually the price of the product in the domestic market of the exporting country) if such dumped imports cause injury to a domestic industry in the territory of the importing contracting party. The ADA contains relatively specific provisions to determine whether a product is exported at a dumped price. Such provisions include criteria for allocating costs when the export price is compared with a "constructed" normal value, as well as rules to ensure that a fair comparison is made between the export price and the normal value of a product so as not to arbitrarily create or inflate margins of dumping.

The agreement includes the requirement that determination of injury be based on positive evidence and objective examination of the volume of dumped imports and effect of those dumped imports on domestic prices of like products, and the resulting impact on domestic industry. Subject to a few exceptions, the ADA defines "domestic industry" as the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products. The examination of the impact of the dumped imports on the domestic industry concerned must include an evaluation of all relevant economic factors bearing on the state of the industry concerned, including at least actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments.

The ADA establishes clear-cut procedures on how anti-dumping cases are to be initiated and how such investigations are to be conducted. It sets out conditions for ensuring that all interested parties are given an opportunity to present evidence. It strengthens provisions on the application of provisional measures, the use of price undertakings in anti-dumping cases, and on the duration of anti-dumping measures. Thus, it provides that anti-dumping measures shall expire five years after the date of imposition, unless a determination is made that, in the event of termination of the measures, dumping and injury would be likely to continue or recur.

The ADA requires the immediate termination of an anti-dumping investigation in cases where the authorities determine that the margin of dumping is de minimis (which is defined as less than two per cent, expressed as a percentage of the export price of the product); that the volume of dumped imports is negligible (generally when the volume of dumped imports from an individual country accounts for less than three per cent of the imports of the product in question into the importing country unless countries which individually account for less than three percent of imports of the like product in the importing member collectively account for more than seven percent of imports of the like product in the importing member), or where injury is negligible.

The agreement calls for prompt and detailed notification of all preliminary or final anti-dumping actions to the Committee on Anti-dumping Practices. The agreement affords parties the opportunity to consult on any matter relating to the operation of the agreement or the furtherance of its objectives, and to request the establishment of panels to examine disputes.

EGYPTIAN CONTEXT FOR ANTI-DUMPING INVESTIGATIONS

The Egyptian Competent Authority

In light of Egypt's membership in the WTO since 1995 and the Government of Egypt's responsibility to provide means to protect the national industry from unfair competition and sudden surges of imports, the GOE established an institutional framework to implement the provisions of the concerned agreements on anti-dumping, safeguards, and subsidies and countervailing measures. Implementation of these agreements is the responsibility of the Subsidies, Anti-Dumping, and Safeguards Department at the Ministry of Foreign Trade, whose role is to implement the rules of the agreements objectively without any bias towards either local production or imported goods.

At its launch the department recruited a number of skilled researchers to form the nucleus of the department. The researchers went through intensive training programs conducted with the cooperation of the WTO Secretariat. Moreover, a number of foreign experts were recruited to assist in designing the organizational structure of the department and the required training programs.

Local Legislation

The department began conducting anti-dumping investigations immediately after Egypt joined the WTO in 1995, as the agreement concluded in the final act of the Uruguay Round had become part of the local legislation. Nevertheless, it was necessary to issue local legislation specifying the competent authorities and setting the rules governing anti-dumping investigations. Therefore, Egypt issued Law No.161 for the year 1998, and set out the specific regulations and procedures for examining dumping, subsidy, and safeguard complaints. The main objective of Law No. 161 is the protection of the national economy from the damage caused by dumping in the Egyptian market. This is accomplished through the establishment of dumping compliant investigation procedures leading to the application of trade remedies in cases where dumping is found.

Stages and Timeline of Anti-Dumping Investigations

Anti-dumping investigations are conducted in five stages: application for investigation, acceptance, initiation, determining essential facts, and final report.

Application for Investigation

A written application of the effects caused by dumping is submitted to the Investigating Authority in the form provided for this purpose. The applicant must attach a non-confidential summary to the

application, which contains sufficient details to permit a reasonable understanding of the substance of the information submitted in confidence.

Acceptance

The application is accepted only if it is lodged by or on behalf of the domestic industry, chamber of industries concerned, federation of industries, producers' associations, or the ministries supervising any of the production sectors. The application must include evidence of the existence of dumping and the causal link between dumping and the injury caused or threatened to the applicant.

The Investigating Authority should inform the applicant whether its application has been accepted in principle or not. If it is accepted in principle, the Investigating Authority may ask the applicant to provide additional information required for consideration of final acceptance of the application. Department investigators may in fact be in contact with complaining firms for several weeks or months, helping them to prepare the required detailed data necessary for a complete application. Applicant firms that do not cooperate during this phase have their applications terminated for not supplying sufficient information. Several of the 38 anti-dumping cases that were terminated by the Department were terminated during this phase.

Once the Investigating Authority has received the complete application, it should inform the applicant within seven days from the date of receiving the complete application of the final acceptance of its application. The application is registered in a special register, an acceptance report is prepared, and the exporter's Embassy is notified.

Initiation

During the initiation phase, evidence is sought to document the case. An initiation report must be prepared and presented to the Advisory Committee within 30 days of acceptance of the case and the Advisory Committee must make a recommendation to the Minister within 10 days. The Advisory Committee is comprised of 14 members representing ministries of Foreign Trade, Industry, Finance, Agriculture, Public Enterprises, Military Production, and the Customs Authority, in addition to the Undersecretary for Trade Remedies, head of FTPS, and two representatives from the private sector (one from the Federation of Egyptian Industries representing the interests of producers and one from the Federation of Chambers of Commerce representing the interests of importers).

During this phase the domestic industry is identified to assess the standing of the petitioners (i.e. whether they are representative enough of domestic industry - see compliance section), and like products are defined. Relevant business and importer associations and industry chambers are also notified. Customs data are obtained for analysis and importers are identified. The initiation report for the Advisory Committee documents the "prima facie" case, assessing the apparent level of dumping, the absolute and relative level of imports, injury indicators, and the nexus between them. After a positive Advisory Committee recommendation, a Gazette notice is prepared, questionnaires and cover letters finalized, and a non-confidential summary of the case drafted. This material is released if the Minister approves the committee's recommendation. Should the case be rejected at this point, a report outlining the reasons for that determination is prepared within seven days to deliver to the applicant(s).

Egyptian regulations also permit the imposition of provisional duties 60 days after the initiation of a case. To apply a provisional duty the Department must conclude that injury to the domestic industry is being caused by dumping. If the provisional duty is set at the estimated margin of dumping, it can be in effect for four months, extendable to six. If the provisional duty is set at less than the estimated margin, it can be applied for six months, extendable to nine months. The Department has applied provisional duties in several cases but all involved countries that were not members of the WTO at the time of application.

Data Gathering Leading to Essential Facts Report

This phase of the investigation has no explicit regulatory time limit though it generally lasts up to six months from acceptance of the initiation report by the Minister. By regulation, a decision on the anti-dumping investigation must be reached within 12 months from initiation.

During this phase of the investigation questionnaires are sent to domestic producers, importers, exporters and respondent producers. Domestic firms are given 30 days to respond while foreign firms are given 37 days to respond (though Article 23 of Regulation of Law No. 161/1998 states that parties concerned should send their responses within 37 days from the date of receiving the questionnaires). These deadlines are often liberally extended. Deficiency letters with instructions on how to cure the deficiency are sent in cases of inadequate responses. Verification trips are made to responding firms to document the accuracy of responses. In the case of inadequate responses alternative public data are sought. This phase of the investigation concludes with the approval of an Essential Facts Report (EFR) by the Advisory Committee. A non-confidential version of the EFR is sent to all parties for comments. The deadline for comments is 10 days.

A hearing may be held during this phase of investigation if requested and justified by a party to the investigation.

Final Report

This phase of the investigation leads to a final decision on the case, which is recorded in the final report. The final report details the steps in the investigation, the facts considered, and the recommendation made to the Minister. Comments from the parties are considered and disposed of during this phase. Upon the approval of the recommendation by the Minister, a non-confidential version of the report is published as the decision in the case.

Egyptian legislation allows interested parties to request a review of the application of anti-dumping duties after the duty has been applied for one year. If warranted, the Department will conduct such an investigation, which could lead to termination of the measure. The legislation also provides for a five-year review of the application of dumping measures. It further allows parties to request the review beginning six months before the five-year anniversary of measures.

COMPLIANCE OF EGYPTIAN LAWS AND REGULATIONS WITH THE ANTI-DUMPING AGREEMENT

By ratifying the WTO Agreement in 1995 and through presidential decree No. 72, Egypt committed itself to the implementation of WTO provisions, including those on the implementation of Article VI (the Anti-Dumping Agreement - ADA), as they became part of Egyptian law. Egyptian laws and

regulations generally mirror the provisions of the ADA. Law No. 161/1998 and Regulation of Law No. 161/1998 (“the Regulations”) promulgated by Ministerial Decree No.1998/549 are the basis for Egypt’s Anti-Dumping jurisprudence. Officials within the investigating authority, which in Egypt is the Subsidies, Anti-Dumping, and Safeguards Department at the Ministry of Foreign Trade, use a manual of procedures, as well as the regulation itself, in conducting anti-dumping investigations. The manual of procedures is based closely on the regulations, but is not as detailed. Depending on its purpose (i.e. whether it is designed to help investigators to make sure they follow all procedural or simply to inform the public about how anti-dumping investigations are conducted), the manual may need to be more fully developed and updated. The full regulations, relevant WTO Agreements, and manual of the Anti-dumping, Subsidy and Safeguard Department of the Ministry of Foreign Trade are contained in the book, *The Egyptian System for Antidumping, Subsidies and Countervailing Duties, and Safeguards in the context of the WTO Agreement*. The department also publishes a final report booklet for each anti-dumping investigation completed. In addition, according to Article (7) of the Regulations, the department prepares a detailed report that includes information and explanations concerning all anti-dumping related notifications and this report is available to all the interested parties.

We outline the major ADA provisions below, with corresponding articles from Egyptian regulations. We highlight any apparent inconsistencies. The full texts of the Regulations and the ADA are attached (Appendix A and E, respectively).

Dumping Definitions

Dumping

Part III, Section 1, Article 32 of the Regulations defines dumping as: “the introduction of a product into Egypt at an export price, which is less than its normal value, in the ordinary course of trade.” (consistent with Article 2.1 of the Anti-Dumping Agreement). The same article defines what constitutes export price and normal value.

Export price

Export price in Egyptian regulation is defined as the price paid or payable by the importer other than any part of the price that represents:

- (i) Costs, charges, and expenses incurred in preparing the goods for shipment to Egypt that are additional to those costs, charges, and expenses generally incurred on sales for home consumption; and
- (ii) Any other costs, charges, and expenses resulting from the exportation of the goods or arising from their shipment from the country of export.

Where the export price cannot be calculated using this method (for example because of a relationship between importer and exporter), it can be constructed on the basis of the price paid by the first independent buyer of the alleged dumped product in the Egyptian market (consistent with Article 2.3 of the ADA). In this case the export price is calculated as the price paid by the first independent buyer in Egypt minus freight cost to Egypt, insurance, customs duties, sales tax,

clearance and brokerage fees, freight in Egypt, selling general and administrative expenses, other expenses (to be identified), and net profit/loss.

Normal value

Article 32 of the Regulations defines normal value as the price paid for the like goods in the ordinary course of trade for home consumption in the country of origin/export, or the cost of production plus the selling, general and administrative costs in addition to the amount of profit normally realized on sales of goods or the price at which the like product is exported to a third country (consistent with Articles 2.1 and 2.2 of the ADA.)

If there are no sales in the domestic market of the country of export or where domestic sales are made at a loss, or if domestic sales of the allegedly dumped goods account for less than five percent of the export sales to Egypt, Egyptian regulation states that the normal value can be constructed according to the cost of production in the country of origin plus an appropriate amount for selling, general and administrative costs and a reasonable margin of profit, or according to the export price of the goods to a third country. (consistent with Article 2.2 of the ADA)

Dumping margin

Egyptian regulations define the margin of dumping as the difference between the normal value and the export price. They further state that in calculating the margin of dumping, the Investigating Authority has to make the calculations on the same level of trade for as nearly as possible the same period, taking into consideration the factors which affect price comparability pursuant to the provisions of Article 2.4 of the Anti-dumping Agreement.

Existence of Injury, Causality, and Cumulation of Imports

Impact of Dumped Imports on Prices and Domestic Industry

The ADA states that determination of injury must be based on evidence and examination of volume of dumped imports and effect of the dumped imports on prices in the domestic market for like products, as well as the consequent impact of these imports on domestic producers of such products (Article 3.1 of the ADA). The ADA calls for the investigating authority to consider both absolute and relative increases in dumped imports, and to consider price undercutting, price depression, or price suppression (Article 3.2 of the ADA).

Egyptian Regulation: Article 39 of the Regulations requires the investigating authority to examine all positive evidence and verify the existence of significant increase in dumped imports, either in absolute terms or relative to production or consumption in Egypt. On the effect of dumped imports on prices, the authority is required to consider the following:

- a. Whether there has been a significant price undercutting by the dumped imports as compared with the price of the domestic like product,

- b. Whether the effect of such imports is to depress prices of the like product to a significant degree, or
- c. Whether the effect of such imports is to prevent price increases which otherwise would have occurred.

Causal Relationship Between Dumped Imports and Injury

In order to demonstrate a causal relationship between the dumped imports and the injury to the domestic industry, the ADA provides that the investigating authority must examine all relevant evidence, including such factors as the volume and prices of imports not sold at dumped prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry (Article 3.5 of the ADA).

Egyptian Regulation: Article 41 of the Regulations requires the investigating authority to verify that the injury suffered by the industry is caused by the dumped imports and not due to any other causes (it does not mention examples of what these other causes might be).

Evaluating Impact of Dumped Imports

The ADA requires that the examination of the impact of the dumped imports on the domestic industry include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including at minimum actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments (Article 3.4 of the ADA).

Egyptian Regulation: Article 39 of the regulations calls for the Investigating Authority, as it conducts injury investigations, to examine and evaluate the economic effects of the dumped imports on the domestic industry reflected in the following:

1. Actual and potential decline in sales, profits, production, market share, productivity, return on investment or utilization of capacity.
2. Factors affecting domestic prices.
3. Magnitude of the margin of dumping.
4. Actual and potential negative effects on cash flow, inventories, employment, wages, investment, growth and ability to raise capital.
5. Any other factors the Investigating Authority deems to be significant.

Though the regulation is fully consistent with the ADA, the WTO panel in the Turkey Steel Rebar case found that Egypt examined but failed to “evaluate” certain factors having a bearing on the state of the industry (this issue is further discussed in the section on the Turkey case below).

Threat of Injury

The ADA provides that anti-dumping duties can be imposed in cases of threat of material injury. However, it requires that such threat of material injury must be based on facts and not merely on conjecture and must be imminent. Factors that the investigating authority must examine include a significant rate of increase of dumped imports into the domestic market, indications of the likelihood of greatly increased dumped exports to the importing country's market, import prices and their likely effect on domestic prices, and inventories.

Egyptian Regulation: Article 40 of the Regulations provides that when determining threat of injury the investigating Authority must verify that the threat of injury is clear and imminent and also consider the following:

- 1- The rate of increase of the dumped imports.
- 2- Likelihood of a significant increase in dumped imports into Egypt in the light of contracts (future purchase orders).
- 3- Whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports.
- 4- The existence of significant export capacity of industry or significant inventories of the product in question in the exporting companies.
- 5- Any other factors which the Investigating Authority determines to have an economic effect on the industry.

Cumulation of Dumped Imports

The ADA provides that the investigating authority may cumulatively assess the effects of imports of a product from more than one country only if it determines that the margin of dumping for each country is more than de minimis, the volume of imports from each country is not negligible, and a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition (Article 3.3 of the ADA).

Egyptian Regulation: Article 43 of the Regulations states that where imports of a product from more than one country are simultaneously subject to anti-dumping investigations, the Investigating Authority may cumulatively assess the effects of such imports only if they determine that:

1. The margin of dumping established in relation to the imports from each country is 2 percent or more of the export price.
2. The volume of imports from each country is 3 percent or more of the total volume of imports of the like product into Egypt.
3. The existence of competition among the imported products and between the imported products and the like domestic products.

Initiating an Investigation

Written Application

The ADA requires that a dumping investigation be initiated upon a written application by or on behalf of the domestic industry (Article 5.1 of the ADA).

Egyptian Regulation: According to the Regulations, Article (14), the dumping application will be accepted only if it is lodged by or on behalf of the domestic industry, chamber of the industries concerned, federation of industries, producers associations or the ministries supervising any of the production sectors. In addition, the application must include evidence of the existence of dumping, injury caused, and the causal link between dumping and the injury caused or threatened to the applicant. According to the regulations, Article (22), the Department publishes the notice of the initiation of an investigation in the Official Gazette.

Domestic Industry

The ADA requires that the application is to be “considered to have been made ‘by or on behalf of the domestic industry’ if it is supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25 per cent of total production of the like product produced by the domestic industry.” (Article 5.4 of the ADA)

Egyptian Regulation: Article 19 of the Regulations mirrors Article 5.4 of the ADA.

