



5 September 2018

(18-4982)

Page: 1/16

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

Original: English

**NOTIFICATION OF LAWS AND REGULATIONS UNDER
ARTICLES 18.5, 32.6 AND 12.6 OF THE AGREEMENTS**

CAMBODIA

The following communication, dated 25 July 2018, is being circulated at the request of the Delegation of Cambodia.

With reference to Article 18.5 of the Agreement on Implementation of Article VI of the GATT 1994, Article 32.6 of the Agreement on Subsidies and Countervailing Measures and Article 12.6 of the Agreement on Safeguards, the Royal Government of Cambodia submits the enclosed Law on Trade Remedies of Cambodia.

LAW ON TRADE REMEDIES

**CHAPTER I
GENERAL PROVISIONS**

Article 1: Purpose

This law aims to protect Cambodian Industry from being negatively affected by unfair trade imports and unanticipated surge in imports and to resolve the negative impact on Cambodian Industry through trade remedies measures in compliance with the relevant WTO Agreements.

Article 2: Objective

This law defines the principles, mechanisms, procedures, and rules pertaining to trade remedies.

Article 3: Scope

This law shall be applied to Dumping, Subsidies and Countervailing Measures, and Safeguards with regard to trade in Cambodia in conformity with the relevant Agreements of the World Trade Organization.

Article 4: General Definitions

Key technical terms applied in this law shall have the meanings as defined in the Annex of this law.

CHAPTER II
NATIONAL COMMITTEE ON TRADE REMEDIES

Article 5: The National Committee on Trade Remedies

There shall be a Committee to be referred to as the National Committee on Trade Remedies. This Committee shall be led by the Minister of Commerce and include representatives from relevant Ministries/Institutions to fulfil the tasks related to trade remedies in conformity with the provisions of this law.

The Organization and functioning of the National Committee on Trade Remedies shall be determined by a Sub-Decree.

CHAPTER III
TRADE REMEDIES PROCEDURES

Part I
Anti-Dumping Measures

Article 6: Identification of Dumping

An investigated product that is being introduced into the commerce of the Kingdom of Cambodia at a price that is less than its normal value in country of origin shall be considered as being dumped.

Article 7: Normal Value Based on Prices in Country of Export or Country of Origin

The National Committee on Trade Remedies shall determine the normal value of the investigated product on the basis of the comparable price paid or payable, in the ordinary course of trade, for sales of the like product when destined for consumption in the exporting country.

Article 8: Normal Value Based on Export Price to a Third Country or on Constructed Value

When there are no sales of the like product in the domestic market of the exporting country, or when such sales do not permit a proper comparison because of the market situation or the low volume of the sales in the domestic market of exporting country, the National Committee on Trade Remedies shall establish the normal value of the investigated product based on either of the following paragraph (1) or (2):

- (1) on the basis of a comparable price of the like product when exported from the country of origin to an appropriate third country, provided that this price is representative; or
- (2) on the basis of the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits.

Article 9: Export Price

Export price is determined as follows:

A. The export price shall be the price actually paid or payable for the investigated product when exported for sale from the exporting country to the Kingdom of Cambodia.

B. In cases where there is no export price or where it appears to the National Committee on Trade Remedies that the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party:

- (1) 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

- (2) the National Committee on Trade Remedies may determine the export price based on reasonable ground if the products are not resold to an independent buyer, or not resold in the condition as imported.

C. In the case where the National Committee on Trade Remedies determines the normal value on the basis of the country of origin, the export price shall be the price actually paid or payable for the investigated product when exported for sale from the country of origin.

Article 10: Adjustments to Normal Value and Export Price

The National Committee on Trade Remedies shall make a fair comparison 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. Reasonable adjustments shall be made to account for differences which affect price comparability.

Article 11: Individual Dumping Margin

The National Committee on Trade Remedies shall determine an individual dumping margin of each exporter or producer concerned of the investigated product. However, the National Committee on Trade Remedies may limit their examination and the resulting individual margins to a reasonable number for interested parties or investigated products.

Article 12: Determination of Injury

A determination of material injury for the purposes of this law shall be based on positive evidence and involve an objective examination of:

- (a) the volume of the dumped imports;
- (b) the effect of the dumped imports on prices in the Cambodian market for like products; and
- (c) the consequent impact of these imports on Cambodian producers of such products.

