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ARTICLES 18.5 AND 32.6 OF THE AGREEMENTS

SINGAPORE

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COUNTERVAILING AND ANTI-DUMPING
DUTIES ACT 1996
(ACT 33 OF 1996)

COUNTERVAILING AND ANTI-DUMPING DUTIES
REGULATIONS 1997

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In exercise of the powers conferred by section 46 of the Countervailing and Anti-Dumping Duties Act 1996, the Minister for Trade and Industry hereby makes the following Regulations:

PART I

PRELIMINARY

Citation and commencement

1. These Regulations may be cited as the Countervailing and Anti-Dumping Duties Regulations 1997 and shall come into operation on 25 April 1997.

Definitions

2. (1) For the purposes of the Act and these Regulations, "producer" means:
- (a) in relation to any manufactured goods, the producer, manufacturer or processor of the goods; and
 - (b) in relation to unmanufactured raw goods, the person who obtains such goods directly by the undertaking of any agricultural, mining or fishing operation.
- (2) In these Regulations, "subsidized imports" means imports with respect to which a countervailable subsidy is provided.

PART II

PETITIONS

Contents of petition

3. (1) A petition requesting that a countervailing or an anti-dumping duty investigation be initiated shall contain the following information:
- (a) the name and address of the petitioner;
 - (b) a description of the volume and value of the domestic production of the like goods by the petitioner;
 - (c) the identity of the domestic industry on behalf of which the petition is submitted, including the names and addresses of the producers of the like goods in the domestic industry (or associations of domestic producers of the like goods) and a description of the volume and value of domestic production of the like goods accounted for by such producers;

- (d) a complete description of the goods that defines the requested scope of the investigation, including technical characteristics and uses of such goods and the current applicable Singapore tariff classifications;
- (e) the name of the country in which the goods are produced and, if such goods are imported from a country other than that in which they are produced, the name of the intermediate country;
- (f) the name and address of each party the petitioner knows is producing the goods for export or is exporting to Singapore and, in relation to a countervailing duty petition, is receiving a countervailable subsidy or, in relation to an anti-dumping duty petition, is selling the goods at prices below the normal value, as the case may be;
- (g) any factual information, particularly documentary evidence, relevant to the alleged countervailable subsidy or dumping, including -
 - (i) in relation to a countervailing duty petition, the authority which provided the countervailable subsidy and the manner in which the countervailable subsidy is provided and an estimate of the value of the countervailable subsidy to producers or exporters of the goods; or
 - (ii) in relation to an anti-dumping duty petition -
 - (A) information on prices at which the goods in question are sold when destined for consumption in the domestic market of the country of origin or export or, where appropriate, information on the prices at which the goods are sold from the country of origin or export to a third country, or on the constructed value of the goods;
 - (B) information on export prices to Singapore or, where appropriate, on the prices at which the goods are first resold to an independent buyer in Singapore; and
 - (C) if the exporting country of the goods in question is a non-market economy country, factual information relevant to the calculation of normal value as specified in these Regulations;
- (h) the volume and value of the goods imported into Singapore during the most recent three-year period and during any another recent period that the petitioner believes to be more representative;
- (i) the name and address of each party whom the petitioner knows is importing or, if there were no importations, is likely to import the goods;
- (j) information on the effect of the goods on prices of the like goods in the domestic market and the consequent impact of the goods on the domestic industry;
- (k) factual information regarding injury to the domestic industry as defined in section 9(1)(b) or 23(1)(b) of the Act; and
- (l) any other factual information on which the petitioner relies.

(2) In relation to paragraph (1)(k), a petitioner should include factual information on relevant economic factors and indices which have a bearing on the condition of such domestic industry, such as:

- (a) actual and potential decline in output, sales, market share, profits, productivity, returns on investments or utilization or capacity;
- (b) factors affecting domestic prices;
- (c) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investment;
- (d) in the case of a countervailing duty petition involving agriculture, whether there has been an increased burden on government support programmes; and
- (e) the magnitude of the margin of the alleged dumping or the rate of countervailable subsidization.

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

(4) The Minister shall not consider any factual information in the petition for which the petitioner requests confidential treatment unless the petitioner meets the requirements of section 35 of the Act.

(5) The Minister may permit the petitioner to amend his petition if the Minister:

- (a) has not made a preliminary determination; and
- (b) is satisfied that exceptional circumstances exist to justify the amendment.

Notification of receipt of petition

4. (1) Subject to paragraphs (2) and (4), the Minister shall not publicize the receipt of any countervailing or anti-dumping duty petition until a decision has been made to initiate an investigation.

(2) On receipt of a countervailing duty petition, the Minister shall, as soon as practicable, notify the representative of the interested foreign government in Singapore of the receipt of such petition for the purpose of section 5 of the Act.

(3) The provision of an opportunity for consultations under section 5 of the Act shall not prevent the Minister from proceeding expeditiously with regard to initiating the investigation, reaching a preliminary or final determination or applying provisional or final measures in accordance with the provisions of the Act and these Regulations.

(4) The Minister shall notify the representative of the interested foreign government in Singapore before initiating an anti-dumping duty investigation.

PART III

INVESTIGATION PROCEDURES

Scope of investigation to be determined

5. (1) Upon receipt of the countervailing or anti-dumping duty petition, the Minister shall review the petition and determine the goods that are to be within the scope of the investigation and whether the petitioner is submitting the petition on behalf of the domestic industry producing such goods.

(2) The Minister may, where appropriate, segregate the subject goods and initiate separate investigation thereof.

Evidence in petition

6. (1) For the purposes of section 4(3) or 19(3) of the Act, the Minister shall, within 30 days from the date of receipt of a countervailing or anti-dumping duty petition, examine the accuracy and adequacy of the evidence provided in the petition.