Publicizing the Application

The ADA requires that the authorities avoid publicizing the application to initiate a dumping investigation unless a decision has been made to initiate the investigation. It also requires authorities to notify the exporter’s government once a properly documented application has been received but before proceeding to initiate an investigation. (Article 5.5 of the ADA)

Egyptian Regulation: Article (21) of the regulations provides that the Investigating Authority must notify the governments of the countries concerned with an application once it has been accepted and before proceeding to initiate an investigation.

Initiation of an Investigation by Authorities

The ADA requires that in cases where authorities decide to initiate a dumping investigation without having received a written application on behalf of the domestic industry that they only do so if they have sufficient evidence of dumping, injury, and a causal link to justify initiating an investigation. (Article 5.6 of the ADA)

Egyptian Regulation: According to the regulations , Article (20), the Investigating Authority may, after presenting a report to the Advisory Committee and after approval of the Minister of Trade & Supply¹ , initiate an investigation without having received a written application by or on behalf of the domestic industry for the initiation of such investigation only if it has sufficient evidence of dumping, subsidy or unjustifiable increase of imports, injury and a causal link to justify the initiation of an investigation.

Rejecting Applications

The ADA requires that a dumping application be rejected and an investigation terminated promptly as soon as the authorities determine that there is not enough evidence of either dumping or of injury to justify proceeding with the case, including when the margin of dumping is found to be de minimis, or that the volume of dumped imports, actual or potential, or the injury, is negligible. (Article 5.8 of the ADA)

Egyptian Regulation: According to Article (30) of the regulations , an investigation is to be terminated if the Investigating Authority finds no sufficient evidence of “injurious practices, injury or causal link between both.”

Customs Clearance

The agreement requires that an anti-dumping proceeding must not hinder customs clearance procedures. (Article 5.9 of the ADA)

Egyptian Regulation: Article 28 of the regulations provides that dumping investigation procedures must not prevent clearance of consignments of the subject goods from customs.

Evidence

Confidential Information

The ADA requires that confidential information provided as part of an investigation be treated as such by authorities upon good cause shown and not be disclosed without specific permission by the party submitting it. (Article 6.5 of the ADA)

Egyptian Regulation: Article 9 of the Regulations requires all persons and bodies to protect the confidentiality of information and data in cases where it is necessary for the purpose of investigation or appeal to have access to such information. Article 6 requires all authorities and persons involved in anti-dumping investigations (as well as subsidy and safeguard investigations) to protect confidentiality of information. Moreover, Article 7 of the law states that any authority or person that

¹ Now the Ministry of Foreign Trade

violates Article 6 will be subjected to a fine estimated to be not less than 10,000 Egyptian Pounds and not more than 50,000 Egyptian Pounds.

Provision of Non-Confidential Summaries

The ADA provides that authorities must require provision of non-confidential summaries from parties submitting confidential information and require that such summaries be in sufficient detail to allow reasonable understanding of the confidential information submitted. Where parties indicate, in exceptional circumstances, that such summarization is not possible; they must provide a statement listing reasons for not being able to provide a summary. (Article 6.5.1 of the ADA)

Egyptian Regulation: Article (8) of the Regulations mirrors Article 6.5.1 of the ADA.

Availability of Information

The ADA requires that, subject to the requirement to protect confidential information, evidence presented in writing by one party must be made available to other parties participating in the investigation. (Article 6.1.2 of the ADA)

Egyptian Regulation: According to the Regulations, Article (29), the department makes available to all the interested parties all information and data relevant to the investigation, taking into consideration the requirement of protecting confidential information.

Opportunity to Defend Interests

The ADA requires that all interested parties in an anti-dumping investigation be given full opportunity to defend their interests, including, upon request, providing the opportunity for interested parties to meet and present their views, taking into account issues of confidentiality and convenience. However, parties are not obligated to attend meetings, and their failure to attend meetings is not to be considered prejudicial to their case. Interested parties also have the right, upon justification, to present other information orally, but such information is not to be taken into account by the authorities unless it is subsequently provided in writing and made available to other interested parties. (Articles 6.2 and 6.3 of the ADA)

Egyptian Regulation: According to the Regulations, Article (25), the department provides full opportunity for all interested parties to defend their interests and to meet those parties with adverse interests to present all opposing views and rebuttal arguments. Also the department may, upon request, hold hearings for the interested parties to present their views and arguments, but those views will not be taken into consideration unless they are presented in writing later on.

Public Notice

The ADA requires that a public notice of the initiation of an investigation contain adequate information on the following (Article 12):

- a. The name of the exporting country or countries and the product involved;
- b. The date of initiation of the investigation;
- c. The basis on which dumping is alleged in the application;
- d. A summary of the factors on which the allegation of injury is based;
- e. The address to which representations by interested parties should be directed;
- f. The time limits allowed to interested parties for making their views known.

Egyptian Regulation: According to the Regulations , Article (6), (21), (22), and (23), the department notifies the governments of the countries (or through their diplomatic missions or authorized consuls in the Arab Republic of Egypt) concerned with the applications already accepted before proceeding to initiate an investigation. The Investigating Authority is also required to publish the notice of the initiation of an investigation in the Official Gazette, which must include :

1. Names of the countries of origin or export of the product under investigation.
2. A description of the product in question
3. A description of the allegations and practices under investigation
4. A summary of the basis for alleged injury.
5. Time limits for other parties concerned to reply.
6. The address the interested parties should send their replies to.

Egyptian regulation requires that parties concerned should send their responses within 37 days from the date of receiving the questionnaires, extendable upon good cause accepted by the Investigating Authority (though in practice domestic parties to an investigation are given 30 days to return their questionnaires). The regulation does not indicate that the date of initiation of investigation be included in the public notice.

Provisional Measures

The ADA provides that provisional measures may be imposed after an investigation has been initiated, a public notice issues, and parties have had a chance to comment; a preliminary positive determination has been made of dumping and consequent injury; and if the authorities believe that the measures are necessary to prevent injury during the investigation. In those cases the authorities may impose provisional measures in the form of a provisional duty or, preferably, a security (cash deposit or bond) equal to the amount of the anti-dumping duty provisionally estimated (which should not be greater than the provisionally estimated margin of dumping). Provisional measures shall not be applied sooner than 60 days from the date of initiation of the investigation. The ADA further requires that provisional measures not be applied for a period exceeding four months, or in specified circumstances, six months. These periods may be six to nine months, respectively, if the duty contemplated is less than the dumping margin. (Article 7 of the ADA).

Egyptian Regulation: According to Article (44) of the Regulations , provisional measures may take the form of cash deposit, which is not greater than the provisionally estimated margin of dumping. Such provisional measures are not to be applied sooner than 60 days from the date of initiation of investigation and “a conclusion is made by the Investigating Authority that there exists dumping which caused injury to the domestic industry.” Provisional measures are to be applied for a period

not exceeding four months, extendable to six months, unless the provisional duty is less than the dumping margin, in which case those periods can be extended to six and nine months, respectively.

Egyptian regulation does not describe in which cases provisional measures can be imposed, only how they can be imposed. There might also be a slight problem in the wording of Article 44 in the regulation. If the investigating authority concludes dumping, injury, and causality within the 12-month investigation period, definitive measures would apply, not provisional ones, as may be implied by the sentence "...and a conclusion is made by the Investigating Authority that there exists dumping..." What is meant is probably "preliminary positive determination" rather than "conclusion is made."

Price Undertaking

The ADA provides that, when authorities are satisfied that the injurious effect of dumping can be eliminated through specific exporters undertaking to revise their prices or to cease exports to an area at dumped prices, they may suspend or terminate anti-dumping proceedings without the imposition of provisional measures or anti-dumping duties. The agreement provides that it is desirable if price increases are less than the margin of dumping when these increases are adequate to remove injury to the domestic industry. A preliminary affirmative determination of dumping and injury caused by dumping is necessary for price undertakings to be sought or accepted from exporters. Moreover, price undertakings need not be accepted if authorities find them impractical. (Article 8 of the ADA)

Egyptian Regulation: According to Article (48) of the Regulations exporters may offer to the Investigating Authority voluntary undertakings to increase the price of their exports to Egypt. Price increases under such undertakings are not to be higher than necessary to eliminate the margin of dumping established by the Investigating Authority. The regulation requires that the following issues be considered when accepting, rejecting or amending undertakings:

1. The possibility to suspend or terminate proceedings, if such undertakings are accepted and if the Investigating Authority finds these undertakings sufficient to eliminate the margin of dumping unless the exporters ask to continue the investigation.
2. Informing the exporters in case of rejection and the reasons for that rejection if practicable.
3. The Investigating Authority may also require any exporter from whom an undertaking has been accepted to periodically provide information relevant to the fulfillment of such an undertaking and to permit verification of pertinent data.

The Department, so far, has not accepted any price undertakings due to the high financial and physical resources that monitoring compliance with such undertakings would require of the Egyptian authorities. Resources permitting, it will consider accepting price undertakings in the future.

Imposition and Collection of Anti-Dumping Duties

The ADA provides that anti-dumping duties lower than the dumping margin are desirable if they are adequate to remove injury to the domestic industry. It also provides that such anti-dumping duties are to be collected in a non-discriminatory way from all sources of dumping (except parties from which price undertakings were accepted). In addition, the ADA calls for authorities to promptly carry out a review to determine individual dumping margins for exporters or producers who have not exported the product subject to anti-dumping duties to the importing country during the investigation period. These exporters or producers would need to show that they are not related to any of the exporters or producers who are subject to anti-dumping duties. While the review is being conducted (on an accelerated basis), authorities are not to levy any anti-dumping duties on products from these exporters or producers. However, the agreement also provides that authorities may withhold appraisal and/or request guarantees to ensure that anti-dumping duties can be levied retroactively should the review result in a dumping determination in respect of these producers or exporters (Article 9 of the ADA).

Egyptian Regulation: Article 45 of the Regulations provides that anti-dumping duties will not exceed the dumping margin and will be imposed on dumped imports from all sources found to be causing material injury to the domestic industry, except from sources whose price undertakings are accepted. Article 46 provides that definitive anti-dumping duties are to be imposed for a period not to exceed five years from the date of publishing the final determination of imposition in the Official Gazette. In addition, Article 47 provides that in cases where products subject to definitive anti-dumping duties are exported to Egypt by exporters or producers who have not exported the product to Egypt during the period of investigation, the authority is to promptly carry out a review for the purpose of determining individual margins of dumping for each of them provided that they can show that they are not related to any of the exporters or producers referred to during the course of the review. In these cases, the regulation provides that the Investigating Authority may request guarantees, which are equal to the definitive anti-dumping duties, imposed on other exporters from the date of initiating the review.

Retroactivity

The ADA provides that anti-dumping duties may be levied retroactively for the period that provisional measures were applied after a final injury determination is made. Anti-dumping duties can also be levied retroactively in the case of a threat of injury where the effect of the dumped imports would have led to an injury determination in the absence of the provisional measures (Article 10.2 of the ADA). The difference between the definitive and provisional anti-dumping duty (or security amount estimated) is not to be collected if the former is higher than the latter. If the provisional duty is higher than the definitive duty, the difference is to be reimbursed or the duty recalculated as the case may be. (Article 10.3 of the ADA)

Definitive anti-dumping duties may be charged on imported products that entered the market within 90 days of the imposition of provisional measures, provided that there is a history of dumping that caused injury or that the importer was or should have been aware that the exporter

practices dumping; and that the injury is caused by massive dumped imports in a short time and is likely to undermine the remedial effect of the definitive anti-dumping duty to be applied. The importers are to be given an opportunity to comment in the latter case. (Article 10.6 of the ADA)

Egyptian Regulation: Article (51) of the Regulations provides that, where a final determination of injury or threat thereof is made, anti-dumping duties may be levied retroactively for the period for which provisional measures have been applied. Article (52) provides that if the definitive anti-dumping duty is higher than the provisional duty paid, the difference is not to be collected. However, if the definitive duty is lower than the provisional duty paid, the difference is to be reimbursed. In addition, Article (54) provides that a definitive anti-dumping duty may be levied on products which were entered for consumption not more than 90 days prior to the date of application of provisional measures, when the Investigating Authority determines that:

- a. There is a history of dumping which caused injury or that the importer was aware or should have been aware that the exporter practiced dumping and that such dumping would cause injury, and
- b. The injury is caused by increased dumped imports of a product in a relatively short time which is likely to seriously undermine the remedial effect of the definitive anti-dumping duty to be applied, provided that the importers concerned have been given an opportunity to comment.

The department has not imposed duties retroactively in any of the cases handled so far.

Duration and Review of Anti-Dumping Duties and Price Undertakings

The ADA provides that an anti-dumping duty is not to be maintained longer than is necessary to counteract dumping that is causing injury (Article 11.1 of the ADA). It also provides that anti-dumping duties are not to be imposed for a period exceeding five years unless authorities upon review initiated before that date or upon substantiated request on behalf of the domestic industry determine that dumping and injury will likely continue or recur in the absence of anti-dumping duties (Article 11.3 of the ADA). Exporters/producers can request a review from the Investigating Authority if a reasonable time has elapsed since the imposition of the duties and the interested party submits information substantiating the need for a review. The anti-dumping duty is to be terminated immediately if the authorities determine upon review that it is no longer warranted (Article 11.2 of the ADA). The review is to be carried out expeditiously and should normally be concluded within 12 months of the date of initiation of the review.

Egyptian Regulation: Article 55 of the Regulations provides that the investigating authority may, after one year from the date of imposition of definitive anti-dumping measures, review the need for the continued imposition of the duty, where warranted, upon request by any interested party, which submits positive information substantiating the need for a review. If, as a result of the review, the investigating authority determines that the definitive anti-dumping duty is no longer warranted it must be terminated immediately. If, as a result of the review, there is a need to impose definitive duties, they may be imposed for no more than five years from the date of the most recent review.

Article 55 also provides that the investigating authority may, at any time, carry out a review on its initiative if necessary. In addition, Article 56 calls for the Investigating Authority to carry out a review on its initiative or upon request by a concerned party, six months before the expiry of the five-year period from the date of the imposition of definitive duties. In conducting the review the Investigating Authority is to determine whether the expiry of the duty is likely to lead to continuation or recurrence of dumping and injury. The duty is to remain in force pending the outcome of such a review, which should be concluded within 12 months of the date of the initiation of the review.

Judicial review

The ADA requires each WTO member whose national legislation contains provisions on anti-dumping measures to maintain judicial, arbitration, or administrative tribunals or procedures for the purpose of the prompt review of administrative actions to final determinations and reviews of determinations. It further calls for these tribunals or procedures to be independent of the authorities responsible for the determination or review in question. (Article 13 of the ADA)

Egyptian Regulation: According to the Regulations, Article (95), concerned parties have the right of appeal to the Administrative Court concerning the measures and decisions taken. According to Article (88), where a decision by final judgment is issued for termination of any measures taken in accordance with the provisions of this regulation, the Minister of Trade and Supply may terminate these measures or give directions to the Investigating Authority to reconsider these measures in the light of recommendations made by the final judgments.²

Notifications

Article 16.4 of the ADA requires WTO members to report to the Committee on Anti-Dumping Practices all preliminary or final anti-dumping actions taken. WTO members are also required to submit, on a semi-annual basis, reports of any anti-dumping actions taken within the preceding six months. Moreover, Article 18.5 of the ADA requires that each member inform the Committee on Anti-Dumping Practices of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.

Egyptian Regulation: According to the Regulations, Article (90), the Investigating Authority is tasked with advising the relevant trade remedy committees in the WTO of all notices required by the agreements. In practice, the Department notified the WTO as soon as Egypt trade remedy laws and regulations came into effect (the notification was submitted in November 1998). The Department has also made semi-annual notifications to the Committee on Anti-Dumping Practices since the entry into force of the WTO in 1995 and is fully up to date (last notification submitted in January 2003).

² This is now the responsibility of the Minister of Foreign Trade.

Implementation of Anti-Dumping Cases

In light of the Agreement's provisions and of Egyptian legislation, the Department has implemented these rules and regulations during the process of investigation in all cases investigated.

Between June 1998 and January 2003 Egypt took 30 anti-dumping actions. Anti-dumping duties were applied to 12 products imported from 21 different countries. Slightly more than half of these actions covering eight of the products applied only to non-WTO members, including China³, Latvia⁴, Saudi Arabia, Ukraine, Russia, Kazakhstan, and Syria. The remaining anti-dumping actions cover four products imported from 14 different WTO countries and were notified as required. Investigations were completed on two additional cases but no anti-dumping duties were applied. There are currently five active investigations, two sunset reviews, and two cases nearing acceptance by the Department. In one instance, anti-dumping duties against imports of stainless steel sinks from Spain and Greece were allowed to expire after five years. During the same period 38 pending cases were either not accepted or terminated before initiation. Anti-dumping duties have not been applied against agricultural products.