Article 13: Examination of the Volume of Dumped Imports and their Effects on Prices in the Kingdom of Cambodia

A. With regard to the volume of the dumped imports, the National Committee on Trade Remedies shall consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the Kingdom of Cambodia.

B. With regard to the effect of the dumped imports on prices in the market of the Kingdom of Cambodia, the National Committee on Trade Remedies shall consider whether:

- (1) there has been a significant price undercutting by the dumped imports as compared with the price of the like product in domestic market; or
- (2) 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.

C. Beside the factors identified in paragraphs A and B of this Article, the National Committee on Trade Remedies may consider other factors which cause the noticeable changes to the price of Cambodian like products.

Article 14: Cumulation

Where imports of a like product from more than one country are subject to simultaneous anti-dumping investigations, the National Committee on Trade Remedies may cumulatively assess the effects of such imports on Cambodian industry only if the Committee determines that:

- (a) the margin of dumping established in relation to the investigated product from each country is more than *de minimis* and the volume of the investigated product imported 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 imports and the conditions of competition between the imported product and the like domestic product.

Article 15: Examination of the Impact of the Dumped Imports on Cambodian Industry

A. The examination of the impact of the dumped imports on the affected Cambodian industry shall include an evaluation by the National Committee on Trade Remedies of all relevant economic factors and indices having a bearing on the state of the industry, including:

- (1) actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilization of production capacity;
- (2) factors affecting domestic prices;
- (3) the magnitude of the dumping margin; and
- (4) actual and potential negative effects on cash flow, growth, inventories, employment, wages, ability to raise capital or investments.

No one of these factors by itself can necessarily give decisive guidance, but the totality of the factors considered shall lead to the conclusion that dumped exports occurred and is causing material injury to Cambodian industry.

B. The National Committee on Trade Remedies shall assess the effect of the dumped imports in relation to Cambodian production of the like domestic 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 National Committee on Trade Remedies shall assess the effects of the dumped imports on the production of the product by the examination of the production of the narrowest group or range of products, which includes the like domestic product, for which the necessary information can be provided.

Article 16: Threat of Material Injury

A. The National Committee on Trade Remedies shall base its determination of a threat of material injury on facts and not merely on unjustifiable allegation or conjecture. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent.

B. In making a determination regarding the existence of a threat of material injury, the National Committee on Trade Remedies should consider such factors as:

- (1) a significant rate of increase of dumped imports into the Cambodian market indicating the likelihood of substantially increased importations;
- (2) an increase in production capacity of the exporter indicating the likelihood of substantially increased dumped exports to the Cambodian market;
- (3) whether imports are entering at prices that will have a significant depressing or suppressing effect on prices of the like domestic product, and would likely increase demand for further imports; and
- (4) inventories of the investigated product.

C. With respect to cases where dumped imports has threatened to cause injury, the National Committee on Trade Remedies shall consider and decide with special care the application of anti-dumping measures.

Article 17: Causal Link

A. The National Committee on Trade Remedies shall demonstrate that the dumped imports are causing material injury within the meaning of this law. The demonstration of a causal link between the dumped imports and the injury to Cambodian industry shall be based on an examination of all relevant evidences available to the National Committee on Trade Remedies.

B. The National Committee on Trade Remedies shall also examine any known factors other than the dumped imports that at the same time are injuring the Cambodian 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, among other things:

- (1) the volume and prices of imports not sold at dumping prices;
- (2) decrease in demand or changes in the patterns of consumption;
- (3) trade restrictive practices of foreign and Cambodian producers;
- (4) competition between the foreign and domestic producers;
- (5) developments in technology; and
- (6) the ability of foreign export performance and productivity of the Cambodian industry.

Article 18: Procedures for Initiating and Conducting Investigations

A. The National Committee on Trade Remedies may initiate anti-dumping investigation up on a written application from the Cambodian industry, except in special circumstances the Committee may itself initiate the investigation. An application to initiate shall include evidence of dumping, injury, and a causal link as defined in this law. The National Committee on Trade Remedies shall establish the procedures for initiation of an investigation, including defining when an application shall be considered to have been made "by or on behalf of the Cambodian industry." The National Committee on Trade Remedies shall not publicize the anti-dumping investigation before it is initiated, but shall promptly publish a notice of its decision to initiate the investigation.