(2) Where the Minister decides not to initiate an investigation, the Minister shall reject the petition and notify the petitioner of the reasons for the rejection.

Furnishing of information in petition

7. (1) Where a countervailing or anti-dumping duty investigation has been initiated, the Minister shall provide the full written text of the non-confidential version of the petition to the known exporters and to the interested foreign government as soon as practicable and shall make it available upon request, to other interested parties.

(2) Where the number of exporters involved is particularly high, the full written text of the non-confidential version of the petition may be provided only to the authorities of the exporting country or to the relevant trade association.

Notice of initiation of investigation

8. A notice of initiation of investigation to be published under section 4(5) or (7) or 19(5) or (7) of the Act shall contain the following information:

- (a) the name of the country or countries in which the subject goods are produced or, if the goods are imported from a country other than the country in which they are produced, the name of the intermediate country;
- (b) a description of the subject goods;
- (c) a brief description of the alleged countervailable subsidy or dumping to be investigated, including the basis for such allegations;
- (d) a brief summary of the factors on which the allegations of injury are based;
- (e) the address where information and comments may be submitted;

- (f) the date of initiation of the investigation; and
- (g) the proposed time limits for the investigation.

Gathering of information and questionnaires

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

(2) A party receiving a questionnaire shall submit his reply within such time and in such form as may be specified by the Minister in the questionnaire, which time shall be at least 30 days from the date of receipt of the questionnaire.

(3) An extension of the time period specified in paragraph (2) may be granted by the Minister on a written request of a party if the Minister is satisfied -

- (a) with the reasons given for the request; and
- (b) that such extension of time will not unreasonably delay the investigation.

(4) Except in extraordinary circumstances, any reply to a questionnaire submitted to the Minister after the due date or not in the specified form shall not be considered by the Minister.

(5) For the purpose of this regulation, a questionnaire shall be deemed to have been received by a party 7 days from the day on which it was sent to the party or to the appropriate representatives of the interested foreign government in Singapore, as the case may be.

(6) The Minister may, if he considers necessary, issue any party with a supplementary questionnaire, a request for clarification or a request for additional information, relevant to the countervailing or anti-dumping duty investigation and the party shall respond to the supplementary questionnaire or request within the time specified in the questionnaire or request.

Preliminary determination

10. (1) The Minister shall make a preliminary determination under section 7 or 21 of the Act within 90 days from the date of publication of the notice of initiation of investigation.

(2) In special circumstances, the Minister may extend the time period for making a preliminary determination by an additional period not exceeding 90 days.

Notice of preliminary determination

11. (1) A notice of preliminary determination under section 7 or 21 of the Act shall set forth in sufficient detail the findings and conclusions reached on all issues of fact and law considered material.

- (2) The notice shall also contain:
- (a) the names of the exporters or, where this is impracticable, the name of the country or countries in which the subject goods are produced or any intermediate country involved;
 - (b) a description of the subject goods that is sufficient for customs purposes, including the current Singapore tariff classification;
 - (c) the amount of countervailable subsidy or margin of dumping, if any, found to exist and the basis for such determination;
 - (d) factors that have led to the injury determination, including information on factors other than subsidized or dumped imports that have been taken into account when the injury determination was made; and
 - (e) the reasons why any provisional measures are necessary to prevent injury caused during the investigation.

Provisional measures

12. (1) Provisional measures may be taken only after the publication of the notice of affirmative preliminary determination.

- (2) The period for the application of provisional measures shall not exceed:
- (a) in the case of a countervailing duty investigation, four months; and
 - (b) in the case of an anti-dumping duty investigation;
 - (i) six months; or
 - (ii) on the decision of the Minister upon the request by exporters representing a significant percentage of the trade involved, nine months.

Final determination

13. (1) A final determination under section 9 of the Act shall be made within 120 days from the date of publication of the notice of preliminary determination.

- (2) A final determination under section 23 of the Act shall be made:
- (a) within 180 days from the date of publication of the notice of preliminary determination; or
 - (b) where Regulation 12(2)(b)(ii) applies, within 270 days from the date of publication of the notice of preliminary determination.

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

- (a) the names of the exporters and producers of the subject goods or, where this is impracticable, the name of the country in which the subject goods are produced or of any intermediate country involved;
- (b) a description of the subject goods that is sufficient for customs purposes, including the current Singapore tariff classification;
- (c) the amount of countervailable subsidy or margin of dumping found to exist and the basis for such determination;
- (d) factors that have led to the injury determination, including information on factors other than subsidized or dumped imports that have been taken into account when the injury determination was made;
- (e) any other reasons leading to the final determination;
- (f) the countervailing or anti-dumping duties to be imposed;
- (g) the reason why final countervailing or anti-dumping duties should be collected with regard to the subject goods for which provisional measures were applied; and
- (h) the reason for the retroactive imposition of duties under section 9(8) or 23(8) of the Act, if applicable.

(4) Where any interested party satisfies the Minister within seven days of the date of publication of the notice of final determination that there is any clerical error in the notice of final determination, the Minister may rectify that clerical error.

Undertakings and suspension of investigation

14. (1) The Minister may consult the domestic industry before accepting any undertaking and suspending a countervailing or anti-dumping duty investigation under section 11 or 25 of the Act.