DISPUTE CONCERNING ANTI-DUMPING MEASURES IMPOSED ON STEEL REBAR FROM TURKEY

In November 2000 Turkey requested consultations with Egypt under the WTO's dispute settlement understanding procedures regarding the definitive anti-dumping measures imposed by Egypt on imports of concrete steel reinforcing bar (rebar) from Turkey. When both parties failed to reach a mutually satisfactory resolution during the consultations, Turkey requested the establishment of a panel to examine elements of the dispute. Since the allegations involved major aspects of how Egypt conducts anti-dumping investigations, including how the investigating authorities determine dumping, determine injury, and collect, use, and share evidence, the case provides practical evidence of Egypt's compliance with the ADA. The panel found that Egypt "did not act inconsistently" with its obligations under the ADA on 19 of Turkey's claims. The panel did, however, find that Egypt acted inconsistently with its obligations under two claims by Turkey and asked that Egypt bring its definitive anti-dumping measures on steel rebar from Turkey into conformity with relevant provisions of the ADA.

At a January 29, 2003 WTO Dispute Settlement Body (DSB) meeting in Geneva, Switzerland, Egypt informed the DSB that it intended to comply with the DSB's recommendations and rulings in this case. It also stated that it would consult with Turkey to agree on a reasonable period of time for implementation. Below is a summary of the major claims and the panel's findings related to dumping determination, injury determination, and evidence.

³ Six cases were brought against imports from China before it became a member of the WTO. Once China became a member of the WTO in December 2001, the department began notifying interested parties.

⁴ Latvia became a member after a dumping action taken in 1998. The duties on steel re-enforcing bars are currently the subject of a five-year "sunset" review.

Claims and Panel Findings Related to Dumping Determination

Claims

- Turkey claimed that the Egyptian Investigating Authority violated certain ADA provisions because it was not justified in resorting to “facts available” (Article 2.2.1.1 and 2.2.2).
- Turkey claimed that the Egyptian Investigating Authority imposed an unreasonable burden of proof upon respondents by waiting until late in the investigation to raise issues requiring them to submit new factual information and then imposing a burdensome "mail order" verification requirement on the respondents (Article 2.4).
- Turkey claimed that Egypt violated Article 2.4 in that the Investigating Authority failed to make a credit cost adjustment to normal value for differences in payment terms between home market sales and exports sales to Egypt.

Panel Findings

The panel found that Turkey failed to establish that Egypt acted inconsistently with its obligations under these ADA provisions.

Claims and Panel Findings Related to Injury Determination

Claims

- Turkey claimed that Egypt failed to examine all factors listed under Article 3.4 (evaluating all economic factors having an impact on the industry), in particular productivity, actual and potential negative effects on cash flow, employment, wages, growth and ability to raise capital or investments.
- Turkey claimed that Egypt failed to develop specific evidence linking imports to adverse volume and price effects on the domestic industry, and failed consequently to base the finding of a causal link on positive evidence.
- Turkey claimed that Egypt failed to take account of, and attributed to dumped imports, the effects of other “known factors” injuring the domestic industry.
- Turkey claimed that Egypt failed to demonstrate that the imports caused injury “through the effects of dumping.”

Panel Findings

The panel found that Turkey failed to establish that Egypt acted inconsistently with its obligations under the relevant ADA provisions, except with respect to one claim. The panel found that “while it gathered data on all of the factors listed in Article 3.4, the Egyptian Investigating Authority failed to

evaluate all of the factors listed in Article 3.4 as it did not evaluate productivity, actual and potential negative effects on cash flow, employment, wages, and ability to raise capital or investments.”

Claims and Panel Findings Related to Evidence

Claims

- Turkey claimed that Egypt changed the "scope" of the injury investigation from threat of material to present material injury, without informing Turkey and after the deadline for submitting factual information in the investigation.
- Turkey claimed that the Investigating Authority's resort to facts available was unjustified as the basis for initially questioning then rejecting respondents' costs was unfounded, and that Turkish respondents provided all necessary information and did not impede the investigation.
- Turkey claimed that Egypt failed to verify the cost data during the "on-the-spot" verification, and conduct of "mail order" verification instead.
- Turkey asserted that the three Turkish respondents requested a meeting with the Investigating Authority in which they could explain how information they had submitted responded to the Investigating Authority's information requests. Turkey also claimed that the denial of these requests violated ADA provisions by denying Turkish respondents the basic right to be informed of reasons why evidence or information presented is not accepted, and to be given an opportunity to provide further explanations within a reasonable period.

Panel Findings

The panel found that Turkey failed to establish that Egypt acted inconsistently with its obligations under the relevant ADA provisions except with respect to one claim. The panel found that “with regard to two of the Turkish exporters, as the Egyptian Investigating Authority, having received the information that it had identified to these two respondents as being necessary, nevertheless found that they had failed to provide the necessary information, and further, did not inform these two exporters of this finding and did not give them the required opportunity to provide further explanations before resorting to facts available.”

Recommendations for Follow-up

The Egyptian anti-dumping system is to a great extent in compliance with the ADA, in both law and implementation. However, there are areas where innovations and improvements can be made.

MINOR LEGISLATIVE COMMENTS

Though Regulation of Law No. 161/1998 largely mirrors ADA provisions, there are a few provisions in the regulation that do not match up exactly with the ADA. These include:

- Article 41 of the Regulations requires the Investigating Authority to verify that the injury suffered by the industry is caused by the dumped imports and not due to any other causes. Though this is consistent with Article 3.5 of the ADA, the regulation does not mention examples of evidence other than dumping that may cause injury (as the ADA Article 3.5 does), including volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry. Since the ADA is technically part of Egyptian legislation, this is not a problem as long as investigators do conduct thorough analyses to verify all other causes that could have caused injury.
- Article 12 of the ADA requires that a public notice for the initiation of an investigation include specific information about the investigation. Article (22) of the Regulations lists all information required in a public notice but does not include the date of initiation of the investigation.
- Article 7 of the ADA outlines how and under which circumstances authorities may impose provisional measures. Article (44) of the Regulations only mentions how provisional measures may be imposed. The same regulation may need to clarify wording as to when provisional measures are imposed (i.e. after preliminary positive determination or after “conclusion” of the investigation).

ANALYTICAL AND INVESTIGATIVE PROCEDURES

While the WTO dispute panel on steel rebar found that Egypt did not act inconsistently with its obligations under the ADA with respect to 19 specific allegations by Turkey, it did find that Egypt needed to bring two aspects of its anti-dumping procedures into compliance:

- Failure to evaluate all the factors listed in Article 3.4 of the ADA as the Investigating Authority did not evaluate productivity, actual and potential negative effects on cash flow, employment, wages, and ability to raise capital or investments, when it examined and evaluated all economic factors having an impact on the industry. The Department has already

taken steps to ensure that such an evaluation is undertaken in all investigations, including further training for investigators in injury determination.

- Failure to let two respondents know that they did not provide the necessary information and to give them an opportunity to provide further explanations before resorting to facts available. In this case also, department investigators need to be further trained in undertaking proper procedures in anti-dumping investigations.

TRANSPARENCY

The Department publishes a book on Egypt's trade remedy system - *The Egyptian System for Antidumping, Subsidies and Countervailing Duties, and Safeguards in the context of the WTO Agreement* - which contains the relevant decree, laws, regulations, procedures, and WTO agreements. The Department also publishes final reports on anti-dumping cases and is up to date on notifications. Together these elements meet the ADA's transparency provisions. However, some additional measures of transparency can probably be added that would have the effect of improving access of interested firms, lawyers, and academic researchers to anti-dumping procedures. As these groups become more informed, anti-dumping applications are likely to improve, which would then allow investigators to focus more on the statutory part of their work. Potential measures include:

- Developing, updating, automating, and releasing the manual of investigations (the updated manual would also serve to identify the underlying work processes that will be the basis of the Automated Work Flow System – AWFS – that is currently being put in place).
- Another innovation would be to make the blank questionnaires available on the web or elsewhere.
- A publicly accessible docket system could be developed identifying active cases and their status in the pipeline. The AWFS might support posting all of this public material on a website.

Appendix A

**MANUAL OF PROCEDURES
FOR CONDUCTING ANTI-
DUMPING INVESTIGATIONS**

Methodology for Conducting Anti-Dumping Investigation Manual¹

1. Dumping Definition:

A product is considered as being dumped if the export price of the product exported to Egypt is less than its normal value in the exporting country.

Export Price is the price paid by the importer for the product in Egypt.

Normal Value: the selling price of the product in the domestic market (the exporter's market).

Therefore, Export Price is the price paid by the importer minus:

1. Costs, charges, and expenses paid in preparing the product for shipment to Egypt that are additional to those costs, expenses, and charges generally incurred on sales for home consumption in the exporting country, e.g. packing costs and other export costs.
2. Any other costs, charges, and expenses resulting from the exportation of the goods arising from their shipment from the country of export such as: ocean freight, insurance, inland freight, wharfage charges, warehousing charges, etc.

If the export price cannot be calculated using the previous method, it could be constructed on the basis of the first independent buyer in the Egyptian market for the allegedly dumped product.

The constructed export price is calculated as follows:

The price to the first independent buyer in Egypt minus:

1. Freight to Egypt
2. Insurance
3. Customs Duties
4. Sales Tax
5. Clearance and Brokerage fees
6. Freight in Egypt
7. SG & A
8. Other expenses (specify)
9. Net profit/ loss
10. Constructed export price.

2. Constructed Normal Value:

If normal value is not available, it can be constructed using the total constructed costs of the good in the country of export / origin (for instance, including the raw material costs, wages, indirect industrial costs, in addition to SG & A and a reasonable ratio of interest).

¹ Unofficial translation from the Arabic version

3. Margin of Dumping:

The margin of dumping is the difference between the normal value and the export price as shown above.

The proof of the existence of dumping is not sufficient to proceed with anti-dumping procedures and conducting an official anti-dumping initiation. Dumping has to cause injury, threaten to cause injury, or significantly preclude the production of a similar product in Egypt.

Hence, proving the existence of material injury to the domestic industry, along with the existence of dumping, is an essential condition to imposing anti-dumping duties.

4. How to determine the Injury suffered by the domestic industry:

Injury:

Evidence for the existence of injury has to be presented in any application submitted before the Department. The existence of a causal link between injury suffered by the Egyptian industry and the dumped imports is necessary; therefore, it has to be clear that the existing injury is the direct result of dumped imports. Hence, the following information has to be submitted:

1. Imports volume, including the significant increase of the imports, either absolute or relative to production or consumption.
2. The impact of these imports on the price of the Egyptian like-product including price depression or price suppression.
3. The economic effect of the dumped imports on the domestic industry reflected in the following:
 - Decline in production, sales, market share, profit, productivity, and productive capacity utilization, return on investment, and increase of inventory.
 - The information related to injury shall be submitted for the previous three years from the date of submission of the application.

Price effects in the Egyptian market as a result of the existence of dumping are to be identified as follows:

1. Price decline takes place when the imported product's price is less than that of the Egyptian product.
2. Price depression takes place when the subject good's price is reduced in order to meet the selling prices of imported subject goods.
3. Price suppression takes place when the subject good's price is prevented from increasing as would have been the case (due to the increase in cost of inputs) without the existence of dumped imports.

5. How to submit the investigation request:

A written application shall be submitted to the Anti-dumping, Subsidy and Safeguard Department at the Foreign Trade Sector in the Ministry of Foreign Trade, in the form provided for this in the Department.

This application enables the Investigating Authority to identify whether a case exists for conducting an official investigation.

The Investigating Authority requires that submitted applications include sufficient evidence to support allegations of dumping and resulting material injury.

6. Who has the right to submit an application?

The application shall be lodged by or on behalf of the domestic industry or federation of industries or chamber of industries concerned.

In order to lodge an application, the industry - or whomever acts on its behalf – are required to fulfill the following two conditions:

1. The complainant industry produces a similar product to the subject product imported.

The similar product (like product) is identical in all aspects to the subject good imported. Or in case of the absence of this product – another product, which, even if it is not identical in all aspects, contains characteristics that are close to those of the allegedly dumped product..

(Annex No. 1 provides guidance in identifying the like product.²)

2. Standing Ratio

Domestic industry means the domestic producers of the similar products or those who produce a significant ratio of the total domestic production of those products.

However, if the producers are also importers of the alleged dumped product, then the term “domestic industry” applies to the other producers, meaning that producer-importers are excluded from the industry standing ratio.

The application is considered to have been submitted by the domestic industry or on its behalf if it is supported by the domestic producers whose production represents more than 50% of the total production of the like product of those domestic producers who either support or oppose the application. The investigation cannot be initiated when producers who support or oppose the application represent less than 25% of the total production of the like product produced by the domestic industry.

(Annex 2 provides guidance on how to calculate the industry standing ratio.³)

² Not attached here. Please refer to the “Egyptian System for Anti-dumping, Subsidy and Countervailing Duties, and Safeguards in the Context of the WTO Agreement” for all annexes. A copy of the book is available from the Anti-Dumping, Subsidy and Safeguard Department at the Foreign Trade Policies Sector, Ministry of Foreign Trade

7. Does the Anti-Dumping, Subsidy and Safeguard Department provide any assistance to the complainant?

The Department may provide advice in preparing the application, and the Department will reply to questions concerning dumping or injury. Contact information is provided in this manual.

8. Studying the Application:

The Anti-Dumping, Subsidy and Safeguard Department in the Foreign Trade Sector (Ministry of Foreign Trade) studies the applications.

The official correspondences regarding the application and initiation have to be addressed to the Undersecretary and head of Anti-Dumping, Subsidy, and Safeguard Department.

The Minister of Foreign Trade is the competent authority that issues the final decisions and imposes the anti-dumping duties necessary to remove injury.

9. How are investigations conducted?

(1) Initiating Proceedings:

The Department examines the application immediately after receiving it to ensure that it is authentic and accompanied by supporting documents.

The complainant shall be notified within seven days of the Department's receipt of the application accompanied with documents needed for its acceptance.

Once the application has been accepted as legitimate and accompanied with supporting documents, the Department will notify the governments of exporting countries that there is an application under study and examination.

The application is examined in order to identify whether there is sufficient evidence to proceed with the investigation. During the examination process, the complainant may be asked to clarify the information provided in the application.

The Department makes a decision on whether to conduct the investigation or to disregard the matter within thirty days of receiving the application. If the Department decides not to conduct an investigation because the information and documentation provided in the application do not justify it, the Department will inform the complainant in detail about the reasons for not conducting the investigation. If sufficient evidence exists, the Advisory Committee will be requested to approve conducting the examination and verification process, after which it will be submitted to the Minister for approval.

The examination and verification process starts officially when initiation of the investigation is published in the official gazette, and the complainant industry, importers, exporters, suppliers and the governments of the exporting countries are notified of the beginning of initiation procedures, stages, and time limits. At the same time the Department sends a non-confidential

³ Not Attached

version of the application and the questionnaires prepared for this purpose to the domestic producers, importers, exporters and governments of the exporting countries, in the case of subsidy and surge of imports, and in other cases, to the industrial bodies which use the product or the main dealers of the product in Egypt. A deadline is set – 37 days from the time the questionnaires are sent – for respondents to reply to the questionnaires. Replies are to be sent to the Department. Certain parties, other than, for example, producers, exporters, importers, and governments, who represent the consumers or the competitive interests in Egypt, may be allowed to participate with a notification about their attendance in a special form prepared for that purpose, which can be obtained from the Department.

If no replies to the questionnaires are received within the time limit, responses may be ignored in making the preliminary decision. Where replies are received or where they are incorrect, the Department will take the preliminary and the final decision in light of the best information available, even if it is the information submitted by the complainant.

(2) The Investigation:

The investigation includes a comprehensive examination of evidence in the case and far-reaching collection of information related to trade and industry, and evaluating whether dumping is causing injury. The Department's investigators analyze foreign exporters' responses and conduct on-site verification visits at these firms' premises to verify information provided in those firms' responses and their compatibility with the ledgers and the financial statements in order to calculate the dumping margin.

In addition, another group of investigators analyze the producers' responses in order to identify the existence of injury and its extent and causes. This group also conducts on-site verification visits in the producers' premises in Egypt.

The Department prepares a preliminary report to be submitted before the Advisory Committee including the results that have been concluded regarding dumping, injury suffered by the domestic industry, and the causal link between them in order to make a preliminary decision.

The preliminary decision can either be positive or negative.

A negative preliminary decision may be the result of a no dumping finding, or finding of dumping and no apparent injury on the domestic industry, or finding of dumping and injury to domestic industry that were the result of causes other than dumping.

10. Positive Preliminary decision:

If the conclusions are positive, in other words there is dumping, injury, and existence of causal link between dumping and injury, the Department prepares a preliminary report to be reviewed by the Advisory Committee to approve the continuation of the investigation, and makes a preliminary decision to impose provisional anti-dumping duties, in which the aim is to prevent further injury during the residual period of investigation. The Advisory Committee, in turn, prepares recommendations for the approval of the Minister of Foreign Trade concerning the imposition of provisional measures.

The Minister of Foreign Trade issues a decree imposing provisional measures for four months, which may be extended for another two months. This decree is published in the *Official Gazette* and circulated to interested parties.