B. The National Committee on Trade Remedies shall make preliminary and final determinations of dumping and injury. After a preliminary determination of dumping, the National Committee on Trade Remedies may impose provisional measures if it determines these measures are necessary to prevent injury being caused during the investigation.

C. The National Committee on Trade Remedies shall establish the principles and conditions under which it may accept voluntary price undertaking agreements in case the exporter agrees to revise its sale prices to eliminate dumping. The National Committee on Trade Remedies shall also establish procedures to address the violation of price undertaking agreements. Investigations may be terminated upon the withdrawal of the application, or when the National Committee on Trade Remedies determines that there is not sufficient evidence of dumping or injury to justify proceeding with the case. The National Committee on Trade Remedies shall publish a notice of its decision to terminate the investigation.

D. The National Committee on Trade Remedies shall establish procedures for keeping confidential any information submitted to the National Committee on Trade Remedies by interested parties that request for such treatment. The National Committee on Trade Remedies shall maintain a public file containing non-confidential information obtained during the investigation. Upon request, the National Committee on Trade Remedies shall hold public hearings at which all interested parties may participate. The interested parties, as well as representatives of Cambodian industrial users and other consumers, may also submit written comments during the investigation and at the hearings.

E. The detailed procedures relating to the initiation and the investigation shall be determined by a Sub-Decree.

Article 19: Investigations Resulting in the Imposition of Anti-Dumping Duties

When the National Committee on Trade Remedies concludes anti-dumping investigations by making affirmative determinations of injury and dumping, anti-dumping measures shall be imposed in accordance with this law.

Article 20: The Public Interest of Cambodia and Lesser Duty Rule

A. The amount of the anti-dumping duty shall not exceed the dumping margin as established in this law. When the National Committee on Trade Remedies has determined that all requirements for the imposition of anti-dumping have been fulfilled, it shall examine whether the imposition of such measure would be in the interest of Cambodia. Consideration of Cambodia's interest shall include:

- the interest of Cambodian industry concerned;
- the situation of domestic competition for the product under investigation;
- the interest of consumers for industrial purpose and
- the interest of final consumers.

If the imposition of a dumping duty deemed to serve the public interest, the anti-dumping duty rate may be lower than the dumping margin.

B. The National Committee on Trade Remedies shall also examine whether the anti-dumping duty less than the full dumping margin would be adequate to remove the injury to the Cambodian industry. Where the National Committee on Trade Remedies determines that such a lesser duty would be adequate to remove the injury, the amount of the final anti-dumping duty imposed shall not exceed that lesser duty.

Article 21: Imposition and Collection of Anti-Dumping Duties

A. Anti-dumping duties shall take the form of *ad valorem* or specific duties, imposed in addition to other import duties levied on the imported products concerned. These duties shall be collected by the Cambodian Customs Authority in the appropriate amounts in each case, on a non-discriminatory basis on imports from all sources of such product found to be dumped and causing injury, except as to imports from those sources from which price undertakings under the terms of this law have been accepted.

B. In anti-dumping investigations, the National Committee on Trade Remedies shall establish an individual anti-dumping duty rate for each known exporter or producer of dumped imports concerned. In case where the number of individual producers is so large that may prevent the timely completion of the investigation, the National Committee on Trade Remedies may establish a common anti-dumping duty rate.

C. The National Committee on Trade Remedies shall refund the duties paid in excess of the dumping margin and temporarily suspend the application of an anti-dumping measure where market conditions have changed and the application of anti-dumping duties is not in the interest of Cambodia.

Article 22: Retroactive Application

A final anti-dumping duty shall be collected on investigated products which were entered for sale not more than ninety (90) days prior to the date of application of provisional measures, and not on product imported prior to the date of the initiation of the investigation if the National Committee on Trade Remedies determine, for the dumped product in question, that:

- (a) there is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practises dumping and that such dumping would cause injury; and
- (b) the injury is caused by massive dumped imports of a product in a relatively short time and based on other circumstances, such as a rapid build-up of inventories of that imported product to avoid the definitive duties imposed by the Authority. In this case,

the National Committee on Trade Remedies shall give the importers concerned an opportunity to comment on the cause of that rapid build-up of inventories.