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

- (a) in relation to a countervailing duty investigation:
 - (i) the government of the exporting country agrees to eliminate or limit the countervailable subsidy or take other measures concerning its effects which the Minister is satisfied will eliminate the injurious effect of the countervailable subsidy; or
 - (ii) the exporter agrees to revise his prices to that which the Minister is satisfied will eliminate the injurious effect of the countervailable subsidy; and
- (b) in relation to an anti-dumping duty investigation:
 - (i) the exporter agrees to revise his prices to that which the Minister is satisfied will eliminate the injurious effect of the dumping; or

- (ii) the exporter agrees to cease exports to Singapore at dumped prices so that the Minister is satisfied it will eliminate the injurious effect of the dumping.
- (3) Except in extraordinary circumstances, any undertakings shall be offered not later than 60 days before the final determination.
- (4) Price undertakings may be suggested by the Minister but:
 - (a) no exporter shall be forced to enter into such undertakings; and
 - (b) subject to paragraph (5), the fact that the exporters do not offer any undertakings, or do not agree to any undertakings suggested by the Minister, shall not prejudice the consideration of the case.
- (5) The Minister may determine that a threat of injury is more likely to be realized if the subsidized or dumped imports continue without such undertakings.
- (6) Where the Minister:
 - (a) has accepted an undertaking, he shall publish a notice under section 11(3)(c) or 25(3)(c) of the Act, as the case may be; or
 - (b) has refused an undertaking, he shall where practicable provide the reasons which have led to the determination that the acceptance of an undertaking is inappropriate and shall, to the extent possible, give the exporter an opportunity to make comments thereon.
- (7) The notice referred to in paragraph (6)(a) shall include the non-confidential part of the undertaking and set forth in sufficient detail the findings and conclusions on all issues of fact and law considered material by the Minister, unless the Minister otherwise makes that information available through a separate report.
- (8) Upon the acceptance of any undertaking, the Minister may require any interested foreign government or exporter from whom the undertaking has been accepted to provide, from time to time, information relevant to the fulfilment of the undertaking, and to permit verification of pertinent data.
- (9) Regulation 44(2) to (15) shall, with the necessary modifications, apply to any request for information or verification under paragraph (8).
- (10) Any refusal to comply with a request for information or verification under paragraph (8) shall constitute a violation of the undertaking.
- (11) Every request to complete the investigation under section 11(4) or 25(4) of the Act shall be made in writing by the government of the exporting country, either on behalf of the exporter or on its own accord, within 14 days from the date of publication of the notice of suspension of investigation.
- (12) Where the Minister continues the investigation under section 11(4) or 25(4) of the Act, he shall publish a notice of the continuation of the investigation and make a final determination within 180 days from the date of publication of the notice.

PART IV
INJURY DETERMINATIONS

Determination of injury

- 15.** (1) A determination of injury for the purposes of sections 3(1)(b) and 14(1)(b) of the Act shall be based on positive evidence and involve an objective examination of:
- (a) the volume of the subsidized or dumped imports and the effect of the subsidized or dumped imports on prices in the domestic market for like goods; and
 - (b) the consequent impact of these imports on domestic producers of like goods.
- (2) In determining the impact on the domestic industry, the Minister shall base his examination on an evaluation of all relevant economic factors and indices having a bearing on the state of such industry.
- (3) The factors and indices referred to in paragraph (2) shall include:
- (a) the actual and potential decline in output, sales, market share, profits, productivity, return on investments or utilization of capacity;
 - (b) the factors affecting domestic prices;
 - (c) the magnitude of the margin of dumping or the amount of countervailable subsidy;
 - (d) the actual and potential negative effects on cash flow, inventories, employment, wages, growth or ability to raise capital or investments; and
 - (e) in the case of a countervailing duty investigation involving agriculture, whether there has been an increased burden on government support programmes.
- (4) The factors and indices listed in paragraph (3) shall not be exhaustive nor shall any such factor or index be necessarily conclusive.

Causation

- 16.** (1) In order to determine whether injury to the domestic industry is caused by the subject goods through the effects of the countervailable subsidy or dumping under section 3 or 14 of the Act, the Minister shall consider, among other factors:
- (a) whether there has been a significant increase in subsidized or dumped imports, in absolute terms or relative to production or consumption in Singapore;
 - (b) whether there has been significant price undercutting by subsidized or dumped imports as compared with the price of any like domestic goods; and

- (c) whether the effect of the subsidized or dumped imports is such as to depress prices to a significant degree or to prevent price increases, which would otherwise have occurred, to a significant degree.
- (2) The Minister shall assess the effect of subsidized or dumped imports in relation to the domestic production of the like goods where available data permit the separate identification of the production in accordance with such criteria as the production process and producers' sales and profits.
- (3) If the separate identification of the production is not possible, the Minister shall assess the effects of the subsidized or dumped imports by examining the production of the narrowest group or range of goods, which includes the like goods, for which necessary information can be provided.
- (4) The Minister shall also examine whether there are factors other than the subsidized or dumped imports which, at the same time, are injuring the domestic industry.
- (5) Factors that may be considered by the Minister under paragraph (4) shall include, *inter alia*, the volume and prices of non-subsidized imports of the goods in question or 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.
- (6) Injury to the domestic industry caused by factors other than the subsidized or dumped imports shall not be attributed to the subsidized or dumped imports.

Threat of material injury

- 17.** (1) For the purpose of sections 3(1)(b)(ii) and 14(1)(b)(ii) of the Act, a determination of threat of material injury to the domestic industry shall be based on facts and not merely on allegation, conjecture or remote possibility, and the change in circumstances which would create a situation in which the subsidized or dumped goods would cause injury must be clearly foreseen and imminent.
- (2) In determining whether a threat of material injury exists, the Minister shall consider, amongst others, factors such as:
- (a) a significant rate of increase of subsidized or dumped imports into the domestic market indicating the likelihood of substantially increased importation;
 - (b) sufficient freely disposable, or an imminent substantial increase in, capacity of the exporter indicating the likelihood of substantially increased subsidized or dumped exports to the market in Singapore taking into account the availability of other export markets to absorb any additional exports;
 - (c) whether the imported goods are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imported goods;
 - (d) inventories of the goods being investigated; and
 - (e) in the case of a countervailing duty investigation, the nature of the countervailable subsidy or subsidies in question and the trade effects likely to arise therefrom.