Before publishing the preliminary decision, concerned parties are informed the results of the investigation, reasons for the decision, and the basis on which the dumping margin, injury and the causal link are established. Concerned parties are provided the opportunity to comment in writing within 15 days on the decision. Interested parties have the right to request that public hearings be held in the Department to discuss dumping margins, present legal arguments, and comment on the Department's findings.

11. Definitive measures:

After the issuance of provisional measures, the Department continues its investigation to reach a final decision within a period not exceeding 180 days to determine whether dumped imports are causing injury to the domestic industry.

If the investigation concludes that there is dumping, injury, and a causal link between them, a final decision is issued in the same way as with the preliminary decision, and provisional duties become definitive duties.

12. Period of validity of anti-dumping, countervailing, and safeguard duties:

Anti-dumping and countervailing definitive duties in subsidy cases may continue for five years and may be renewed if their termination may cause injury to the domestic industry. Safeguard duties are valid for four years and may be extended, but they may not last for more than ten years including the period that provisional safeguard duties are in effect.

13. How confidential information is dealt with:

Preparing a proper dumping application requires specific information on Egyptian products. Some producers may be reluctant to disclose this information to competitors in the same industry domestically or abroad.

The Anti-dumping Agreement annexed to the final document of the Uruguay Round and the Egyptian law concerning the Protection of National Economy from Injurious Effects of Unfair Practices in International Trade ensure the protection of confidential information submitted by all parties and outline methods of presenting, using, and safeguarding confidential information. The aforementioned law criminalizes the disclosure of confidential information and sets a fine of not less than ten thousand pounds and not to exceed fifty thousand pounds for anyone who discloses confidential information.

According to applicable measures, confidential information is dealt as follows:

The applicant should submit confidential information to prove injury. The law forbids the Department and its employees from exploiting this confidential information for any purpose other than the application under investigation. It is forbidden for the employees in the Department to disclose the information to any person or governmental department, including the tax Authority or the courts, without the approval of the party providing the confidential information.

The applicant is required to submit a non-confidential copy of the information provided to the Department to give the chance to interested parties to comment and defend their interests. This non-confidential copy (non-confidential summary) consists mostly of the same information as what is included in the complaint except that confidential numbers are omitted leaving blank spaces instead.

The same rules concerning safeguarding confidential information – and providing non-confidential summaries thereof – apply to confidential information from all sources during all stages of investigation.

Parties to the investigation are allowed to review non-confidential information used in the investigation for comment and analysis.

The Department (Investigating Authority) prepares a non-confidential file to be available for all parties to the investigation and a confidential file that is not available for review or copying.

Where to send the application:

The application is sent to
Undersecretary- Head of Anti-dumping, Subsidy and Safeguard
Ministry of Foreign Trade- Foreign Trade Sector
19 Ma'had Naser Str.- Aghakhan- Shubra- Kornich El- Nil –Cairo

For more information, please contact
Head of Anti-dumping, Subsidy and Safeguard Department Subsidy and Safeguard Dept.
Phone: 2037817 Fax: 2026681

Appendix B

DECREE NO. 549 OF 1998 AND
EGYPTIAN LAW NO.161 OF 1998

Ministerial Decree No.1998/549

To issue Regulation of Law

No. 161/1998

Concerning the Protection of National Economy from Injurious Effects of Unfair Practices in International Trade

Issued on 24/10/1998

Minister of Trade & Supply

Having regard to law No. 42/1967 concerning authorization of powers,

Having regard to law No. 161/1998 concerning the protection of national economy from injurious effects of unfair practices in international trade,

Having regard to Presidential Decree No. 72/1995 concerning the accession of A.R.E to The World Trade Organization (W.T.O), the Agreements embodied in the Final Act including the Results of Multilateral Trade Negotiations of Uruguay Round and Egypt's schedule of undertakings in the fields of trade in goods and services concluded in Marrakech, Morocco on April 15th, 1994; and

Having regard to Ministerial Decree No. 67/1992 to form the committee on the protection of domestic industry from dumping and subsidy,

Has decided:

Article 1

The attached provisions of the Regulation of Law No. 161/1998 concerning the protection of national economy from injurious effects of unfair practices in international trade shall be enforced without prejudice to the provisions stated in the agreements included in the Final Act of Uruguay Round.

Article 2

Ministerial Decree No. 67/1992 referred to shall be revoked.

Article 3

This Regulation shall be published in the Official Gazette and shall enter into force on the day following its publication.

Regulation of Law No. 161/1998

Concerning The Protection of National Economy From Injurious Effects of Unfair Practices in International Trade

Part I

3Definitions & General Provisions”

Section 1

Definitions

Article 1

In applying the provisions of this regulation, the following terms shall be defined as follows:

- “Final Act”**: means the act including the Results of Multilateral Trade Negotiations of Uruguay Round.

- “W.T.O Agreement”**: means Marrakech Agreement establishing the World Trade Organization concluded in Marrakech, Morocco on April 15, 1994.

- **“Anti-dumping Agreement”**: means the Agreement included in Annex (1A) to the Final Act of the Results of Uruguay Round concerning the Implementation of Article VI of GATT 1994 and regulating the imposition of anti-dumping duties against dumped imports causing material injury to the domestic industry or threat thereof.

- “Agreement on Subsidies and Countervailing Measures”**: means the Agreement included in Annex (1A) to the Final Act of the Results of Uruguay Round concerning the Implementation of Article XVI of GATT 1994 and regulating the imposition of countervailing duties against countries which provide subsidies for the goods exported from them and thereby causing injury to the domestic industry or threat thereof.

- “Agreement on Safeguard”**: means the Agreement included in Annex (1A) to the Final Act of the Results of Uruguay Round concerning the Implementation of Article 19 of GATT 1994, regulating the imposition of safeguard measures against increased imports causing serious injury to the domestic industry or threat thereof.

- “Injurious Practices”**: means increase of imports of a product as a result of dumping or subsidy which causes material injury to the domestic industry or threat thereof, or the unjustifiable increase of imports which causes serious injury to the domestic industry or threat thereof.

- “Concerned parties”** shall include the domestic industry (the applicant), those acting on behalf of the domestic industry, importers, exporters and governments of exporting countries.

- “Other interested parties”**: means industrial users of the product under investigation, consumer associations, government bodies responsible for consumer protection, government bodies responsible for making competition policies or any other foreign or domestic parties found to have an interest.

“Domestic Industry”: means the Egyptian producers of the like product whose collective output represents a major proportion of the domestic production of that product. This definition is applicable to both industrial and agricultural production.

“Independent buyer”: means a buyer who is in no way related to the importer; there is no commercial or production partnership between the buyer and the importer, there is no common relationship in another business, they are not directly or indirectly controlled by a third party or members of the same family.

“Government of an exporting country” means:

- a) The government of a foreign country.
- b) Any local or regional Government or authority of a foreign country
- c) A body that exercises authority for an association of foreign countries.
- d) A person, agency or institution acting for or on behalf of a government or body referred to in (a) to (c) of this definition.

“Members having substantial interest in supplying the product concerned”: means those member states that export a significant proportion of the total imports of Egypt’s imports of the product under investigation.

“The Investigating Authority”: means The International Trade Policies Department (Anti-dumping, Subsidy and Safeguard Department), Foreign Trade Sector.

Section 2

General Provisions

Article 2

Foreign Trade Sector, Ministry of Trade and Supply, shall be the competent authority for implementing the provisions of law No. 161/1998 referred to.

Article 3

An Advisory Committee shall be formed upon a decree by the Minister of Trade and Supply to consider the results concluded by the Investigating Authority concerning the injurious practices in international trade, so that the committee can make recommendations to the Minister of Trade and Supply.

This decree sets out the competencies, rules and work system of that committee.

Article 4

Both Head of Foreign Trade Sector and Head of International Trade Policies Department of the Ministry of Trade & Supply shall be authorized to ask for the data required to prove the cases of subsidy, dumping or unjustifiable increase of imports.

Article 5

In cases where the Administrative Court refers cases to a competent expert, a time limit shall be set to complete the task and expert fees shall not be less than three hundred pounds per day.

Article 6

Notifications to interested parties, letters to complete documents or to ask for comments shall be sent by a registered mail, courier service, which confirms delivery to the interested party personally or to his legal deputy.

The above-mentioned procedures shall be taken in all correspondences with the parties concerned in foreign countries through their diplomatic missions or authorized consuls in A.R.E.

Article 7

The Investigating Authority shall prepare a detailed report including information and explanations concerning all notifications. This report shall be available to all parties concerned.

Article 8

The Investigating Authority shall require interested parties providing confidential information to furnish non-confidential summaries thereof. These summaries shall be in sufficient details to permit a reasonable understanding of the substance of the information submitted in confidence. Those parties may indicate that such information is not susceptible of summary. In this case a statement of the reasons why summarization is not possible must be provided.

The Investigating Authority may disregard data and information provided if confidentiality is not justified or the request for confidentiality is not warranted.

Article 9

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

Article 10

Rejection of an application, initiation or termination of investigation, provisional or definitive measures or acceptance of a price undertaking or any other measures shall be upon a decision by the Minister of Trade and Supply and upon a recommendation by the Advisory Committee mentioned in article 3 of this regulation.

Article 11

The Investigating Authority shall be required to complete the investigation within 12 months from the date of initiation. The Minister of Trade and Supply may extend this period, upon recommendation by the advisory committee referred to, for another period of no more than six months.

Article 12

Procedures, measures and duties applied in accordance with this regulation shall be applicable to imported goods for which a custom statement has been made for final clearance.

Part II

³Application and Procedures of Investigation”

Section 1

The Application

Article 13

A written application of the effects caused by subsidy, dumping or unjustifiable increase of imports shall be submitted to the Investigating Authority in the form provided for this. The applicant shall attach a non-confidential summary to the application, in sufficient details to permit a reasonable understanding of the substance of the information submitted in confidence.

Article 14

The application shall be accepted only if it is lodged by or on behalf of the domestic industry, chamber of the industries concerned, federation of industries, producers associations or the ministries supervising any of the production sectors.

The application shall include evidence of the existence of dumping, subsidy or unjustifiable increase of imports, the injury caused by each and the causal link between each and the injury caused or threatened to the applicant.

Article 15

In applications where the domestic industry alleges that dumped or subsidized imports have materially retarded the establishment of a new industry, the applicant should provide:

- 1- Whether the domestic industry of the like product has already been established and the time required establishing this industry if it hasn't been established yet.
- 2- Possibilities of continuing this industry.
- 3- Feasibility studies.
- 4- Negotiated loans.
- 5- Contracts concluded to purchase new machinery to implement new investment or to expand the existing factories.

Article 16

The Investigating Authority should inform the applicant, within seven working days from the date of receiving the application, whether the application has been accepted in principle. The Investigating Authority may ask the applicant to provide information required considering the acceptance of the application. The application shall be registered promptly after acceptance.

Article 17

The Investigating Authority shall examine the accuracy and adequacy of the evidence provided within thirty days from the date of registering the application. The Investigating Authority shall submit a preliminary report to the Advisory Committee showing the results of considering whether to reject the application or to initiate an investigation. This committee shall present its recommendations to the Minister of Trade and Supply within ten days from the date of receiving this report.

Article 18

The Investigating Authority shall notify the applicant of the reasons why the application was rejected within no more than seven days of the Ministerial determination.

Section 2
Investigation Procedures

Article 19

An investigation shall not be initiated unless the application is supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25 per cent of total production of the like product produced by the domestic industry.

Article 20

The Investigating Authority may, after presenting the report to the Advisory Committee and after approval of the Minister of Trade & Supply, initiate an investigation without having received a written application by or on behalf of the domestic industry for the initiation of such investigation only if they have sufficient evidence of dumping, subsidy or unjustifiable increase of imports, injury and a causal link to justify the initiation of an investigation.

Article 21

The Investigating Authority shall notify the governments of the countries concerned with the applications already accepted before proceeding to initiate an investigation, except in respect to safeguard applications.

Article 22

The Investigating Authority shall publish the notice of the initiation of an investigation in the Official Gazette. The notice shall include:

- 1- Names of the countries of origin or export of the product under investigation.
- 2- A description of the product in question.
- 3- A description of the allegations and practices under investigation.
- 4- A summary of the basis for alleged injury.
- 5- Time limits for other parties concerned to reply.
- 6- The address the interested parties should send their replies to.

Article 23

The Investigating Authority shall send all known interested parties and the representatives of the exporting countries a copy of the non-confidential version of the application, the notice of initiation and questionnaires to get the data necessary for the investigation. The parties concerned should send their responses within 37 days from the date of receiving the questionnaires. This period may be extended upon good cause accepted by the Investigating Authority.

Article 24

In cases where the number of the parties concerned or the types of products involved is so large as to make such investigation impracticable, the Investigating Authority may limit their investigation to a representative sample of the parties or types of products involved.

Article 25

The Investigating Authority shall provide fair opportunities for all parties concerned to defend their interests during the period of investigation and may, upon request hold hearings for the interested parties to present their views and arguments. All interested parties can present verbal information during the hearings, however this information shall not be taken into consideration unless it is provided in writing later on.

Article 26

The Investigating Authority may conduct on-the-spot verification visits inside and outside the country to obtain the information and data required for the investigation provided they obtain the approval of the parties concerned.

Article 27

In case of absence of the data required, failure to submit data within the time limit or non-cooperation with the Investigating Authority, the Investigating Authority may proceed in the investigation procedures and come to conclusions according to the best information available.

Article 28

Investigation procedures shall not prevent clearance of consignments of the subject goods from customs.

Article 29

Subject to the requirement to protect confidential information, the Investigating Authority shall make available all information and data, relevant to the investigation, to all the parties concerned. The Investigating Authority shall disclose the confidential information to the court or the expert it appoints upon written permission from the party providing such information.

Article 30

Investigation shall be terminated if the Investigating Authority finds no sufficient evidence injurious practices, injury or causal link between both.

Article 31

The Investigating Authority shall, where conditions of an injurious practice in international trade are met, prepare a report of the conclusions reached in the investigation within three months from the date of the notice of initiation.

Part III

“Anti-dumping”

Section 1

Dumping Calculations

Article 32

Dumping is the introduction of a product into Egypt at an export price, which is less than its normal value in the ordinary course of trade.

Export price shall be the price paid or payable by the importer other than any part of the price that represents:

(i) costs, charges, and expenses incurred in preparing the goods for shipment to Egypt that are additional to those costs, charges, and expenses generally incurred on sales for home consumption; and

(ii) any other costs, charges, and expenses resulting from the exportation of the goods or arising from their shipment from the country of export.

Normal value shall be the price paid for the like goods in the ordinary course of trade for home consumption in the country of origin/export or the cost of production plus the selling, general and administrative costs in addition to the amount of profit normally realized on sales of goods or the price at which the like product is exported to a third country.

The Investigating Authority may construct the normal value for goods originating in or exported from a state-economy country or on the basis of the data of a free-economy country with similar conditions or on any other basis it deems appropriate.

Article 33

In cases where there is no export price for the product concerned or where it appears to the Investigating Authority that the export price is unreliable because of association, relationship or a compensatory agreement between exporter and the imported or a third party, the export price may be calculated on the basis of the selling price to the first independent buyer in the domestic market or any other basis the authority deems appropriate.

Article 34

The normal value shall be constructed according to the cost of production in the country of origin plus an appropriate amount for selling, general and administrative costs and a reasonable margin of profit, or according to the export price of the goods to a third country in the following cases:

- 1- where there is no sales in the domestic market of the country of export or where domestic sales are made at a loss.
- 2- where domestic sales of the subject goods account for less than five percent of the export sales to Egypt.

Article 35

In cases where there is no sufficient data to determine the export price or the normal value, the Investigating Authority may determine them on the basis of the best information available.

Article 36

The margin of dumping is the difference between the normal value and the export price.

In calculating the margin of dumping, the Investigating Authority shall make the calculations on the same level of trade for as nearly as possible the same period, taking into consideration the factors which affect price comparability pursuant to the provisions of Article 2.4 of the Anti-dumping Agreement.

Article 37

The Investigating Authority shall calculate a separate margin of dumping for each exporter. The highest margin of dumping shall be imposed on the unknown or non-cooperative exporters.

If the number of exporters is large, the Investigating Authority may limit the investigation to a representative sample in which case the margin of dumping shall be applied as follows:

1. Individual margins of dumping or the weighted average of these margins shall be applied to the representative sample of exporters.
2. The weighted average of the dumping margins calculated for the representative sample of exporters shall be applied to the cooperative exporters not included in the sample.
3. The highest dumping margin shall be applied to the unknown or non-cooperative exporters.

Article 38

The Investigating Authority shall prepare a report to recommend the termination of the investigation in the following cases:

- a- If the volume of dumped imports from a particular country is less than 3% of the volume of imports of the subject goods unless countries which individually account for less than 3% of the total imports of the like product collectively account for more than 7% of the total imports.
- b- If the margin of dumping is less than 2% of the export price.