Article 23: Collection of Definitive Duties on Dumped Product for the Period of the Application of Provisional Measures

A. Definitive anti-dumping duties may be levied retroactively for the period for which provisional measures have been applied, if:

- (1) the National Committee on Trade Remedies makes a final determination of injury; or
- (2) the final determination of injury is based upon a finding that during the imposition of provisional measures, the effect of the dumped imports would have caused material injury.

B. Definitive anti-dumping duties may not be levied retroactively if the final injury determination is based upon a finding of material retardation of the establishment of an industry.

C. If the definitive anti-dumping duty is higher than the amount paid for provisional duties or amount estimated for the purpose of the security, the difference shall not be collected. If the definitive duty is lower than the amount estimated for the purpose of the security, the difference shall be reimbursed to the importer or the definitive anti-dumping duty shall be recalculated.

D. Except as provided in paragraph A above, where the National Committee on Trade Remedies make a determination of threat of injury or material retardation of the establishment of an industry, a definitive anti-dumping duty may be imposed only from the date of the determination of threat of injury or material retardation. Any security provided during the period of the application of provisional measures shall be reimbursed to the exporter no later than 10 (ten) working days after the final determination.

E. Where the National Committee on Trade Remedies makes a negative final determination, any security provided during the period of application of the provisional measures shall be reimbursed to the exporter no later than 10 (ten) working days after the final determination.

Article 24: Principles of Duration and Review of Anti-Dumping Duties and Price Undertakings

An anti-dumping duty shall remain in force only as long as for the applicable duration under this law and to the extent necessary to counteract dumping that is causing injury to the Cambodian industry.

Article 25: Sunset Review

Any definitive anti-dumping duty shall be terminated in 5 (five) years from its imposition or from the date of the most recent review on both dumping and injury. The National Committee on Trade Remedies shall, no later than ninety (90) days preceding the date of expiry of the definitive measure, publish a notice of impending expiry of anti-dumping duty in the Official Bulletin. However, definitive measures may not expire if the National Committee on Trade Remedies determines, in a review initiated before the date of expiry on their own initiative or upon a duly substantiated request made by or on behalf of the Cambodian industry within forty-five (45) days from the public notice of impending termination of the definitive anti-dumping measures concerned, that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury. The duty may remain in force pending the outcome of such a review.

Article 26: Review for Change of Circumstances

A. The National Committee on Trade Remedies shall review the need for the continued imposition of the anti-dumping duty, where deemed necessary, on its own initiative or, provided that at least one year has elapsed since the imposition of the definitive anti-dumping duty, upon a written request submitted by any interested party that contains positive information substantiating the need for a review. Upon initiation of the review, the National Committee on Trade Remedies shall publish a notice in the Official Bulletin.

B. In responding to a written request for a review, the National Committee on Trade Remedies shall determine whether the request contains sufficient information substantiating the need for a review. When conducting a review under this Article, the National Committee on Trade Remedies shall determine whether the continued imposition of the anti-dumping duty is necessary to offset dumping or whether the injury would be likely to continue or recur if the duty were removed or varied, or both. If, as a result of a review under this Article, the National Committee on Trade Remedies found that the anti-dumping duty is no longer necessary, the imposition of anti-dumping duty shall be terminated immediately.

C. The National Committee on Trade Remedies shall also establish procedures for determining individual dumping margins for any exporter or producer in the exporting country concerned who did not export the product to Cambodia during the period of investigation but who evidently demonstrate the desire to export to Cambodia.

Article 27: Duration and Review of Price Undertakings

The provisions of this law regarding the duration and review of anti-dumping measures shall apply to the duration and review of price undertakings accepted under this law.

Article 28: Evidence and Procedure

A. The provisions of this law regarding evidence and procedure shall apply to a review carried out under this Chapter.

B. Any such review shall be carried out expeditiously and shall normally be concluded within twelve (12) months of the date of initiation of the review.

Part 2

Subsidies and Countervailing Measures

Article 29: Subsidies and Countervailing Measures

Procedures for dealing with subsidies and countervailing measures shall be determined by a Sub-decree in accordance with this law and the provisions of the WTO Agreement on Subsidies and Countervailing Measures.