(3) None of the factors stated in paragraph (2) by itself necessarily gives decisive guidance but the totality of the factors considered must lead to the conclusion that further imports of the subsidized or dumped goods are imminent and that, unless protective action is taken, material injury would occur.

Material retardation

18. (1) A determination of material retardation of the establishment of a domestic industry for the purposes of section 3(1)(b)(iii) or 14(1)(b)(iii) of the Act shall be based on a determination by the Minister that:

- (a) a domestic industry producing the like goods is in the process of being established;
- (b) such an industry is viable;
- (c) the establishment of such an industry is imminent; and
- (d) the dumped or subsidized imports are, through the effects of the dumping or countervailable subsidy, materially retarding the establishment of such an industry.

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

(3) The determination under paragraph (1) shall be based on facts and not merely on allegation, conjecture or remote possibility.

Cumulation in countervailing duty investigation

19. Where imports of goods from more than one country are the subject of a countervailing duty investigation, the Minister may, for the purpose of determining whether injury exists, cumulatively assess the effects of such subsidized imports on the domestic industry only if:

- (a) the petitions are filed simultaneously;
- (b) the Minister determines that the amount of countervailable subsidization established in relation to the imports from each country is more than *de minimis* as specified in Regulation 24 and the volume of imports from each country is not negligible as specified in Regulation 25; and
- (c) the Minister determines that a cumulative assessment of the effects of the imports is appropriate in the light of the conditions of competition between the imported goods and the conditions of competition between the imported goods and the like domestic goods.

Cumulation in anti-dumping duty investigation

20. Where imports of goods from more than one country are the subject of an anti-dumping duty investigation, the Minister may, for the purpose of determining whether injury exists, cumulatively assess the effects of such dumped imports on the domestic industry only if:

- (a) the petitions are filed simultaneously;
- (b) the Minister determines that the amount of dumping established in relation to the imports from each country is more than *de minimis* and the volume of imports from each country is not negligible as specified in section 24(3) of the Act; and
- (c) the Minister determines that a cumulative assessment of the effects of the imports is appropriate in the light of the conditions of competition between the imported goods and the conditions of competition between the imported goods and the like domestic goods.

PART V

SUBSIDIES AND DUMPING

Specificity and contingency of subsidy

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

- (a) where the granting authority, or the legislation pursuant to which the granting authority operates, explicitly limits access to a subsidy to certain enterprises, such subsidy shall be specific;
- (b) where the granting authority, or the legislation pursuant to which the granting authority operates, establishes objective criteria or conditions governing the eligibility for, and the amount of, a subsidy, specificity shall not exist, provided that the eligibility is automatic and that such criteria and conditions are strictly adhered to and are clearly spelt out in written law or other official document so as to be capable of verification; and
- (c) if, notwithstanding any appearance of non-specificity resulting from the application of the principles laid down in subparagraphs (a) and (b), there are reasons to believe that the subsidy may in fact be specific, other factors may be considered.

(2) For the purposes of paragraph (1)(b), objective criteria or conditions mean criteria or conditions which are neutral, which do not favour certain enterprise over others, and which are economic in nature and horizontal in application, such as the number of employees or the size of enterprise.

(3) For the purposes of paragraph (1)(c):

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

- (b) account shall be taken of the extent of diversification of economic activities within the jurisdiction of the granting authority, as well as of the length of time during which the subsidy programme has been in operation.
- (4) The setting or change of generally applicable tax rates by all levels of government entitled to do so shall not be deemed to be a specific subsidy.
- (5) A subsidy is contingent upon export performance within the meaning of section 2(3)(b)(i) of the Act where the facts demonstrate that the granting of a subsidy, without having been made legally contingent upon export performance, is in fact tied to actual or anticipated exportation or export earnings.
- (6) A subsidy that is granted to certain enterprises which export shall not for that reason alone be considered to be contingent upon export performance within the meaning of section 2(3)(b)(i) of the Act.
- (7) Any determination of specificity under this regulation shall be clearly substantiated on the basis of positive evidence.

Calculation of countervailable subsidy

- 22.** (1) The Minister shall calculate the total countervailable subsidy received by each enterprise with respect to the subject goods during the designated period of investigation or review.
- (2) In calculating the amount of countervailable subsidy:
 - (a) the Minister shall either calculate the countervailable subsidy from a particular programme received by the enterprise, industry or exporters as to be provided in a single year or on an annual basis for two or more years, as the Minister thinks appropriate;
 - (b) the Minister shall allocate the countervailable subsidy to those goods to which the countervailable subsidy is associated;
 - (c) the amount of countervailable subsidy shall be determined per unit, on an *ad valorem* basis, or on any other reasonable basis;
 - (d) the Minister may subtract the amount of:
 - (i) any application fee, deposit or similar payment paid in order to qualify for, or to receive, the countervailable subsidy; and
 - (ii) export taxes, duties or other charges collected on the export of the goods to Singapore specifically intended to offset the countervailable subsidy received;
 - (e) the Minister may calculate the countervailable subsidy based on the currency which he considers appropriate; and
 - (f) where it is necessary in the circumstances of the case, the Minister may adopt any other method of calculation which he considers appropriate.