Section 2

Determination of Injury

Article 39

The Investigating Authority, having examined all positive evidence, shall determine the material injury suffered by the domestic industry and shall verify the following:

- 1- Existence of significant increase in dumped imports, either in absolute terms or relative to production or consumption in Egypt. With regard to the effect of the dumped imports on prices the authority shall consider:
 - a. whether there has been a significant price undercutting by the dumped imports as compared with the price of the domestic like product,
 - b. whether the effect of such imports is to depress prices of the like product to a significant degree, or
 - c. whether the effect of such imports is to prevent price increases which otherwise would have occurred.
- 2- The economic effects of the dumped imports on the domestic industry reflected in the following:
 - a. Actual and potential decline in sales, profits, production, market share, productivity, return on investment or utilization of capacity.
 - b. Factors affecting domestic prices.
 - c. Magnitude of the margin of dumping.
 - d. Actual and potential negative effects on cash flow, inventories, employment, wages, investment, growth and ability to raise capital.
 - e. Any other factors the Investigating Authority deem to be significant.

Article 40

Subject to the provisions of article 39 of this regulation, in determining the threat of injury to the domestic industry, the Investigating Authority shall verify that the threat of injury is clear and imminent and shall consider the following:

- 1- The rate of increase of the dumped imports.
- 2- Likelihood of significant increase in dumped imports into Egypt in the light of contracts (future purchase orders).
- 3- Whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports.
- 4- The existence of significant exports capacity or inventories of the product in question in the exporting companies.
- 5- Any other factors which the Investigating Authority determines to have an economic effect on the industry.

Article 41

The Investigating Authority shall verify that the injury suffered by the industry is caused by the dumped imports and not due to any other causes.

Article 42

The Investigating Authority shall, on receiving an application of dumped imports, which lead to materially retard a new industry, evaluate the contents of the application and prepare a report with their recommendations on it.

Article 43

Where imports of a product from more than one country are simultaneously subject to anti-dumping investigations, the Investigating Authority may cumulatively assess the effects of such imports only if they determine that:

1. The margin of dumping established in relation to the imports from each country is 2% or more of the export price.
2. The volume of imports from each country is 3% or more of the total volume of imports of the like product into Egypt.
3. The existence of competition among the imported products and between the imported products and the like domestic products.

Section 3

Provisional Measures

Article 44

Provisional measures may take the form of cash deposit, which is not greater than provisionally estimated margin of dumping. Such provisional measures shall not be applied sooner than 60 days from the date of initiation of investigating and a conclusion is made by the Investigating Authority that there exists dumping which caused injury to the domestic industry.

Provisional measures shall be applied for a period not exceeding four months, which may be extended to six months.

If the provisional measures are less than the margin of dumping, they shall be applied for six-months which may be extended to nine months.

Section 4

Definitive Anti-dumping Duties

Article 45

The Investigating Authority shall determine the amount of definitive anti-dumping duties, which will not exceed the margin of dumping.

Such duties shall be imposed on dumped imports of the product from all sources found to be causing material injury to the domestic industry, except for imports from those sources from which price undertakings have been accepted.

Article 46

Definitive anti-dumping duties shall be imposed for a period, which will not exceed 5 years from the date of publishing the final determination of imposition in the Official Gazette.

Article 47

In cases where products subject to definitive anti-dumping duties are exported to Egypt by exporters or producers who have not exported the product to Egypt during the period of investigation, the authority shall promptly carry out a review for the purpose of determining individual margins of dumping for each of them provided that they can show that they are not related to any of the exporters or producers referred to during the course of the review.

In these cases the Investigating Authority may request guarantees, which are equal to the definitive anti-dumping duties, imposed on other exporters from the date of initiating the review.

Section 5

Undertakings

Article 48

Exporters may offer to the Investigating Authority voluntary undertakings to increase the price of their exports to Egypt. Price increases under such undertakings shall not be higher than necessary to eliminate the margin of dumping established by the Investigating Authority.

In accepting, rejecting or amending undertakings the following issues shall be taken into consideration:

- 1- The possibility to suspend or terminate proceedings, if such undertakings are accepted and if the Investigating Authority finds these undertakings sufficient to eliminate the margin of dumping unless the exporters ask to continue the investigation.
- 2- Informing the exporters in case of rejection and the reasons for that rejection if practicable.
- 3- The Investigating Authority may also require any exporter from whom an undertaking has been accepted to periodically provide information relevant to the fulfillment of such an undertaking and to permit verification of pertinent data.

Article 49

Subject to the provisions of section 7 of this part, price undertakings shall be maintained for a reasonable period of time sufficient to eliminate the margin of dumping.

Undertakings shall automatically lapse if a decision was taken to terminate the investigation as there is no evidence of dumping or no injury was caused to the domestic industry.

Article 50

In case of violation of an undertaking the Investigating Authority may prepare a report to impose a provisional duty using the best available information or impose definitive duties. In such cases, definitive duties may be levied retroactively on the products, which entered on the date of violation of the price undertaking and not more than 90 days before the application of such provisional measures.

Section 6

Retroactivity

Article 51

Where a final determination of injury or threat thereof is made, anti-dumping duties may be levied retroactively for the period for which provisional measures have been applied.

Article 52

If the definitive anti-dumping duty is higher than the provisional duty paid, the difference shall not be collected. However, if the definitive duty is lower than the provisional duty paid, the difference shall be reimbursed.

Article 53

Where a determination of threat of injury or material retardation is made (but no injury has yet occurred) a definitive anti-dumping duty shall not be imposed retroactively.

Article 54

A definitive anti-dumping duty may be levied on products which were entered for consumption not more than 90 days prior to the date of application of provisional measures, when the Investigating Authority determines that:

- a- There is a history of dumping which caused injury or that the importer was aware or should have been aware that the exporter practiced dumping and that such dumping would cause injury, and
- b- The injury is caused by increased dumped imports of a product in a relatively short time which is likely to seriously undermine the remedial effect of the definitive anti-dumping duty to be applied, provided that the importers concerned have been given an opportunity to comment.

Section 7

Review of Definitive Anti-Dumping Duties

Article 55

The Investigating Authority may, after one year from the date of imposition of definitive anti-dumping measures, review the need for the continued imposition of the duty, where

warranted, upon request by any interested party, which submits positive information substantiating the need for a review.

If, as a result of the review, the Investigating Authority determines that the definitive anti-dumping duty is no longer warranted it shall be terminated immediately.

If, as a result of the review, there is a need to impose definitive duties, they may be imposed for no more than five years from the date of the most recent review.

The Investigating Authority may, at any time, carry out a review on its initiative if necessary.

Article 56

The Investigating Authority shall carry out a review on its initiative or upon request by a concerned party, six months before the expiry of the five-year period from the date of the imposition of definitive duties. The Investigating Authority shall review whether the expiry of the duty is likely to lead to continuation or recurrence of dumping and injury. The duty shall remain in force pending the outcome of such a review.

Any such review shall be concluded within 12 months of the date of the initiation of the review.

Part IV

“Subsidy and Countervailing Measures”

Section 1

Definition of Subsidy

Article 57

Subsidy is any financial contribution provided directly or indirectly, by the government of the country of origin or any public body within its territory and a benefit is thereby conferred to the recipient of subsidy either producer(s) or exporter(s).

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

Measures can be taken against subsidy only if it confers a benefit on the recipient, is directed or specific to certain enterprises or industries and causes material injury or threat thereof to the domestic industry or materially retards the establishment of a new industry.

Section 2

Consultations

Article 58

Upon acceptance of an application, the Investigating Authority shall take necessary measures to invite the governments of the exporting countries of the subsidized products under consideration to conduct consultations with the purpose of reaching mutually accepted solutions.

The Investigating Authority shall give the opportunity, as well, in the course of investigations, to conduct the above mentioned consultations.

Conduct of consultations shall not prevent the initiation or completion of investigation.

Section 3

Subsidy Calculations

Article 59

The amount of subsidy is the amount of money, which represents the benefit conferred on the recipient. Investigating Authority shall calculate the amount of subsidy according to the following rules:

- 1- Determining the total amount of the subsidy provided to the products under investigation during the period of investigation.
- 2- A weighted average shall be used if the amount of the subsidy varies among the exporters of the country providing a subsidy.
- 3- Expenses and charges spent to get the subsidy shall be deducted from the amount of a subsidy.
- 4- The amount of the subsidy shall be calculated on a unit basis and as a percentage of the value of this unit.
- 5- The amount of the subsidy does not include:
 - a. the provision of equity capital by a foreign government unless the investment decision in relation to the provision of that equity can be regarded as inconsistent with the usual investment practice of private investors in the territory of the exporting country;
 - b. the provision of a loan by a foreign government unless the amount that the recipient of the loan pays under the loan is less than the amount that the recipient would pay under a comparable commercial loan that the recipient would obtain on the market, in which case, the benefit to the recipient shall be deemed to be the difference between those two amounts;
 - c. the provision a loan guarantee by a foreign government unless the amount that the recipient of the loan pays under the government guaranteed loan is less than the amount that the recipient would pay under a comparable commercial loan that was not so guaranteed, in which case, the benefit of the recipient shall be deemed to be the difference between those two amounts.

The Investigating Authority shall establish the amount of the subsidy according to the reliable available data if it does not have sufficient data to verify the amount of the subsidy.

Article 60

Investigating authority shall prepare a report recommending the termination of investigation if it is found that the amount of the subsidy is less than 1% of the value of subsidized goods; or where the imposition of a countervailing duty on the subject goods is inconsistent with Egypt's obligations under GATT 1994.

Section 4

Determination of Injury

Article 61

The Investigating Authority, having examined all positive evidence, shall determine the material injury suffered by the domestic industry and shall verify the following:

- 1- Existence of significant increase in subsidized imports either in absolute terms or relative to production or consumption in Egypt. With regard to the effect of the subsidized imports on prices the authority shall consider:

- a. whether there has been a significant price undercutting by the subsidized imports as compared with the price of the domestic like product.
 - b. whether the effect of such imports is to depress prices of the like product to a significant degree, or
 - c. whether the effect of such imports is to prevent price increases which otherwise would have occurred.
- 2- The economic effects of the subsidized imports on the domestic industry reflected in the following:
- a. Actual and potential decline in sales, profits, production, market share, productivity, return on investment or utilization of capacity.
 - b. Factors affecting domestic prices.
 - c. Actual and potential negative effects on cash flow, inventories, employment, wages, investment, growth and ability to raise capital.
 - d. The increase of burden on government subsidy programs for agricultural goods.
 - e. Any other factors the Investigating Authority deems to be significant.

Article 62

Subject to the provision of article (61) of this regulation, in determining the threat of injury to the domestic industry, the Investigating Authority shall verify that the threat of injury is clear and imminent and shall consider the following:

- 1- The rate of increase of the subsidized imports.
- 2- Likelihood of significant increase in subsidized imports into Egypt in the light of contracts (future purchase orders).
- 3- Whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports.
- 4- The existence of significant exports capacity or inventories of the product in question in the exporting companies.
- 5- Any other factors which the Investigating Authority determines has an economic effect on the industry.

Article 63

The Investigating Authority shall verify the injury suffered by the industry is caused by the subsidized imports and not as a result of any other causes.

Article 64

The Investigating Authority shall, on receiving an application of subsidized imports which led to materially retard a new industry, evaluate the contents of the application and prepare a report with their recommendations on it.

Article 65

Where imports of a product from more than one country are simultaneously subject to subsidy investigation, the Investigating Authority may cumulatively assess the effects of such imports only if they determine that:

- 1- The amount of subsidy established for each unit of the product under investigation is 1% or more.
2. The existence of competition among the imported products and between the imported products and the like domestic products.

Section 5

Provisional Measures

Article 66

Provisional measures may take the form of cash deposit, which is not greater than the amount of subsidy. Such provisional measures shall not be applied sooner than 60 days from the date of initiation of investigation and a preliminary conclusion is made by the Investigating Authority that there exists subsidy, which caused injury to the domestic industry.

The application of provisional measures shall be limited to a period not exceeding four months.

Section 6

Definitive Countervailing Duties

Article 67

The Investigating Authority shall determine the amount of definitive duties. This amount of definitive duties should not exceed the amount of the subsidy calculated for each unit under investigation.

These duties shall be imposed on the subsidized imports from all sources if it is found that they cause injury to the domestic industry. Duties will not be imposed on all countries subject to the investigation, which eliminated the subsidy under investigation or those, whose undertakings were accepted.

Article 68

Definitive countervailing duties shall be imposed for a period not exceeding 5 years starting from the date of publishing the notice of imposition in the Official Gazette.

Article 69

If the products subject to definitive countervailing duties are imported into Egypt by producers or exporters, not included in the proceedings for reasons other than non-cooperation with the Investigating Authority, they may ask for an expeditious review to evaluate their countervailing duties.

Section 7

Undertakings

Article 70

Governments of the exporting countries or exporters, provided they get the approval of their governments, may offer to the Investigating Authority voluntary undertakings to increase the price of their exports to Egypt. Price increases under such undertakings shall not

be higher than necessary to eliminate the amount of subsidy established by the Investigating Authority.

In accepting, rejecting or amending undertakings the following issues shall be taken into consideration:

- 1- The possibility to suspend or terminate proceedings, if such undertakings are accepted and if the Investigating Authority finds these undertakings sufficient to eliminate the amount of subsidy unless the exporters ask to continue the investigation.
- 2- Informing the exporters in case of rejection and the reasons for that rejection if practicable.
- 3- The Investigating Authority may also require exporters or governments from whom undertakings have been accepted to periodically provide information relevant to the fulfillment of such undertakings and to permit verification of pertinent data.

Article 71

Subject to the provisions of section 9 of this part, price undertakings shall be maintained for a reasonable period of time sufficient to eliminate the amount of subsidy.

The undertaking shall automatically lapse if a decision was taken to terminate the investigation where there is no evidence of subsidization or material injury to the domestic industry.

Article 72

In case of violation of an undertaking the Investigating Authority may prepare a report to impose a provisional duty using the best available information or impose definitive countervailing duties. In such cases, definitive duties may be levied retroactively on the products, which entered on the date of violation of the price undertaking and not more than 90 days before the application of such provisional measures.

Section 8

Retroactivity

Article 73

Where a final determination of injury or threat thereof is made, definitive-countervailing duties may be levied retroactively for the period for which provisional measures have been applied.

Article 74

If the definitive countervailing duty is higher than the provisional duty paid, the difference shall not be collected. However, if the definitive duty is lower than the provisional duty paid, the difference shall be reimbursed.

Article 75

Where a determination of threat of injury or material retardation is made (but no injury has yet occurred) a definitive countervailing duty shall not be imposed retroactively.

Article 76

A definitive countervailing duty may be levied on products which were entered for consumption not more than 90 days prior to the date of application of provisional measures, when the Investigating Authority determines that:

- a) there is material injury caused by large quantities of imports, in a relatively short time, of a product benefiting from subsidies paid or bestowed inconsistently with the provisions of GATT 1994, and
- b) it is necessary, in order to preclude the recurrence of such injury, to impose countervailing duties retroactively.

Section 9

Review of Definitive Countervailing Duties

Article 77

The Investigating Authority may, after one year from the date of imposition of definitive countervailing measures, review the need for the continued imposition of the duty, where warranted, upon request by any interested party which submits positive information substantiating the need for a review.

If, as a result of the review, the Investigating Authority determines that the definitive countervailing duty is no longer warranted it shall be terminated immediately.

If, as a result of the review, there is a need to impose definitive duties, they may be imposed for no more than five years from the date of the most recent review.

The Investigating Authority may, at any time, carry out a review on its initiative if necessary.

Article 78

The Investigating Authority shall carry out a review on its initiative or upon request by the domestic industry, six months before the expiry of the five-year period from the date of the imposition of definitive duties. The Investigating Authority shall review whether the expiry of the duty is likely to lead to continuation or recurrence of subsidy and injury. The duty shall remain in force pending the outcome of such a review.

Any such review shall be concluded within 12 months of the date of the initiation of the review.

Part V

³Safeguard Measures Against the Unjustifiable Increase in Imports³

Section 1

Application of Safeguard Measures

Article 79

Safeguard measures against unjustifiable increase of imports are those applied against products (other than dumped or subsidized) imported into Egypt in such increased quantities, absolute or relative to domestic production and under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products.

Section 2

Determination of Serious Injury or Threat Thereof

Article 80

³ Serious injury⁷ shall be understood to mean a significant overall impairment in the position of a domestic industry.

³ Threat of serious injury⁷ shall be understood to mean serious injury that is clearly imminent and that would cause impairment in the position of the domestic industry.

Article 81

The Investigating Authority shall determine the serious injury caused to the domestic industry on the basis of facts and the existence of a causal link between the increased imports of the product concerned and serious injury or threat thereof. The Investigating Authority shall verify the following:

1. An increase in imports of the product under investigation either absolute or relative to production in Egypt.
2. 2-The impact of increased imports on the situation of the domestic industry, including sales, production, productivity, utilization of capacity, profits and losses, employment and market share.

Section 3

Provisional Safeguard Measures

Article 82

Provisional safeguard measures against unjustifiable increase of imports may be imposed if the Investigating Authority finds a clear evidence that increased imports have caused or are threatening to cause serious injury that can not be easily remedied or would be difficult to remedy should the imposition of these measures be delayed.