Part 3

Safeguard Measures and Procedures

Article 30: Serious Injury and Causal Link

A. A determination of whether increased imports of the investigated product have caused or are threatening to cause serious injury to a Cambodian industry shall be based upon an evaluation of all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry, in particular:

- (1) the rate and amount of the increase in imports of the investigated product, in absolute terms or relative to Cambodian production of like or directly competitive products;
- (2) the share of the domestic market taken by increased imports of the investigated product;
- (3) the impact of increased imports of the investigated product on the Cambodian industry, as evidenced by relevant indicators including: production, capacity utilization, changes in the level of sales, productivity, profits and losses, and employment;
- (4) factors other than increased imports of the investigated product that at the same time are causing or threatening to cause serious injury to the Cambodian industry.

B. The National Committee on Trade Remedies may only determine that increased imports of the investigated product have caused or are threatening to cause serious injury to a Cambodian industry if the Committee found that there is a causal link between the increased imports and the actual, or threatened, serious injury.

C. When factors other than increased imports of the investigated product are at the same time causing or threatening to cause injury to the Cambodian industry, such injury shall not be attributed to the increased imports.

Article 31: Threat of Serious Injury and Causal Link

A. A determination by the National Committee on Trade Remedies of a threat of serious injury caused by increased imports shall be based on facts and not merely on allegation, conjecture or remote possibility.

B. In considering whether increased imports threaten to cause serious injury, the National Committee on Trade Remedies shall evaluate, in addition to the factors referred to in paragraph A of Article 30 (Serious Injury and Causal Link) of this law, the following:

- (1) the actual and potential export capacity of the country or countries of production or origin;
- (2) any build-up of inventories in the Kingdom of Cambodia and in the countries of exportation;
- (3) the probability that exports of the investigated product will enter the Cambodian market in increasing quantities.
- (4) any other factor deemed relevant by the National Committee on Trade Remedies.

Article 32: Initiation and Conducting of Safeguards Investigation

A. When conducting safeguards investigations, the National Committee on Trade Remedies shall apply the principles and procedures contained in Article 18 of this Law.

B. The National Committee on Trade Remedies shall establish procedures for initiating and terminating a safeguard investigation and providing public notices thereof. Any application may be withdrawn by the applicant prior to the initiation of the investigation.

C. A provisional safeguard measure may be applied by the National Committee on Trade Remedies before the safeguard investigation is completed, pursuant to a determination and finding that there is sufficient evidence that increased imports have caused or are threatening to cause serious injury and that delay in taking action would cause damage which would be difficult to repair.

D. Safeguard measures and procedure for the application of safeguard measures shall be determined by a Sub-Decree.

Article 33: Determination of Serious Injury or Threat Thereof and Causal Link

A. In conformity with the provisions of this law, the National Committee on Trade Remedies shall base on specific evidence obtained in the investigation when determining whether increased imports of the investigated product have caused or threaten to cause serious injury to the Cambodian industry.

B. Upon reaching its determination, whether negative or affirmative, as to serious injury or threat thereof, the National Committee on Trade Remedies shall immediately publish a notice of its determination in the Official Bulletin. The content of the notice shall conform with the requirements for the contents of notices regarding safeguard investigations.

C. The Royal Government of Cambodia shall immediately notify the World Trade Organization if it is determined that increased imports have caused or threaten to cause serious injury to the Cambodian industry.

Article 34: General Principles for Definitive Safeguard Measures

A. Where the National Committee on Trade Remedies determines that the investigated product is being imported in such increased quantities and under such conditions as to cause or threaten to cause serious injury to the Cambodian industry as a result of unforeseen developments and of the effect of obligations incurred by the Royal Government of Cambodia under the GATT 1994 and to protect public interest, the National Committee on Trade Remedies shall recommend to the Royal Government of Cambodia that the definitive measures be applied. Such definitive measures consist of tariff increase to higher than bound rates or quantitative import restrictions.

B. The duration and level of any definitive safeguard measure shall be not more than necessary to prevent or remedy serious injury and to facilitate adjustment.