(3) In determining whether there is conferred a benefit referred to in section 2(2) of the Act the Minister shall have regard to the following guidelines:

- (a) government provision of equity capital shall not be considered as conferring a benefit unless the investment decision can be regarded as inconsistent with the usual investment practice, including the provision of risk capital, or private investors in the territory of that country;
- (b) a loan by a government shall not be considered as conferring a benefit unless there is a difference between the amount that the firm receiving the loan pays on the government loan and the amount the firm would pay on a comparable commercial loan which the firm could actually obtain on the market, in which case the benefit shall be the difference between these two amounts;
- (c) a loan guarantee by a government shall not be considered as conferring a benefit unless there is a difference between the amount that the firm receiving the guarantee pays on a loan guaranteed by the Government and the amount that the firm would pay on a comparable commercial loan absent the government guarantee, in which case the benefit shall be the difference between these two amounts adjusted for any differences in fees; and
- (d) the provision of goods or services or purchase of goods by a government shall not be considered as conferring a benefit unless the provision is made for less than adequate remuneration, or the purchase is made for more than adequate remuneration.

(4) For the purposes of paragraph (3)(d), the adequacy of remuneration shall be determined in relation to prevailing market conditions for the good or service in question in the country of provision or purchase, including price, quality, availability, marketability, transportation and other conditions of purchase or sale.

Establishing the countervailing duty rate

23. (1) The Minister shall, subject to paragraph (2), determine and apply an individual countervailing duty rate for each known exporter or producer concerned of the subject goods that has been individually investigated.

(2) Where limited examinations carried out under Regulation 33, the Minister shall apply to any exporter or producer not included in the investigation a rate that is equal to the weighted average of the individual countervailing duty rates established for all exporters and producers individually examined, provided that the Minister shall disregard any rate determined under the circumstances referred to in section 37 of the Act.

***De minimis* level of countervailable subsidy**

24. (1) An amount of countervailable subsidy shall be considered to be *de minimis* under section 10(3)(a) of the Act:

- (a) if the countervailable subsidy when expressed as an *ad valorem* percentage is less than 1%;

- (b) where the country of export is a developing country but not a developing country specified in paragraph (2), if the countervailable subsidy when expressed as an *ad valorem* percentage is not more than 2%; or
 - (c) where the country of export is a developing country specified in paragraph (2), if the countervailable subsidy when expressed as an *ad valorem* percentage is not more than 3%.
- (2) A developing country shall be specified for the purposes referred to in paragraph (1)(b) and (c) if it is:
- (a) a Member country that has eliminated export subsidies before 1 January 2003; or
 - (b) a Member country referred to in Annex VII of the Agreement on Subsidies and Countervailing Measures.
- (3) Paragraph (1)(c) shall cease to have effect on 1 January 2003.
- (4) In this regulation, Member country means a country which is a party to the World Trade Organization Agreement.

Negligible volume of subsidized or dumped imports

- 25.** (1) The volume of subsidized imports from a country of export shall be regarded as negligible under section 10(3)(b) of the Act:
- (a) if the volume of subsidized imports from that country accounts for less than 3% of the total volume of imports of the like goods into Singapore, unless subsidized imports from countries which individually account for less than 3% of the total imports of the like goods into Singapore collectively account for more than 7% of the total imports of the like goods into Singapore; or
 - (b) where the country of export is a developing country, if the total volume of subsidized imports from that country accounts for less than 4% of the total volume of imports of the like goods into Singapore, unless subsidized imports from developing countries which individually account for less than 4% of the total imports of the like goods into Singapore collectively account for more than 9% of the total imports of the like goods into Singapore.
- (2) For the purpose of determining whether the volume of imports of the subject goods is negligible under section 24(3)(b), the Minister shall only consider subject goods that are found to be dumped.

Relevant period for anti-dumping duty investigation

- 26.** (1) For the purposes of determining normal value and export price under sections 15 and 16 of the Act respectively, the Minister shall normally examine sales during the one-year period preceding the initiation of an investigation.
- (2) The Minister may examine sales during any additional or alternative period that the Minister thinks appropriate if such sales permit a proper comparison.

Determining normal value under section 15(2) of the Act

27. (1) In computing the normal value of any subject goods under section 15(2) of the Act, 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 subject goods.

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

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

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

Selecting third country under Section 15(2)(a) of the Act

28. The Minister generally shall select the third country for the purposes of section 15(2)(a) of the Act based on the following criteria:

- (a) the like goods exported to the third country are of a sufficient quantity for the purpose of section 15(3) of the Act;
- (b) the market in the third country, in terms of structure and development is similar to the Singapore market;
- (c) the sales in the third country are in the ordinary course of trade; and
- (d) any other relevant criteria based on the circumstances of a particular industry.

Determining cost of production and constructed value under section 15 of the Act

29. (1) The cost of production of the subject goods for the purpose of section 15(5) of the Act, shall be the sum of:

- (a) the cost of materials and of fabrication or processing in the production of the subject goods in the exporting country; and
- (b) a reasonable amount for administrative, selling and general costs (including financial costs).

(2) The constructed value of the subject goods for the purpose of section 15(2)(b) of the Act shall be the sum of the cost of production and a reasonable amount for profits.

(3) The amounts referred to in paragraphs (1) and (2) shall be determined based on actual data pertaining to production and sales in the ordinary course of trade of the like goods in the exporting country by the producer or exporter under investigation or review.

(4) Where the amounts referred to in paragraphs (1) and (2) cannot be determined on the basis specified in paragraph (3), the amounts may be determined on the basis of:

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

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

(6) If a transaction is disregarded under paragraph (5) and there are not other transactions available for consideration, then the determination of the amounts required to be considered under paragraphs (1) and (2) shall be based on the facts available as to what the amounts would have been if the transaction had occurred between unrelated parties or parties without the compensatory arrangements.