Article 83

Provisional safeguard measures shall take the form of tariff increases, taking into consideration the following:

- 1- The duration of the provisional measure shall not exceed 200 days.
- 2- Should such measures take the form of tariff increases, they shall be promptly refunded if the investigation does not determine that increased imports have caused or threatened to cause serious injury to the domestic industry.

Section 4

Definitive Measures

Article 70

If it is found that the imports of the product under investigation have caused serious injury to the domestic industry or threat thereof, the Investigating Authority shall recommend to apply definitive safeguard measures in the form of quantitative restrictions or increase in customs duties or both, taking into consideration the following:

- 1- The definitive safeguard measure shall be applied to the extent necessary to prevent or remedy the serious injury caused to the domestic industry.

- 2- Where a quantitative restriction is used, the determined quantities for each country shall not be less than the average volume of imports for the most recent 3 years or any period the investigating authorities may consider necessary to remove the injury provided that it is justified.
- 3- In cases where a quota is allocated among members having a substantial interest in supplying the product, shares shall be allotted based upon the proportions, supplied by such members during a previous representative period, of the total quantity or value of imports of the product, unless justified reasons for not applying this rule are provided.
- 4- The period of application of a definitive safeguard measure shall be four years which may be extended to not more than 10 years including the period of application of provisional measures.
- 5- No safeguard measure shall be applied to the imports of a product which has been previously subject to a safeguard measure, provided that the period of non-application is at least two years.

Part VI

Final Provisions

Article 85

The Minister of Trade and Supply may accept or reject the recommendations of the Advisory Committee. He may also terminate or reduce countervailing duties.

Article 86

The Minister of Trade and Supply may apply the provisions of this regulation against imports from countries that are not members in the WTO or apply protective measures against the injurious practices of these countries in international trade for the purpose of Egypt's interest.

Article 87

The Minister of Trade & Supply may impose additional duties or any other restrictions on imports in accordance with the agreements included in the Final Act of Multilateral Trade Negotiations of Uruguay Round.

Article 88

Where a decision by the dispute settlement panels of the WTO or a final judgment is issued for termination of any measures taken in accordance with the provisions of this regulation, the Minister of Trade and Supply may terminate these measures or give directions to the Investigating Authority to reconsider these measures in the light of recommendations made by the dispute settlement panels or the final judgments.

Article 89

Member states and parties concerned shall have full opportunity to conduct consultations in consistency with the provisions of the agreements referred to.

Article 90

The Investigating Authority shall advise the committees concerned in the WTO of the notices stated in the agreements referred to.

Article 91

In applying the provisions of the agreements referred to, the Investigating Authority shall give special regard to the special situation of the developing countries.

Article 92

The Investigating Authority may give notice to initiate a new investigation or a review of the measures in force if it found that there is circumvention, which affects the effectiveness of these measures.

Article 93

In cases where anti-dumping and subsidy investigations for the same product are involved simultaneously only one duty shall be imposed.

Article 94

Provisions of the agreements referred to shall be applied on matters, which are not stated in this regulation.

Article 95

Parties concerned have the right of appeal to the Administrative Court concerning the measures and decisions taken pursuant to the provisions of this regulation and in accordance with the relevant rules and procedures.

Appendix C

EGYPT NOTIFICATION TO
THE WTO (JANUARY 2003)

**WORLD TRADE
ORGANIZATION**

G/ADP/N/98/EGY
24 January 2003

(03-0448)

Committee on Anti-Dumping Practices

Original: English

**SEMI-ANNUAL REPORT UNDER ARTICLE 16.4
OF THE AGREEMENT**

EGYPT

Reproduced herewith is the semiannual report for the period 1 July-31 December 2002 from Egypt.

SEMI-ANNUAL REPORT OF ANTI-DUMPING MEASURES

For the period 1 July-31 December 2002

Country/ customs territory	Product	Initiation	Provisional measures	FINAL MEASURES		NO FINAL MEASURES				Trade volume	Dumped imports as % of domestic consumption	% of trade volume investigated (of the exporting country)	Basis of determina- tion
				Definitive duty	Price undertaking	No dumping	No injury	Case withdrawn	Other				
1	2	3	4	5	6	7	8	9	10	11	12	13	14
		Date	Date (dumping margin)	Date (dumping margin)	Date (dumping margin)	Date	Date	Date	Date				
Chinese Taipei	Common electric filament lamps from 25-200 watts. Voltage up to 240 watts	24/09/01		05.09.02 100%						CF			FA
Hungary	Common electric filament lamps from 25-200 watts. Voltage up to 240 watts	24/09/01		05/09/02 78%						CF			FA
India	Matches	01/08/02											
Indonesia	Common electric filament lamps from 25-200 watts. Voltage up to 240 watts	24/09/01		05/09/02 228%						CF			FA
Italy	Common electric filament lamps from 25-200 watts. Voltage up to 240 watts	24/09/01		05/09/02 183%						CF			FA
Pakistan	Matches	01/08/02											
Romania	Common electric filament lamps from 25-200 watts. Voltage up to 240 watts	24/09/01		05/09/02 69%; 78%						CF			FA
Spain	Common electric filament lamps from 25-200 watts. Voltage up to 240 watts	24/09/01		05/09/02 342%						CF			FA

CF - Information not provided for reasons of confidentiality

FA - Facts available

DEFINITIVE DUTIES IN FORCE

(As at 31 December 2002)

Country/customs territory	Product	Date of imposition	Date last reviewed	Date current review initiated
China	New pneumatic tyres rubber of a kind used on motor cars including station wagons and racing cars and of a kind used on light trucks	29/05/02		
Greece	Stainless steel kitchen sinks	28/06/98	-	-
Spain	Stainless steel kitchen sinks	28/06/98	-	-
Latvia	Steel reinforcing bars	28/06/98	-	-
Romania	Steel reinforcing bars	28/06/98	10/04/2000	-
Ukraine	Steel reinforcing bars	28/06/98	-	-
Japan	Tyres	04/10/99	18/12/00 12/01/02	-
Korea, Rep. of	Tyres	04/10/99	-	-
France	Tyres	04/10/99	-	-
Other EU countries	Tyres	04/10/99	-	-
Turkey	Steel reinforcing bars (steel rebars)	23/10/99	-	-

Appendix D

**SAMPLE FINAL REPORT
FOR AN ANTI-DUMPING
INVESTIGATION**

Appendix E
ANTI-DUMPING AGREEMENT

**AGREEMENT ON IMPLEMENTATION OF ARTICLE VI
OF THE GENERAL AGREEMENT ON TARIFFS AND TRADE 1994**

Members hereby agree as follows:

PART I

Article 1

Principles

An anti-dumping measure shall be applied only under the circumstances provided for in Article VI of GATT 1994 and pursuant to investigations initiated¹ and conducted in accordance with the provisions of this Agreement. The following provisions govern the application of Article VI of GATT 1994 in so far as action is taken under anti-dumping legislation or regulations.

Article 2

Determination of Dumping

2.1 For the purpose of this Agreement, a product is to be considered as being dumped, i.e. introduced into the commerce of another country at less than its normal value, if the export price of the product exported from one country to another is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country.

2.2 When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country or when, because of the particular market situation or the low volume of the sales in the domestic market of the exporting country², such sales do not permit a proper comparison, the margin of dumping shall be determined by comparison with a comparable price of the like product when exported to an appropriate third country, provided that this price is representative, or with the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits.

2.2.1 Sales of the like product in the domestic market of the exporting country or sales to a third country at prices below per unit (fixed and variable) costs of production plus administrative, selling and general costs may be treated as not being in the ordinary course of trade by reason of price and may be disregarded in determining normal value only if the authorities³ determine that such sales are made within an extended period of time⁴ in substantial

¹ The term "initiated" as used in this Agreement means the procedural action by which a Member formally commences an investigation as provided in Article 5.

² Sales of the like product destined for consumption in the domestic market of the exporting country shall normally be considered a sufficient quantity for the determination of the normal value if such sales constitute 5 per cent or more of the sales of the product under consideration to the importing Member, provided that a lower ratio should be acceptable where the evidence demonstrates that domestic sales at such lower ratio are nonetheless of sufficient magnitude to provide for a proper comparison.

³ When in this Agreement the term "authorities" is used, it shall be interpreted as meaning authorities at an appropriate senior level.

⁴ The extended period of time should normally be one year but shall in no case be less than six months.

quantities⁵ and are at prices which do not provide for the recovery of all costs within a reasonable period of time. If prices which are below per unit costs at the time of sale are above weighted average per unit costs for the period of investigation, such prices shall be considered to provide for recovery of costs within a reasonable period of time.

2.2.1.1 For the purpose of paragraph 2, costs shall normally be calculated on the basis of records kept by the exporter or producer under investigation, provided that such records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the product under consideration. Authorities shall consider all available evidence on the proper allocation of costs, including that which is made available by the exporter or producer in the course of the investigation provided that such allocations have been historically utilized by the exporter or producer, in particular in relation to establishing appropriate amortization and depreciation periods and allowances for capital expenditures and other development costs. Unless already reflected in the cost allocations under this sub-paragraph, costs shall be adjusted appropriately for those non-recurring items of cost which benefit future and/or current production, or for circumstances in which costs during the period of investigation are affected by start-up operations.⁶

2.2.2 For the purpose of paragraph 2, the amounts for administrative, selling and general costs and for profits shall be based on actual data pertaining to production and sales in the ordinary course of trade of the like product by the exporter or producer under investigation. When such amounts cannot be determined on this basis, the amounts may be determined on the basis of:

- (i) the actual amounts incurred and realized by the exporter or producer in question in respect of production and sales in the domestic market of the country of origin of the same general category of products;
- (ii) the weighted average of the actual amounts incurred and realized by other exporters or producers subject to investigation in respect of production and sales of the like product in the domestic market of the country of origin;
- (iii) any other reasonable method, provided that the amount for profit so established shall not exceed the profit normally realized by other exporters or producers on sales of products of the same general category in the domestic market of the country of origin.

2.3 In cases where there is no export price or where it appears to the authorities concerned that the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported products are first resold to an independent buyer, or if the products are not

⁵ Sales below per unit costs are made in substantial quantities when the authorities establish that the weighted average selling price of the transactions under consideration for the determination of the normal value is below the weighted average per unit costs, or that the volume of sales below per unit costs represents not less than 20 per cent of the volume sold in transactions under consideration for the determination of the normal value.

⁶ The adjustment made for start-up operations shall reflect the costs at the end of the start-up period or, if that period extends beyond the period of investigation, the most recent costs which can reasonably be taken into account by the authorities during the investigation.

resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as the authorities may determine.

2.4 A fair comparison shall be made between the export price and the normal value. This comparison shall be made at the same level of trade, normally at the ex-factory level, and in respect of sales made at as nearly as possible the same time. Due allowance shall be made in each case, on its merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are also demonstrated to affect price comparability.⁷ In the cases referred to in paragraph 3, allowances for costs, including duties and taxes, incurred between importation and resale, and for profits accruing, should also be made. If in these cases price comparability has been affected, the authorities shall establish the normal value at a level of trade equivalent to the level of trade of the constructed export price, or shall make due allowance as warranted under this paragraph. The authorities shall indicate to the parties in question what information is necessary to ensure a fair comparison and shall not impose an unreasonable burden of proof on those parties.

2.4.1 When the comparison under paragraph 4 requires a conversion of currencies, such conversion should be made using the rate of exchange on the date of sale⁸, provided that when a sale of foreign currency on forward markets is directly linked to the export sale involved, the rate of exchange in the forward sale shall be used. Fluctuations in exchange rates shall be ignored and in an investigation the authorities shall allow exporters at least 60 days to have adjusted their export prices to reflect sustained movements in exchange rates during the period of investigation.

2.4.2 Subject to the provisions governing fair comparison in paragraph 4, the existence of margins of dumping during the investigation phase shall normally be established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions or by a comparison of normal value and export prices on a transaction-to-transaction basis. A normal value established on a weighted average basis may be compared to prices of individual export transactions if the authorities find a pattern of export prices which differ significantly among different purchasers, regions or time periods, and if an explanation is provided as to why such differences cannot be taken into account appropriately by the use of a weighted average-to-weighted average or transaction-to-transaction comparison.

2.5 In the case where products are not imported directly from the country of origin but are exported to the importing Member from an intermediate country, the price at which the products are sold from the country of export to the importing Member shall normally be compared with the comparable price in the country of export. However, comparison may be made with the price in the country of origin, if, for example, the products are merely transshipped through the country of export, or such products are not produced in the country of export, or there is no comparable price for them in the country of export.

2.6 Throughout this Agreement the term "like product" ("produit similaire") shall be interpreted to mean a product which is identical, i.e. alike in all respects to the product under consideration, or in

⁷ It is understood that some of the above factors may overlap, and authorities shall ensure that they do not duplicate adjustments that have been already made under this provision.

⁸ Normally, the date of sale would be the date of contract, purchase order, order confirmation, or invoice, whichever establishes the material terms of sale.

the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.

2.7 This Article is without prejudice to the second Supplementary Provision to paragraph 1 of Article VI in Annex I to GATT 1994.

Article 3

*Determination of Injury*⁹

3.1 A determination of injury for purposes of Article VI of GATT 1994 shall be based on positive evidence and involve an objective examination of both (a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products, and (b) the consequent impact of these imports on domestic producers of such products.

3.2 With regard to the volume of the dumped imports, the investigating authorities shall consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the importing Member. With regard to the effect of the dumped imports on prices, the investigating authorities shall consider whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product of the importing Member, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree. No one or several of these factors can necessarily give decisive guidance.

3.3 Where imports of a product from more than one country are simultaneously subject to anti-dumping investigations, the investigating authorities may cumulatively assess the effects of such imports only if they determine that (a) the margin of dumping established in relation to the imports from each country is more than *de minimis* as defined in paragraph 8 of Article 5 and the volume of imports from each country is not negligible and (b) a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between the imported products and the conditions of competition between the imported products and the like domestic product.

3.4 The examination of the impact of the dumped imports on the domestic industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilization of capacity; factors affecting domestic prices; the magnitude of the margin of dumping; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.

3.5 It must be demonstrated that the dumped imports are, through the effects of dumping, as set forth in paragraphs 2 and 4, causing injury within the meaning of this Agreement. The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the authorities. The authorities shall also examine any known factors other than the dumped imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped imports. Factors which may be relevant in this respect include, *inter alia*, the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption,

⁹ Under this Agreement the term "injury" shall, unless otherwise specified, be taken to mean material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such an industry and shall be interpreted in accordance with the provisions of this Article.

trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the domestic industry.

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

3.7 A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent.¹⁰ In making a determination regarding the existence of a threat of material injury, the authorities should consider, *inter alia*, such factors as:

- (i) a significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importation;
- (ii) sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped exports to the importing Member's market, taking into account the availability of other export markets to absorb any additional exports;
- (iii) whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and
- (iv) inventories of the product being investigated.

No one of these factors by itself can necessarily give decisive guidance but the totality of the factors considered must lead to the conclusion that further dumped exports are imminent and that, unless protective action is taken, material injury would occur.

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

Article 4

Definition of Domestic Industry

4.1 For the purposes of this Agreement, the term "domestic industry" shall be interpreted as referring to the domestic producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products, except that:

¹⁰ One example, though not an exclusive one, is that there is convincing reason to believe that there will be, in the near future, substantially increased importation of the product at dumped prices.

- (i) when producers are related¹¹ to the exporters or importers or are themselves importers of the allegedly dumped product, the term "domestic industry" may be interpreted as referring to the rest of the producers;
- (ii) in exceptional circumstances the territory of a Member may, for the production in question, be divided into two or more competitive markets and the producers within each market may be regarded as a separate industry if (a) the producers within such market sell all or almost all of their production of the product in question in that market, and (b) the demand in that market is not to any substantial degree supplied by producers of the product in question located elsewhere in the territory. In such circumstances, injury may be found to exist even where a major portion of the total domestic industry is not injured, provided there is a concentration of dumped imports into such an isolated market and provided further that the dumped imports are causing injury to the producers of all or almost all of the production within such market.

4.2 When the domestic industry has been interpreted as referring to the producers in a certain area, i.e. a market as defined in paragraph 1(ii), anti-dumping duties shall be levied¹² only on the products in question consigned for final consumption to that area. When the constitutional law of the importing Member does not permit the levying of anti-dumping duties on such a basis, the importing Member may levy the anti-dumping duties without limitation only if (a) the exporters shall have been given an opportunity to cease exporting at dumped prices to the area concerned or otherwise give assurances pursuant to Article 8 and adequate assurances in this regard have not been promptly given, and (b) such duties cannot be levied only on products of specific producers which supply the area in question.

4.3 Where two or more countries have reached under the provisions of paragraph 8(a) of Article XXIV of GATT 1994 such a level of integration that they have the characteristics of a single, unified market, the industry in the entire area of integration shall be taken to be the domestic industry referred to in paragraph 1.

4.4 The provisions of paragraph 6 of Article 3 shall be applicable to this Article.

Article 5

Initiation and Subsequent Investigation

5.1 Except as provided for in paragraph 6, an investigation to determine the existence, degree and effect of any alleged dumping shall be initiated upon a written application by or on behalf of the domestic industry.