C. In deciding whether to recommend the Royal Government to apply a definitive safeguard measure, the National Committee on Trade Remedies shall take into account the fact that:

1. the WTO Members whose trade interests would be negatively affected by the application of the measure may ask for compensation from Cambodia by requesting Cambodia to provide increased market access for other products of their export interests; or
2. if Cambodia is not agreeable on the requested compensation referred to in paragraph 1, the National Committee on Trade Remedies shall take into account the benefit and cost resulting from retaliation measures that may be taken by those affected WTO Members in the form of suspension of substantially equivalent concessions provided to Cambodia under GATT 1994, provided that such suspension is not disapproved by the Council for Trade in Goods of the WTO. The Member's right of suspension of equivalent concessions of shall not be exercised for the first 3 (three) years that a safeguard measure is in effect, provided that the measure has been taken as a result of an absolute increase in imports.

D. Upon recommending a decision regarding the application of a definitive safeguard measure, the National Committee on Trade Remedies shall publish a notice regarding the application of a definitive safeguard measure in accordance with the requirements for the contents of notices regarding safeguard investigations.

Article 35: Notification and Consultation with WTO Members

A. Upon a decision to apply a definitive safeguard measure, the Royal Government of Cambodia shall notify the WTO regarding:

- the evidence of serious injury or threat thereof caused by increased imports;
- the precise description of the investigated product, the form, level and duration of the proposed measure;
- the proposed date of application of the measure, and, if relevant, the proposed timetable for its progressive liberalization.

B. Before a definitive safeguard measure is applied, the Royal Government of Cambodia shall provide adequate opportunity for consultations with those WTO Members having a substantial interest as exporters of the investigated product, with a view to *inter alia* reviewing the information notified to the WTO Committee on Safeguards regarding the finding of serious injury or threat thereof caused by increased imports and regarding the proposed measure. The Royal Government of Cambodia shall provide adequate opportunity for the exchange of views about the measure, with a view to reach an understanding on ways to achieve the objective set forth in paragraph C of this Article.

C. In applying a definitive safeguard measure, the Royal Government of Cambodia shall endeavour to maintain a substantially equivalent level of concessions and other obligations to that

existing under GATT 1994 between Cambodia and the exporting Member(s) that would be affected by such measures.

D. For the purposes of maintaining a substantially equivalent level of concessions and other obligations between Cambodia and the affected exporting Member(s), agreement may be reached through the consultations on trade compensation, such as market access for other products, for the adverse effects of the definitive safeguard measure on the trade of the affected WTO Member(s).

E. The Royal Government of Cambodia shall notify the WTO of the results of the consultations, including any compensation granted.

Article 36: Form and Application of a Definitive Safeguard Measure

A. A definitive safeguard measure shall be applied in the form of either a tariff increase or a quota on imports. A tariff increase may also take the form of a tariff-rate quota in which higher tariffs are imposed on imports above a certain annual quantity.

B. Any definitive safeguard measure shall be applied to all imports of the investigated product, irrespective of its source or date before or after which the measure takes effect.

C. The Customs Authority shall be responsible for the collection of cash gained from the application of a definitive safeguard measure in the form of a tariff increase. The Ministry of Commerce shall be responsible for the administration of procedures to allocate quantities under a definitive safeguard measure in the form of a quantitative restriction and a tariff-rate quota.

Article 37: Non-application of a Definitive Safeguard Measure to Certain Developing Countries

A. The National Committee on Trade Remedies shall not apply a definitive safeguard measure to imports of the investigated product originating in a WTO developing country Member as long as those imports do not exceed three per cent (3%) of Cambodia's total imports of the investigated product.

B. If imports from developing country Members which individually account for less than 3% (three per cent) of Cambodia's imports of the investigated product collectively account for more than 9% (nine per cent) of Cambodia's total imports of the investigated product, the National Committee on Trade Remedies shall apply a definitive safeguard measure to such imports from those developing country Members.

C. The Royal Government of Cambodia shall notify the non-application of a definitive safeguard measure to imports originating in a developing country Member to the WTO.

Article 38: Duration of the Application of a Definitive Safeguard Measure

A. A definitive safeguard measure shall be applied for a period of no more than 4 (four) years, unless it is extended as provided for in this law.

B. The total duration of the application of a definitive safeguard measure, including the period of initial application, and any extension, shall not exceed 10 (ten) years.

Article 39: Progressive Liberalization of Definitive Safeguard Measure

A definitive safeguard measure whose period of application exceeds one year shall be progressively liberalized at regular intervals during the period of application, in accordance with the schedule published in the "Notice Regarding Application of a Definitive Safeguard Measure" of the National Committee on Trade Remedies.