Transactions not in ordinary course of trade

30. For the purposes of section 15(4) of the Act:

- (a) the extended period of time shall normally be one year but shall in no case be less than six months;
- (b) sales below per unit costs are made in substantial quantities where the Minister establishes 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% of the volume sold in transactions under consideration for the determination of normal value; and
- (c) prices below per unit costs at the time of sale and above weighted average per unit costs for the period of investigation or review are considered to provide for the recovery of costs within a reasonable period of time.

Establishing dumping margins

31. (1) The Minister shall normally establish an individual margin of dumping for each known exporter or producer of the subject goods.

(2) Subject to paragraph (3), the Minister may, where appropriate, instead of establishing the margin of dumping on the weighted average-to-weighted average basis as provided in section 17(3) of the Act, establish the margin of dumping by comparing the export prices determined in respect of individual transactions over the period under investigation or review with the normal value of comparable individual transactions determined over that period.

(3) If the Minister is satisfied that:

- (a) the export prices differ significantly among different purchasers or periods; and
- (b) those differences make the methods referred to in section 17(3) of the Act and paragraph (2) inappropriate for use in respect of a period constituting the whole or a part of the period under investigation or review,

the Minister may establish the margin of dumping for that period by comparing the respective export prices determined in relation to individual transactions during that period with the weighted average normal value of comparable transactions over that period.

(4) If the Minister establishes the margin of dumping for any period by the method in paragraph (3), he must provide a written explanation as to how the differences in export prices referred to in paragraph (3)(a), make the methods in section 17(3) and paragraph (2) inappropriate for use in respect of that period.

(5) If, in a comparison under section 17(3) of the Act, the Minister is satisfied that the weighted average of export prices over the period under investigation or review is less than the weighted average of corresponding normal values over that period:

- (a) the goods exported to Singapore during that period are taken to have been dumped; and
- (b) the dumping margin for the exporter concerned in respect of those goods is the difference between those weighted averages.

(6) If, in a comparison under paragraph (2), the Minister is satisfied that an export price in respect of an individual transaction during the period under investigation or review is less than the normal values of comparable individual transactions determined over that period:

- (a) the goods exported to Singapore in that transaction are taken to have been dumped; and
- (b) the dumping margin for the exporter concerned in respect of those goods is the difference between that export price and that normal value.

(7) If, in a comparison under paragraph (3), the Minister is satisfied that the export prices in respect of particular transactions during the period under investigation or review are less than the weighted average of corresponding normal values during that period:

- (a) the goods exported to Singapore in each such transaction are taken to have been dumped; and

- (b) the dumping margin for the exporter concerned in respect of those goods is the difference between each relevant export price and the weighted average of the corresponding normal values.

(8) Where the Minister has limited his examination in accordance with Regulation 33, any anti-dumping duty applied to imports from exporters or producers not included in the examination shall not exceed the weighted average margin of dumping established with respect to the exporters or producers individually examined.

(9) For the purposes of paragraph (8), the Minister shall disregard any margin determined under the circumstances referred to in section 37 of the Act.

Adjustments to ensure fair comparison between normal value and export prices

32. (1) The Minister shall make the following adjustments to ensure a fair comparison between the normal value and the export price of any goods:

- (a) make reasonable allowances for transport expenses such as freight, shipping, insurance or other similar expenses to ensure the prices are compared normally at an ex-factory level;
- (b) make reasonable allowances for bona fide differences in the selling conditions of the sales compared, such as commissions, credit terms, guarantees, warranties, technical assistance, servicing and other expenses, if the Minister is satisfied that the amount of any price difference is wholly or partly due to such differences in the selling conditions;
- (c) make reasonable allowances for differences in the physical characteristics of goods compared if the Minister is satisfied that the amount of any price difference is wholly or partly due to such physical differences;
- (d) make reasonable allowances for the amount of any indirect taxes or duties imposed on sales in the exporting country but exempted or rebated upon exportation of the goods;
- (e) make reasonable allowances for selling costs incurred by the producer or distributor on behalf of the purchaser;
- (f) where the export price is constructed under section 16(2) of the Act, make reasonable allowances for costs, including duties and taxes, incurred between importation and resale;
- (g) calculate normal value and export price based on sales at the same commercial level of trade, but where the levels of trade are different and the Minister is satisfied that the amount of any price difference is wholly or partly due to such difference, the Minister may make a reasonable allowance for the difference;
- (h) calculate normal value and export price based on comparable quantities of goods, but where the quantities are not comparable and the Minister is satisfied that the amount of any price difference is wholly or partly due to such difference in quantities, the Minister may make a reasonable allowance for the difference; and

- (i) make any other adjustments he thinks necessary to ensure a fair price comparison.
- (2) Any price used to establish normal value or export price shall be net of all discounts and rebates directly linked to the sales under consideration or indirect discounts or rebates reasonably allocated to the sales under consideration, provided that the exporter furnishes sufficient evidence that any such reduction from the gross price has actually been granted.
- (3) The Minister may make adjustments for deferred discounts if they are directly linked to the sales under consideration and if evidence is produced to show that the discounts were based:
 - (a) on consistent periods; or
 - (b) on an undertaking to comply with the conditions required to qualify for the deferred discount.

Limited examination

- 33.** (1) Where the number of exporters, producers, importers or types of the subject goods is so large as to make it impracticable to individually examine each interested party or all the subject goods for the purposes of Regulations 23(1) or 31(1), the Minister may limit the examination either to a reasonable number of interested parties or subject goods by using samples which are statistically valid on the basis of information available to the Minister 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.
- (2) Any selection of exporters, producers, importers or types of goods made under paragraph (1) shall preferably be chosen in consultation with and with the consent of the exporters, producers or importers concerned.
- (3) Where the Minister has limited the examination under this regulation, he shall nevertheless determine an individual countervailing duty rate or 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 Minister and prevent the timely completion of the investigation.
- (4) Voluntary responses shall not be discouraged under this regulation.