5.2 An application under paragraph 1 shall include evidence of (a) dumping, (b) injury within the meaning of Article VI of GATT 1994 as interpreted by this Agreement and (c) a causal link between the dumped imports and the alleged injury. Simple assertion, unsubstantiated by relevant evidence,

¹¹ For the purpose of this paragraph, producers shall be deemed to be related to exporters or importers only if (a) one of them directly or indirectly controls the other; or (b) both of them are directly or indirectly controlled by a third person; or (c) together they directly or indirectly control a third person, provided that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers. For the purpose of this paragraph, one shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

¹² As used in this Agreement "levy" shall mean the definitive or final legal assessment or collection of a duty or tax.

cannot be considered sufficient to meet the requirements of this paragraph. The application shall contain such information as is reasonably available to the applicant on the following:

- (i) the identity of the applicant and a description of the volume and value of the domestic production of the like product by the applicant. Where a written application is made on behalf of the domestic industry, the application shall identify the industry on behalf of which the application is made by a list of all known domestic producers of the like product (or associations of domestic producers of the like product) and, to the extent possible, a description of the volume and value of domestic production of the like product accounted for by such producers;
- (ii) a complete description of the allegedly dumped product, the names of the country or countries of origin or export in question, the identity of each known exporter or foreign producer and a list of known persons importing the product in question;
- (iii) information on prices at which the product in question is sold when destined for consumption in the domestic markets of the country or countries of origin or export (or, where appropriate, information on the prices at which the product is sold from the country or countries of origin or export to a third country or countries, or on the constructed value of the product) and information on export prices or, where appropriate, on the prices at which the product is first resold to an independent buyer in the territory of the importing Member;
- (iv) information on the evolution of the volume of the allegedly dumped imports, the effect of these imports on prices of the like product in the domestic market and the consequent impact of the imports on the domestic industry, as demonstrated by relevant factors and indices having a bearing on the state of the domestic industry, such as those listed in paragraphs 2 and 4 of Article 3.

5.3 The authorities shall examine the accuracy and adequacy of the evidence provided in the application to determine whether there is sufficient evidence to justify the initiation of an investigation.

5.4 An investigation shall not be initiated pursuant to paragraph 1 unless the authorities have determined, on the basis of an examination of the degree of support for, or opposition to, the application expressed¹³ by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry.¹⁴ The application shall be considered to have been made "by or on behalf of the domestic industry" if it is supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application. However, no investigation shall be initiated when domestic producers expressly supporting the application account for less than 25 per cent of total production of the like product produced by the domestic industry.

5.5 The authorities shall avoid, unless a decision has been made to initiate an investigation, any publicizing of the application for the initiation of an investigation. However, after receipt of a properly documented application and before proceeding to initiate an investigation, the authorities shall notify the government of the exporting Member concerned.

¹³ In the case of fragmented industries involving an exceptionally large number of producers, authorities may determine support and opposition by using statistically valid sampling techniques.

¹⁴ Members are aware that in the territory of certain Members employees of domestic producers of the like product or representatives of those employees may make or support an application for an investigation under paragraph 1.

5.6 If, in special circumstances, the authorities concerned decide to initiate an investigation without having received a written application by or on behalf of a domestic industry for the initiation of such investigation, they shall proceed only if they have sufficient evidence of dumping, injury and a causal link, as described in paragraph 2, to justify the initiation of an investigation.

5.7 The evidence of both dumping and injury shall be considered simultaneously (a) in the decision whether or not to initiate an investigation, and (b) thereafter, during the course of the investigation, starting on a date not later than the earliest date on which in accordance with the provisions of this Agreement provisional measures may be applied.

5.8 An application under paragraph 1 shall be rejected and an investigation shall be terminated promptly as soon as the authorities concerned are satisfied that there is not sufficient evidence of either dumping or of injury to justify proceeding with the case. There shall be immediate termination in cases where the authorities determine that the margin of dumping is *de minimis*, or that the volume of dumped imports, actual or potential, or the injury, is negligible. The margin of dumping shall be considered to be *de minimis* if this margin is less than 2 per cent, expressed as a percentage of the export price. The volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports from a particular country is found to account for less than 3 per cent of imports of the like product in the importing Member, unless countries which individually account for less than 3 per cent of the imports of the like product in the importing Member collectively account for more than 7 per cent of imports of the like product in the importing Member.

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

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

Article 6

Evidence

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

6.1.1 Exporters or foreign producers receiving questionnaires used in an anti-dumping investigation shall be given at least 30 days for reply.¹⁵ Due consideration should be given to any request for an extension of the 30-day period and, upon cause shown, such an extension should be granted whenever practicable.

6.1.2 Subject to the requirement to protect confidential information, evidence presented in writing by one interested party shall be made available promptly to other interested parties participating in the investigation.

6.1.3 As soon as an investigation has been initiated, the authorities shall provide the full text of the written application received under paragraph 1 of Article 5

¹⁵ As a general rule, the time-limit for exporters shall be counted from the date of receipt of the questionnaire, which for this purpose shall be deemed to have been received one week from the date on which it was sent to the respondent or transmitted to the appropriate diplomatic representative of the exporting Member or, in the case of a separate customs territory Member of the WTO, an official representative of the exporting territory.

to the known exporters¹⁶ and to the authorities of the exporting Member and shall make it available, upon request, to other interested parties involved. Due regard shall be paid to the requirement for the protection of confidential information, as provided for in paragraph 5.

6.2 Throughout the anti-dumping investigation all interested parties shall have a full opportunity for the defence of their interests. To this end, the authorities shall, on request, provide opportunities for all interested parties to meet those parties with adverse interests, so that opposing views may be presented and rebuttal arguments offered. Provision of such opportunities must take account of the need to preserve confidentiality and of the convenience to the parties. There shall be no obligation on any party to attend a meeting, and failure to do so shall not be prejudicial to that party's case. Interested parties shall also have the right, on justification, to present other information orally.

6.3 Oral information provided under paragraph 2 shall be taken into account by the authorities only in so far as it is subsequently reproduced in writing and made available to other interested parties, as provided for in subparagraph 1.2.

6.4 The authorities shall whenever practicable provide timely opportunities for all interested parties to see all information that is relevant to the presentation of their cases, that is not confidential as defined in paragraph 5, and that is used by the authorities in an anti-dumping investigation, and to prepare presentations on the basis of this information.

6.5 Any information which is by nature confidential (for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom that person acquired the information), or which is provided on a confidential basis by parties to an investigation shall, upon good cause shown, be treated as such by the authorities. Such information shall not be disclosed without specific permission of the party submitting it.¹⁷

6.5.1 The authorities shall require interested parties providing confidential information to furnish non-confidential summaries thereof. These summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. In exceptional circumstances, such parties may indicate that such information is not susceptible of summary. In such exceptional circumstances, a statement of the reasons why summarization is not possible must be provided.

6.5.2 If the authorities find that a request for confidentiality is not warranted and if the supplier of the information is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the authorities may disregard such information unless it can be demonstrated to their satisfaction from appropriate sources that the information is correct.¹⁸

6.6 Except in circumstances provided for in paragraph 8, the authorities shall during the course of an investigation satisfy themselves as to the accuracy of the information supplied by interested parties upon which their findings are based.

¹⁶ It being understood that, where the number of exporters involved is particularly high, the full text of the written application should instead be provided only to the authorities of the exporting Member or to the relevant trade association.

¹⁷ Members are aware that in the territory of certain Members disclosure pursuant to a narrowly-drawn protective order may be required.

¹⁸ Members agree that requests for confidentiality should not be arbitrarily rejected.

6.7 In order to verify information provided or to obtain further details, the authorities may carry out investigations in the territory of other Members as required, provided they obtain the agreement of the firms concerned and notify the representatives of the government of the Member in question, and unless that Member objects to the investigation. The procedures described in Annex I shall apply to investigations carried out in the territory of other Members. Subject to the requirement to protect confidential information, the authorities shall make the results of any such investigations available, or shall provide disclosure thereof pursuant to paragraph 9, to the firms to which they pertain and may make such results available to the applicants.

6.8 In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available. The provisions of Annex II shall be observed in the application of this paragraph.

6.9 The authorities shall, before a final determination is made, inform all interested parties of the essential facts under consideration which form the basis for the decision whether to apply definitive measures. Such disclosure should take place in sufficient time for the parties to defend their interests.

6.10 The authorities shall, as a rule, determine an individual margin of dumping for each known exporter or producer concerned of the product under investigation. In cases where the number of exporters, producers, importers or types of products involved is so large as to make such a determination impracticable, the authorities may limit their examination either to a reasonable number of interested parties or products by using samples which are statistically valid on the basis of information available to the authorities at the time of the selection, or to the largest percentage of the volume of the exports from the country in question which can reasonably be investigated.

6.10.1 Any selection of exporters, producers, importers or types of products made under this paragraph shall preferably be chosen in consultation with and with the consent of the exporters, producers or importers concerned.

6.10.2 In cases where the authorities have limited their examination, as provided for in this paragraph, they shall nevertheless determine an individual margin of dumping for any exporter or producer not initially selected who submits the necessary information in time for that information to be considered during the course of the investigation, except where the number of exporters or producers is so large that individual examinations would be unduly burdensome to the authorities and prevent the timely completion of the investigation. Voluntary responses shall not be discouraged.

6.11 For the purposes of this Agreement, "interested parties" shall include:

- (i) an exporter or foreign producer or the importer of a product subject to investigation, or a trade or business association a majority of the members of which are producers, exporters or importers of such product;
- (ii) the government of the exporting Member; and
- (iii) a producer of the like product in the importing Member or a trade and business association a majority of the members of which produce the like product in the territory of the importing Member.

This list shall not preclude Members from allowing domestic or foreign parties other than those mentioned above to be included as interested parties.

6.12 The authorities shall provide opportunities for industrial users of the product under investigation, and for representative consumer organizations in cases where the product is commonly sold at the retail level, to provide information which is relevant to the investigation regarding dumping, injury and causality.

6.13 The authorities shall take due account of any difficulties experienced by interested parties, in particular small companies, in supplying information requested, and shall provide any assistance practicable.

6.14 The procedures set out above are not intended to prevent the authorities of a Member from proceeding expeditiously with regard to initiating an investigation, reaching preliminary or final determinations, whether affirmative or negative, or from applying provisional or final measures, in accordance with relevant provisions of this Agreement.

Article 7

Provisional Measures

7.1 Provisional measures may be applied only if:

- (i) an investigation has been initiated in accordance with the provisions of Article 5, a public notice has been given to that effect and interested parties have been given adequate opportunities to submit information and make comments;
- (ii) a preliminary affirmative determination has been made of dumping and consequent injury to a domestic industry; and
- (iii) the authorities concerned judge such measures necessary to prevent injury being caused during the investigation.

7.2 Provisional measures may take the form of a provisional duty or, preferably, a security - by cash deposit or bond - equal to the amount of the anti-dumping duty provisionally estimated, being not greater than the provisionally estimated margin of dumping. Withholding of appraisement is an appropriate provisional measure, provided that the normal duty and the estimated amount of the anti-dumping duty be indicated and as long as the withholding of appraisement is subject to the same conditions as other provisional measures.

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

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

7.5 The relevant provisions of Article 9 shall be followed in the application of provisional measures.

Article 8

Price Undertakings

8.1 Proceedings may¹⁹ be suspended or terminated without the imposition of provisional measures or anti-dumping duties upon receipt of satisfactory voluntary undertakings from any exporter to revise its prices or to cease exports to the area in question at dumped prices so that the authorities are satisfied that the injurious effect of the dumping is eliminated. Price increases under such undertakings shall not be higher than necessary to eliminate the margin of dumping. It is desirable that the price increases be less than the margin of dumping if such increases would be adequate to remove the injury to the domestic industry.

8.2 Price undertakings shall not be sought or accepted from exporters unless the authorities of the importing Member have made a preliminary affirmative determination of dumping and injury caused by such dumping.

8.3 Undertakings offered need not be accepted if the authorities consider their acceptance impractical, for example, if the number of actual or potential exporters is too great, or for other reasons, including reasons of general policy. Should the case arise and where practicable, the authorities shall provide to the exporter the reasons which have led them to consider acceptance of an undertaking as inappropriate, and shall, to the extent possible, give the exporter an opportunity to make comments thereon.

8.4 If an undertaking is accepted, the investigation of dumping and injury shall nevertheless be completed if the exporter so desires or the authorities so decide. In such a case, if a negative determination of dumping or injury is made, the undertaking shall automatically lapse, except in cases where such a determination is due in large part to the existence of a price undertaking. In such cases, the authorities may require that an undertaking be maintained for a reasonable period consistent with the provisions of this Agreement. In the event that an affirmative determination of dumping and injury is made, the undertaking shall continue consistent with its terms and the provisions of this Agreement.

8.5 Price undertakings may be suggested by the authorities of the importing Member, but no exporter shall be forced to enter into such undertakings. The fact that exporters do not offer such undertakings, or do not accept an invitation to do so, shall in no way prejudice the consideration of the case. However, the authorities are free to determine that a threat of injury is more likely to be realized if the dumped imports continue.

8.6 Authorities of an importing Member may require any exporter from whom an undertaking has been accepted to provide periodically information relevant to the fulfilment of such an undertaking and to permit verification of pertinent data. In case of violation of an undertaking, the authorities of the importing Member may take, under this Agreement in conformity with its provisions, expeditious actions which may constitute immediate application of provisional measures using the best information available. In such cases, definitive duties may be levied in accordance with this Agreement on products entered for consumption not more than 90 days before the application of such provisional measures, except that any such retroactive assessment shall not apply to imports entered before the violation of the undertaking.

Article 9

Imposition and Collection of Anti-Dumping Duties

¹⁹ The word "may" shall not be interpreted to allow the simultaneous continuation of proceedings with the implementation of price undertakings except as provided in paragraph 4.

9.1 The decision whether or not to impose an anti-dumping duty in cases where all requirements for the imposition have been fulfilled, and the decision whether the amount of the anti-dumping duty to be imposed shall be the full margin of dumping or less, are decisions to be made by the authorities of the importing Member. It is desirable that the imposition be permissive in the territory of all Members, and that the duty be less than the margin if such lesser duty would be adequate to remove the injury to the domestic industry.

9.2 When an anti-dumping duty is imposed in respect of any product, such anti-dumping duty shall be collected in the appropriate amounts in each case, on a non-discriminatory basis on imports of such product from all sources found to be dumped and causing injury, except as to imports from those sources from which price undertakings under the terms of this Agreement have been accepted. The authorities shall name the supplier or suppliers of the product concerned. If, however, several suppliers from the same country are involved, and it is impracticable to name all these suppliers, the authorities may name the supplying country concerned. If several suppliers from more than one country are involved, the authorities may name either all the suppliers involved, or, if this is impracticable, all the supplying countries involved.

9.3 The amount of the anti-dumping duty shall not exceed the margin of dumping as established under Article 2.

9.3.1 When the amount of the anti-dumping duty is assessed on a retrospective basis, the determination of the final liability for payment of anti-dumping duties shall take place as soon as possible, normally within 12 months, and in no case more than 18 months, after the date on which a request for a final assessment of the amount of the anti-dumping duty has been made.²⁰ Any refund shall be made promptly and normally in not more than 90 days following the determination of final liability made pursuant to this sub-paragraph. In any case, where a refund is not made within 90 days, the authorities shall provide an explanation if so requested.

9.3.2 When the amount of the anti-dumping duty is assessed on a prospective basis, provision shall be made for a prompt refund, upon request, of any duty paid in excess of the margin of dumping. A refund of any such duty paid in excess of the actual margin of dumping shall normally take place within 12 months, and in no case more than 18 months, after the date on which a request for a refund, duly supported by evidence, has been made by an importer of the product subject to the anti-dumping duty. The refund authorized should normally be made within 90 days of the above-noted decision.

9.3.3 In determining whether and to what extent a reimbursement should be made when the export price is constructed in accordance with paragraph 3 of Article 2, authorities should take account of any change in normal value, any change in costs incurred between importation and resale, and any movement in the resale price which is duly reflected in subsequent selling prices, and should calculate the export price with no deduction for the amount of anti-dumping duties paid when conclusive evidence of the above is provided.

9.4 When the authorities have limited their examination in accordance with the second sentence of paragraph 10 of Article 6, any anti-dumping duty applied to imports from exporters or producers not included in the examination shall not exceed:

²⁰ It is understood that the observance of the time-limits mentioned in this subparagraph and in subparagraph 3.2 may not be possible where the product in question is subject to judicial review proceedings.

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

provided that the authorities shall disregard for the purpose of this paragraph any zero and *de minimis* margins and margins established under the circumstances referred to in paragraph 8 of Article 6. The authorities shall apply individual duties or normal values to imports from any exporter or producer not included in the examination who has provided the necessary information during the course of the investigation, as provided for in subparagraph 10.2 of Article 6.