Article 40: Review of a Definitive Safeguard Measure

A. If the duration of the application of a definitive safeguard measure exceeds 3 (three) years, the National Committee on Trade Remedies shall conduct a review on the general situation of the

application of a definitive safeguard measure no later than the mid-term of the period of application of the measure. The review should include the effects of the definitive safeguard measure on the Cambodian industry concerned, and of the industry's progress in implementing its adjustment plan. The results of the review shall be published in the Official Bulletin of the National Committee on Trade Remedies. Based on the results of this review, the National Committee on Trade Remedies shall decide to maintain or withdraw the definitive safeguard measure or to increase the pace of its liberalization.

B. A "Notice to Maintain, Liberalize or Withdraw a Definitive Safeguard Measure", summarizing the results of the review, shall be published in the Official Bulletin of the National Committee on Trade Remedies. The contents of such notice shall conform to the requirements for the contents of notices regarding safeguard investigations.

C. The Royal Government of Cambodia shall notify the results of the review, including the withdrawal or any modification of the definitive safeguard measure, to the WTO.

Article 41: Extension of the Application of a Definitive Measure

A. Not less than 6 (six) months before the end of the initial period of the application of definitive safeguard measure, the Cambodian industry may submit to the National Committee on Trade Remedies a written request for the extension of the application of the initial safeguard measure, including evidence that the industry is progressively implementing its adjustment plan.

Upon receiving the request from Cambodia industry or before starting the imposition of extended application of the initiated measure, the National Committee on Trade Remedies shall conduct an investigation to ensure that the extension is warranted. A safeguard measure may be extended one time only, for a period of not more than 6 (six) years.

B. The National Committee on Trade Remedies may extend a definitive safeguard measure only if it determines through the investigation referred to in paragraph A of this Article that the safeguard measure continues to be necessary to prevent or remedy serious injury, and that there is evidence that the Cambodian industry is adjusting.

C. An extended definitive safeguard measure shall not be more restrictive than the measure in place at the end of the initial period of application. During the extension period, the National Committee on Trade Remedies shall continue to progressively liberalize those measures in accordance with the revised schedule published in a Notice of Application of a Definitive Safeguard Measure. Such Notice shall conform to the requirements for the contents of notices regarding safeguard investigations.

D. In extending the application of a definitive safeguard measure, the Royal Government of Cambodia shall endeavour to maintain a substantially equivalent level of concessions and other obligations to that existing under GATT 1994 between Cambodia and the exporting Members which would be affected by such measures.

E. The requirements pertaining to notifications to the WTO, and pertaining to consultations with exporting Members whose interests would be affected by measures taken under this law, shall apply in full to any extension of a definitive safeguard measure.

Article 42: Reapplication of a Safeguard Measure

A. The National Committee on Trade Remedies shall not apply again any new safeguard measure to the imported product that has been subject to an earlier definitive safeguard measure, provided the period of non-application is at least two (2) years since the end of the initial definitive safeguard measure. In the circumstance that the initial definitive safeguard measure has been applied for a period of more than 4 (four) years, the National Committee on Trade Remedies shall wait at least half of the duration of the initial definitive safeguard measure has elapsed before applying any new measure.

B. A safeguard measure with a duration of 180 (one hundred and eighty) days or less shall be applied again to the imports of an investigated product that was the subject of an earlier safeguard measure if:

- (1) at least 1 (one year) has elapsed since the date of imposition of the earlier safeguard measure on that imported product; and
- (2) a safeguard measure has not been applied on the imported product more than twice in the 5 (five) year period preceding the date on which the new safeguard measure is to take effect.

CHAPTER IV JUDICIAL REVIEW

Article 43: Judicial Review

A. Any interested party who participated in an investigation, or refund procedure, or review conducted by the National Committee on Trade Remedies by submitting information or written argument, or participating in any public hearing, may file an appeal to the court of jurisdiction seeking prompt review of actions taken by the National Committee on Trade Remedies relating to final determinations, reviews of determinations, and refund determinations.

B. Appeals contained in paragraph 1 of this Article shall be filed not less than 30 (thirty) days after the date of publication of those determinations in the Official Bulletin of the National Committee on Trade Remedies.