Rate of countervailing subsidy on goods from non-market economy country

- 34.** (1) Where the exporting country of the subject goods is a non-market economy country, no countervailing duty shall be applied to such goods under any programme to the extent that the Minister determines that it is impracticable, because of the nature of the non-market economy, to determine a countervailable duty rate in respect of goods under that programme in accordance with the methods prescribed by the Act or these Regulations.
- (2) The Minister shall, where he has made a determination referred to in paragraph (1), provide a written explanation as to the reasons for his determination.

Dumping margin for goods from non-market economy country

35. Where the exporting country of the subject goods is a non-market economy country, the Minister shall (to the extent that he determines that it is impracticable, because of the nature of the non-market economy and the industry concerned, to calculate a dumping margin in accordance with the methods prescribed by the Act or these Regulations) base the calculation of the dumping margin upon other reasonable methods including:

- (a) the prices of like goods sold in the ordinary course of trade in an appropriate surrogate market-economy country;
- (b) the constructed value of like goods based on the factors of production in the exporting country and the costs of producing like goods sold in the ordinary course of trade in an appropriate surrogate market economy country; and
- (c) the prices, in the ordinary course of trade; of like goods produced and sold in Singapore.

PART VI

REVIEWS

Review by Minister

36. (1) A review to be conducted by the Minister under section 12 or 26 of the Act shall normally, except as provided in Regulations 37 and 38, be undertaken not earlier than one year after the date of publication of the determination or decision of which the review is sought.

(2) A review conducted by the Minister shall normally be completed within 180 days from the date of publication of the notice of initiation of the review but in no case shall it extend beyond one year from that date.

Expedited review of countervailing duty for exporters not examined

37. (1) Where a countervailing duty has been imposed on goods exported by an exporter who was not actually investigated for reasons other than a refusal to cooperate, the Minister shall promptly initiate an expedited review under section 12(1)(f) of the Act.

(2) Any review conducted under paragraph (1) shall be completed within six months of the date of publication of the notice of initiation of the review.

Expedited review of anti-dumping duties for new exporters

38. (1) If any goods are subject to anti-dumping duties under the Act, the Minister shall promptly initiate an expedited review under section 26(1)(f) of the Act for the purpose of determining individual margins of dumping for any exporter or producer in the exporting country in question who has not exported the goods to Singapore during the period of investigation.

- (2) No review shall be initiated under paragraph 1 unless the exporters or producers can show that they are not related to any or the exporters or producers in the exporting country who are subject to the anti-dumping duties on the goods.
- (3) The review under paragraph (1) shall be completed within nine months of the date of publication of the notice of initiation of the review.
- (4) No anti-dumping duties shall be levied on imports from such exporters or producers while the review under paragraph (1) is being carried out.
- (5) The Minister may, however, request security 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.

Extension review

- 39.** (1) The Minister shall publish a notice of any impending termination of the imposition of countervailing or anti-dumping duties at least six months prior to the end of the five-year period referred to in section 12(7) or 26(7) of the Act, as the case may be.
- (2) The Minister shall specify in the notice the period within which any interested parties may present their views on such termination of imposition of duties.
 - (3) Where an interested party provides evidence or the Minister otherwise obtains information that the termination of the imposition of duties would be likely to lead to continuation or recurrence of countervailable subsidization or dumping, as the case may be, and injury, the Minister shall publish a notice of initiation of a review under section 12(7) or 26(7) of the Act to examine whether to extend the imposition of duties.
 - (4) An extension review referred to in paragraph (3) shall normally be completed within 80 days from the date of publication of the notice of initiation of the review but in no case shall it extend beyond one year after that date.
 - (5) The imposition of countervailing or anti-dumping duties shall continue pending the outcome of the extension review.
 - (6) Except for paragraph (3), this regulation shall apply, with the necessary modifications, to the review of undertakings under section 12(1)(d) or 26(1)(d) of the Act.

Refund review

- 40.** (1) Subject to paragraphs (2) and (3), where an importer has sufficient and complete evidence that anti-dumping or countervailing duties paid by him during the 12-month period after the final determination of the anti-dumping or countervailing duty investigation, or any subsequent 12-month period, are in excess of the margin of dumping or the countervailable subsidy, the importer may request a refund review under section 12(1)(b) or 26(1)(b) of the Act for each such 12-month period to which the evidence relates.

- (2) No importer shall request a refund review under paragraph (1) unless he has not later than the time of entry of the subject goods into the customs territory, notified the Director-General of Customs and Excise and the Minister, in such form as may be required, of his intention to request a refund review.
- (3) Every request for a refund review by an importer shall:
- (a) be made in writing and contain a list of all the subject goods imported into Singapore by the importer for which the refund is being requested; and
 - (b) be filed with the Minister, with all the evidence referred to in paragraph (1), within 90 days after the end of the 12-month period in respect of which the refund is requested by the importer
- (4) If an importer has complied with paragraphs (1) to (3), the Minister shall conduct a refund review and publish a notice of initiation of the refund review.
- (5) A refund review under this regulation shall normally be completed within 180 days from the date of publication of the notice of initiation of the review but in no case shall it extend beyond one year from that date.
- (6) The amount of anti-dumping or countervailing duty for the subject goods under review shall be determined by the result of the refund review.
- (7) If the margin of dumping or countervailable subsidy is found to be less than the anti-dumping or countervailing duty paid by the importer, the difference shall be refunded to him.
- (8) If the margin of dumping or countervailable subsidy is found to be greater than the anti-dumping or countervailing duty paid by the importer he shall pay the difference.