9.5 If a product is subject to anti-dumping duties in an importing Member, the authorities shall promptly carry out a review for the purpose of determining individual margins of dumping for any exporters or producers in the exporting country in question who have not exported the product to the importing Member during the period of investigation, provided that these exporters or producers can show that they are not related to any of the exporters or producers in the exporting country who are subject to the anti-dumping duties on the product. Such a review shall be initiated and carried out on an accelerated basis, compared to normal duty assessment and review proceedings in the importing Member. No anti-dumping duties shall be levied on imports from such exporters or producers while the review is being carried out. The authorities may, however, withhold appraisement and/or request guarantees to ensure that, should such a review result in a determination of dumping in respect of such producers or exporters, anti-dumping duties can be levied retroactively to the date of the initiation of the review.

Article 10

Retroactivity

10.1 Provisional measures and anti-dumping duties shall only be applied to products which enter for consumption after the time when the decision taken under paragraph 1 of Article 7 and paragraph 1 of Article 9, respectively, enters into force, subject to the exceptions set out in this Article.

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

10.3 If the definitive anti-dumping duty is higher than the provisional duty paid or payable, or the amount estimated for the purpose of the security, the difference shall not be collected. If the definitive duty is lower than the provisional duty paid or payable, or the amount estimated for the purpose of the security, the difference shall be reimbursed or the duty recalculated, as the case may be.

10.4 Except as provided in paragraph 2, where a determination of threat of injury or material retardation is made (but no injury has yet occurred) a definitive anti-dumping duty may be imposed only from the date of the determination of threat of injury or material retardation, and any cash

deposit made during the period of the application of provisional measures shall be refunded and any bonds released in an expeditious manner.

10.5 Where a final determination is negative, any cash deposit made during the period of the application of provisional measures shall be refunded and any bonds released in an expeditious manner.

10.6 A definitive anti-dumping duty may be levied on products which were entered for consumption not more than 90 days prior to the date of application of provisional measures, when the authorities determine for the dumped product in question that:

- (i) there is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practises dumping and that such dumping would cause injury, and
- (ii) the injury is caused by massive dumped imports of a product in a relatively short time which in light of the timing and the volume of the dumped imports and other circumstances (such as a rapid build-up of inventories of the imported product) is likely to seriously undermine the remedial effect of the definitive anti-dumping duty to be applied, provided that the importers concerned have been given an opportunity to comment.

10.7 The authorities may, after initiating an investigation, take such measures as the withholding of appraisement or assessment as may be necessary to collect anti-dumping duties retroactively, as provided for in paragraph 6, once they have sufficient evidence that the conditions set forth in that paragraph are satisfied.

10.8 No duties shall be levied retroactively pursuant to paragraph 6 on products entered for consumption prior to the date of initiation of the investigation.

Article 11

Duration and Review of Anti-Dumping Duties and Price Undertakings

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

11.2 The authorities shall review the need for the continued imposition of the duty, where warranted, on their own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty, upon request by any interested party which submits positive information substantiating the need for a review.²¹ Interested parties shall have the right to request the authorities to examine whether the continued imposition of the duty is necessary to offset dumping, whether the injury would be likely to continue or recur if the duty were removed or varied, or both. If, as a result of the review under this paragraph, the authorities determine that the anti-dumping duty is no longer warranted, it shall be terminated immediately.

11.3 Notwithstanding the provisions of paragraphs 1 and 2, any definitive anti-dumping duty shall be terminated on a date not later than five years from its imposition (or from the date of the most recent review under paragraph 2 if that review has covered both dumping and injury, or under this paragraph), unless the authorities determine, in a review initiated before that date on their own

²¹ A determination of final liability for payment of anti-dumping duties, as provided for in paragraph 3 of Article 9, does not by itself constitute a review within the meaning of this Article.

initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury.²² The duty may remain in force pending the outcome of such a review.

11.4 The provisions of Article 6 regarding evidence and procedure shall apply to any review carried out under this Article. Any such review shall be carried out expeditiously and shall normally be concluded within 12 months of the date of initiation of the review.

11.5 The provisions of this Article shall apply *mutatis mutandis* to price undertakings accepted under Article 8.

Article 12

Public Notice and Explanation of Determinations

12.1 When the authorities are satisfied that there is sufficient evidence to justify the initiation of an anti-dumping investigation pursuant to Article 5, the Member or Members the products of which are subject to such investigation and other interested parties known to the investigating authorities to have an interest therein shall be notified and a public notice shall be given.

12.1.1 A public notice of the initiation of an investigation shall contain, or otherwise make available through a separate report²³, adequate information on the following:

- (i) the name of the exporting country or countries and the product involved;
- (ii) the date of initiation of the investigation;
- (iii) the basis on which dumping is alleged in the application;
- (iv) a summary of the factors on which the allegation of injury is based;
- (v) the address to which representations by interested parties should be directed;
- (vi) the time-limits allowed to interested parties for making their views known.

12.2 Public notice shall be given of any preliminary or final determination, whether affirmative or negative, of any decision to accept an undertaking pursuant to Article 8, of the termination of such an undertaking, and of the termination of a definitive anti-dumping duty. Each such notice shall set forth, or otherwise make available through a separate report, in sufficient detail the findings and conclusions reached on all issues of fact and law considered material by the investigating authorities. All such notices and reports shall be forwarded to the Member or Members the products of which are subject to such determination or undertaking and to other interested parties known to have an interest therein.

12.2.1 A public notice of the imposition of provisional measures shall set forth, or otherwise make available through a separate report, sufficiently detailed

²² When the amount of the anti-dumping duty is assessed on a retrospective basis, a finding in the most recent assessment proceeding under subparagraph 3.1 of Article 9 that no duty is to be levied shall not by itself require the authorities to terminate the definitive duty.

²³ Where authorities provide information and explanations under the provisions of this Article in a separate report, they shall ensure that such report is readily available to the public.

explanations for the preliminary determinations on dumping and injury and shall refer to the matters of fact and law which have led to arguments being accepted or rejected. Such a notice or report shall, due regard being paid to the requirement for the protection of confidential information, contain in particular:

- (i) the names of the suppliers, or when this is impracticable, the supplying countries involved;
- (ii) a description of the product which is sufficient for customs purposes;
- (iii) the margins of dumping established and a full explanation of the reasons for the methodology used in the establishment and comparison of the export price and the normal value under Article 2;
- (iv) considerations relevant to the injury determination as set out in Article 3;
- (v) the main reasons leading to the determination.

12.2.2 A public notice of conclusion or suspension of an investigation in the case of an affirmative determination providing for the imposition of a definitive duty or the acceptance of a price undertaking shall contain, or otherwise make available through a separate report, all relevant information on the matters of fact and law and reasons which have led to the imposition of final measures or the acceptance of a price undertaking, due regard being paid to the requirement for the protection of confidential information. In particular, the notice or report shall contain the information described in subparagraph 2.1, as well as the reasons for the acceptance or rejection of relevant arguments or claims made by the exporters and importers, and the basis for any decision made under subparagraph 10.2 of Article 6.

12.2.3 A public notice of the termination or suspension of an investigation following the acceptance of an undertaking pursuant to Article 8 shall include, or otherwise make available through a separate report, the non-confidential part of this undertaking.

12.3 The provisions of this Article shall apply *mutatis mutandis* to the initiation and completion of reviews pursuant to Article 11 and to decisions under Article 10 to apply duties retroactively.

Article 13

Judicial Review

Each Member whose national legislation contains provisions on anti-dumping measures shall maintain judicial, arbitral or administrative tribunals or procedures for the purpose, *inter alia*, of the prompt review of administrative actions relating to final determinations and reviews of determinations within the meaning of Article 11. Such tribunals or procedures shall be independent of the authorities responsible for the determination or review in question.

Article 14

Anti-Dumping Action on Behalf of a Third Country

14.1 An application for anti-dumping action on behalf of a third country shall be made by the authorities of the third country requesting action.

14.2 Such an application shall be supported by price information to show that the imports are being dumped and by detailed information to show that the alleged dumping is causing injury to the domestic industry concerned in the third country. The government of the third country shall afford all assistance to the authorities of the importing country to obtain any further information which the latter may require.

14.3 In considering such an application, the authorities of the importing country shall consider the effects of the alleged dumping on the industry concerned as a whole in the third country; that is to say, the injury shall not be assessed in relation only to the effect of the alleged dumping on the industry's exports to the importing country or even on the industry's total exports.

14.4 The decision whether or not to proceed with a case shall rest with the importing country. If the importing country decides that it is prepared to take action, the initiation of the approach to the Council for Trade in Goods seeking its approval for such action shall rest with the importing country.

Article 15

Developing Country Members

It is recognized that special regard must be given by developed country Members to the special situation of developing country Members when considering the application of anti-dumping measures under this Agreement. Possibilities of constructive remedies provided for by this Agreement shall be explored before applying anti-dumping duties where they would affect the essential interests of developing country Members.

PART II

Article 16

Committee on Anti-Dumping Practices

16.1 There is hereby established a Committee on Anti-Dumping Practices (referred to in this Agreement as the "Committee") composed of representatives from each of the Members. The Committee shall elect its own Chairman and shall meet not less than twice a year and otherwise as envisaged by relevant provisions of this Agreement at the request of any Member. The Committee shall carry out responsibilities as assigned to it under this Agreement or by the Members and it shall afford Members the opportunity of consulting on any matters relating to the operation of the Agreement or the furtherance of its objectives. The WTO Secretariat shall act as the secretariat to the Committee.

16.2 The Committee may set up subsidiary bodies as appropriate.

16.3 In carrying out their functions, the Committee and any subsidiary bodies may consult with and seek information from any source they deem appropriate. However, before the Committee or a subsidiary body seeks such information from a source within the jurisdiction of a Member, it shall inform the Member involved. It shall obtain the consent of the Member and any firm to be consulted.

16.4 Members shall report without delay to the Committee all preliminary or final anti-dumping actions taken. Such reports shall be available in the Secretariat for inspection by other Members. Members shall also submit, on a semi-annual basis, reports of any anti-dumping actions taken within the preceding six months. The semi-annual reports shall be submitted on an agreed standard form.

16.5 Each Member shall notify the Committee (a) which of its authorities are competent to initiate and conduct investigations referred to in Article 5 and (b) its domestic procedures governing the initiation and conduct of such investigations.

Article 17

Consultation and Dispute Settlement

17.1 Except as otherwise provided herein, the Dispute Settlement Understanding is applicable to consultations and the settlement of disputes under this Agreement.

17.2 Each Member shall afford sympathetic consideration to, and shall afford adequate opportunity for consultation regarding, representations made by another Member with respect to any matter affecting the operation of this Agreement.

17.3 If any Member considers that any benefit accruing to it, directly or indirectly, under this Agreement is being nullified or impaired, or that the achievement of any objective is being impeded, by another Member or Members, it may, with a view to reaching a mutually satisfactory resolution of the matter, request in writing consultations with the Member or Members in question. Each Member shall afford sympathetic consideration to any request from another Member for consultation.

17.4 If the Member that requested consultations considers that the consultations pursuant to paragraph 3 have failed to achieve a mutually agreed solution, and if final action has been taken by the administering authorities of the importing Member to levy definitive anti-dumping duties or to accept price undertakings, it may refer the matter to the Dispute Settlement Body ("DSB"). When a provisional measure has a significant impact and the Member that requested consultations considers that the measure was taken contrary to the provisions of paragraph 1 of Article 7, that Member may also refer such matter to the DSB.

17.5 The DSB shall, at the request of the complaining party, establish a panel to examine the matter based upon:

- (i) a written statement of the Member making the request indicating how a benefit accruing to it, directly or indirectly, under this Agreement has been nullified or impaired, or that the achieving of the objectives of the Agreement is being impeded, and
- (ii) the facts made available in conformity with appropriate domestic procedures to the authorities of the importing Member.

17.6 In examining the matter referred to in paragraph 5:

- (i) in its assessment of the facts of the matter, the panel shall determine whether the authorities' establishment of the facts was proper and whether their evaluation of those facts was unbiased and objective. If the establishment of the facts was proper and the evaluation was unbiased and objective, even though the panel might have reached a different conclusion, the evaluation shall not be overturned;

- (ii) the panel shall interpret the relevant provisions of the Agreement in accordance with customary rules of interpretation of public international law. Where the panel finds that a relevant provision of the Agreement admits of more than one permissible interpretation, the panel shall find the authorities' measure to be in conformity with the Agreement if it rests upon one of those permissible interpretations.

17.7 Confidential information provided to the panel shall not be disclosed without formal authorization from the person, body or authority providing such information. Where such information is requested from the panel but release of such information by the panel is not authorized, a non-confidential summary of the information, authorized by the person, body or authority providing the information, shall be provided.

PART III

Article 18

Final Provisions

18.1 No specific action against dumping of exports from another Member can be taken except in accordance with the provisions of GATT 1994, as interpreted by this Agreement.²⁴

18.2 Reservations may not be entered in respect of any of the provisions of this Agreement without the consent of the other Members.

18.3 Subject to subparagraphs 3.1 and 3.2, the provisions of this Agreement shall apply to investigations, and reviews of existing measures, initiated pursuant to applications which have been made on or after the date of entry into force for a Member of the WTO Agreement.

18.3.1 With respect to the calculation of margins of dumping in refund procedures under paragraph 3 of Article 9, the rules used in the most recent determination or review of dumping shall apply.

18.3.2 For the purposes of paragraph 3 of Article 11, existing anti-dumping measures shall be deemed to be imposed on a date not later than the date of entry into force for a Member of the WTO Agreement, except in cases in which the domestic legislation of a Member in force on that date already included a clause of the type provided for in that paragraph.

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

18.5 Each Member shall inform the Committee of any changes in its laws and regulations relevant to this Agreement and in the administration of such laws and regulations.

18.6 The Committee shall review annually the implementation and operation of this Agreement taking into account the objectives thereof. The Committee shall inform annually the Council for Trade in Goods of developments during the period covered by such reviews.

²⁴ This is not intended to preclude action under other relevant provisions of GATT 1994, as appropriate.

18.7 The Annexes to this Agreement constitute an integral part thereof.

ANNEX I

PROCEDURES FOR ON-THE-SPOT INVESTIGATIONS PURSUANT TO PARAGRAPH 7 OF ARTICLE 6

1. Upon initiation of an investigation, the authorities of the exporting Member and the firms known to be concerned should be informed of the intention to carry out on-the-spot investigations.
2. If in exceptional circumstances it is intended to include non-governmental experts in the investigating team, the firms and the authorities of the exporting Member should be so informed. Such non-governmental experts should be subject to effective sanctions for breach of confidentiality requirements.
3. It should be standard practice to obtain explicit agreement of the firms concerned in the exporting Member before the visit is finally scheduled.
4. As soon as the agreement of the firms concerned has been obtained, the investigating authorities should notify the authorities of the exporting Member of the names and addresses of the firms to be visited and the dates agreed.
5. Sufficient advance notice should be given to the firms in question before the visit is made.
6. Visits to explain the questionnaire should only be made at the request of an exporting firm. Such a visit may only be made if (a) the authorities of the importing Member notify the representatives of the Member in question and (b) the latter do not object to the visit.
7. As the main purpose of the on-the-spot investigation is to verify information provided or to obtain further details, it should be carried out after the response to the questionnaire has been received unless the firm agrees to the contrary and the government of the exporting Member is informed by the investigating authorities of the anticipated visit and does not object to it; further, it should be standard practice prior to the visit to advise the firms concerned of the general nature of the information to be verified and of any further information which needs to be provided, though this should not preclude requests to be made on the spot for further details to be provided in the light of information obtained.
8. Enquiries or questions put by the authorities or firms of the exporting Members and essential to a successful on-the-spot investigation should, whenever possible, be answered before the visit is made.

ANNEX II

BEST INFORMATION AVAILABLE IN TERMS OF PARAGRAPH 8 OF ARTICLE 6

1. As soon as possible after the initiation of the investigation, the investigating authorities should specify in detail the information required from any interested party, and the manner in which that information should be structured by the interested party in its response. The authorities should also ensure that the party is aware that if information is not supplied within a reasonable time, the authorities will be free to make determinations on the basis of the facts available, including those contained in the application for the initiation of the investigation by the domestic industry.

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

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

4. Where the authorities do not have the ability to process information if provided in a particular medium (e.g. computer tape), the information should be supplied in the form of written material or any other form acceptable to the authorities.

5. Even though the information provided may not be ideal in all respects, this should not justify the authorities from disregarding it, provided the interested party has acted to the best of its ability.

6. If evidence or information is not accepted, the supplying party should be informed forthwith of the reasons therefor, and should have an opportunity to provide further explanations within a reasonable period, due account being taken of the time-limits of the investigation. If the explanations are considered by the authorities as not being satisfactory, the reasons for the rejection of such evidence or information should be given in any published determinations.

7. If the authorities have to base their findings, including those with respect to normal value, on information from a secondary source, including the information supplied in the application for the initiation of the investigation, they should do so with special circumspection. In such cases, the authorities should, where practicable, check the information from other independent sources at their disposal, such as published price lists, official import statistics and customs returns, and from the information obtained from other interested parties during the investigation. It is clear, however, that if an interested party does not cooperate and thus relevant information is being withheld from the authorities, this situation could lead to a result which is less favourable to the party than if the party did cooperate.