PART VII

GENERAL

Information from interested parties

- 41.** (1) Any interested party may submit, in writing to the Minister, information that it considers relevant to any countervailing or anti-dumping duty investigation or review.
- (2) An interested party may submit the information orally but the party must, if it wishes to have such information taken into account, reduce the oral information to writing and properly submit it to the Minister within seven days from the date of the oral submission.
- (3) An interested party shall provide five copies of the confidential version of the submission and three copies of the non-confidential version.
- (4) Any document submitted which is not in the English language shall be accompanied by a translation in English, unless the Minister, in writing, waives this requirement for an individual document.

- (5) The Minister may require submission of factual information on computer tape or discs compatible with the computer system specified by the Minister unless the Minister is satisfied that the party submitting the information does not maintain records in computerized form or cannot supply the requested information in computer format without unreasonable additional burden in time and expense.
- (6) All information submitted must be certified as accurate and complete and shall be in such form as may be specified by the Minister.
- (7) Subject to section 35 of the Act, written information submitted by any interested party shall be made available to other interested parties involved in the investigation.
- (8) A party submitting information may apply to the Minister to treat such information as confidential:
- (a) if its disclosure would be of significant competitive advantage to a competitor;
 - (b) if its disclosure would have a significant adverse effect upon the party supplying the information or upon a party from whom that party acquired the information; or
 - (c) for any other good cause shown.

Information from industrial users, etc.

- 42.** (1) Industrial users of the subject goods and, where the subject goods are commonly sold at the retail level, the representative consumer organization may provide to the Minister information relevant to the investigation.
- (2) Regulation 41(2) to (8) shall, with the necessary modifications, apply to the provision of information under paragraph (1).

Verification of information

- 43.** (1) Where the Minister decides to verify the accuracy of any information submitted during an investigation or a review or provided pursuant to Regulation 14(8), the Minister shall notify the interested foreign government that authorized representatives from the Minister will visit the interested foreign government, interested parties or any other party deemed relevant for an on-site verification in order to verify the accuracy and completeness of the factual information submitted.
- (2) The procedure described in Annex I to the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994 shall apply to such on-site verification carried out in the territory of another country.
- (3) The authorized representatives of the Minister may request access to all files, records and personnel that they consider relevant to the investigation or review.
- (4) Subject to the requirement to protect confidential information, the Minister shall make the results of any such on-site verification available, or shall provide disclosure thereof pursuant to Regulation 46, to the parties to which the on-site verification pertains.

(5) Where the Minister decides that, because of the large number of parties under investigation or review, or who are required to provide information pursuant to Regulation 14(8), it is impracticable to verify relevant factual information for each party, the Minister may select and verify a sample.

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

Determination on facts available

44. (1) As soon as practicable after the initiation of an investigation or review, the Minister shall specify in detail the information required from any interested party, and the form in which that information is required.

(2) The Minister shall ensure that the interested party is aware that if information is not supplied within a reasonable time, the Minister may 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.

(3) The Minister may request that an interested party provides its response in a particular medium (such as computer tape) or computer language.

(4) Where such a request is made under paragraph (3), the Minister shall consider the reasonable ability of the interested party to respond in the requested medium or computer language, and shall not request the party to use for its response a computer system other than that used by the party.

(5) The Minister shall not maintain a request for a computerized response if the interested party does not maintain computerized accounts and if presenting the response as requested would result in an unreasonable extra burden on the interested party, such as entailing unreasonable additional cost and trouble.

(6) The Minister shall 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, such as entailing unreasonable additional cost and trouble.

(7) All information which is:

- (a) verifiable;
- (b) appropriately submitted so that it can be used in the investigation or review without undue difficulties;
- (c) supplied in a timely fashion; and
- (d) where applicable, supplied in a medium or computer language requested by the Minister,

shall be taken into account when determinations are made.

(8) If an interested party does not respond in the requested medium or computer language but the Minister finds that the circumstances set out in paragraphs (3) to (6) have been satisfied, the failure to respond in the requested medium or computer language shall not be considered to significantly impede the investigation.

(9) Where the Minister does not have the ability to process information provided in a particular medium (such as computer tape), the information shall be supplied in the form of written material or any other form acceptable to the Minister.

(10) Even though the information provided may not be ideal in all respects, this shall not justify the Minister disregarding it, provided that the interested party has acted to the best of its ability.

(11) If evidence or information is disregarded, the supplying party shall be informed forthwith of the reasons therefor, and shall have an opportunity to provide further explanations within a reasonable period, due account being taken of the time-limits of the investigation.

(12) If the explanations are considered by the Minister as not being satisfactory, the reasons for the rejection of such evidence or information shall be given in any published determinations.

(13) If the Minister has to base his 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 or review, he shall do so with special circumspection.

(14) If paragraph (13) applies, the Minister shall, where practicable, check the information from other independent sources at his disposal, such as published price lists, official import statistics and customs returns, and from the information obtained from other interested parties during the investigation or review.

(15) If relevant information is withheld from the Minister as a result of the failure of an interested party to cooperate, the Minister may make a determination which is less favourable to that party than he would otherwise have made.

Meeting of interested parties

45. (1) Any request from an interested party for a meeting under section 34(4) of the Act shall be made in writing to the Minister.

(2) The interested parties shall be notified of the time and place of the meeting at least 14 days before the meeting takes place.

(3) Any other interested party proposing to attend the meeting shall submit a written request at least 7 days prior to the date for the meeting and shall provide a valid justification for participating in the meeting.

Disclosure of facts under consideration

46. (1) The Minister 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.

(2) Such disclosure shall take place in sufficient time for the interested parties to defend their interests.

Made this 22nd day of April 1997.

KHAW BOON WAN
Permanent Secretary,
Ministry of Trade and Industry,
Singapore