C. In circumstances when the trade remedy measure is subject to judicial review, the Customs Authority shall suspend the collection of trade remedy duties at the entries port of subject merchandise if the importer provides security, by cash deposit or bond in accordance with the Law on Customs, equal to the amount of such duties. The trade remedy duties at these entries port shall be collected in accordance with the final court decision.

CHAPTER V PENALTIES

Article 44:

A. Any violation of the provisions of this law shall be punished by applicable regulations and laws of the Kingdom of Cambodia.

B. If the National Committee on Trade Remedies finds that the information provided to it in support of an application for investigation, an anti-dumping or safeguard measure has been falsified, anti-dumping or safeguard measures shall be revoked, or the investigation shall be terminated.

CHAPTER VI FINAL PROVISIONS

Article 45:

Any provisions of laws and regulations contrary to the provisions of this law shall be null and void.

ANNEX

(a) "Trade remedy" refers to:

- Anti-dumping measures;
- Subsidies and countervailing measure; and
- Safeguards measures.

(b) "Trade remedy duty" refers to a duty applied to an imported product as the result of an anti-dumping or safeguards investigation.

(c) "Member" refers to Member of the World Trade Organization.

(d) "Country" refers to WTO Members and any other non-WTO Member country or autonomous customs territory.

(e) "National Committee on Trade Remedies" refers to the competent authority leading the investigations on matter relating to anti-dumping measures, subsidies and countervailing measures and safeguards measures.

(f) "Cambodian industry" refers to producers as a whole of the domestic like product or of products made from a major proportion of the total domestic production, except that when producers are related to the exporters or importers or are themselves importers of the allegedly dumped or subsidized investigated product. "Cambodian industry" shall be interpreted as referring to the rest of the producers. For the purposes of this definition, producers shall be deemed to be related to exporters or importers only if:

- (1) one of them directly or indirectly controls the other; or
- (2) both of them are directly or indirectly controlled by a third person; or
- (3) together they directly or indirectly control a third person and 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 purposes of this definition, one shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter.

(g) "like domestic product" refers to a domestic product which is identical, i.e. alike in all respects to the investigated product.

(h) "dumping margin" refers to the difference between the export price and the normal value based on the result of the comparison in accordance with the provisions of this law;

(i) "de minimis dumping margin" refers to a margin of dumping that is less than two (2%) per cent, expressed as a percentage of the export price.

(j) "material injury" refers to material injury to a Cambodian industry, threat of material injury to a Cambodian industry or material retardation of the establishment of a Cambodian industry;

(k) "interested parties" for anti-dumping refers to:

- (1) the exporter(s) or foreign producer(s) of the investigated product;
- (2) the importer(s) of the investigated product;
- (3) trade or business association(s) a majority of the members of which are producers, exporters or importers of the investigated product;

- (4) the government(s) of the exporting country(ies);
- (5) the producer(s) of the domestic like or directly competitive product in the Kingdom of Cambodia;
- (6) trade and business association(s) a majority of the members of which produce the domestic like product in the Kingdom of Cambodia.

(l) "investigated product" refers to the product subject to an anti-dumping or subsidies investigation as described in the notice of initiation of the investigation.

(m) "like product for anti-dumping investigation" refers to a product which is identical, i.e. alike in all respects to the investigated product, or another product which, although not alike in all respects, has characteristics closely resembling those of the investigated product.

(n) "serious injury" refers to a significant overall impairment to a Cambodian industry which is unable to repair immediately.

(o) "threat of serious injury" refers to serious injury that is clearly imminent;

(p) "interested parties" for safeguards refer to:

- the exporter (s) and foreign producer(s) of the investigated product;
- the importer(s) of the investigated product;
- trade or business association(s) a majority of the members of which are producers, exporters or importers of the investigated product;
- the government(s) of the exporting country or countries;
- the producer(s) of the domestic like or directly competitive products in the Kingdom of Cambodia;
- trade and business association(s) a majority of the members of which are producers of the domestic like or directly competitive products in the Kingdom of Cambodia;
- labour unions or other professional organizations representing the interests of workers in the Cambodian industry;
- consumer associations;
- users of the investigated product;
- any other natural or legal person which the National Committee on Trade Remedies determines to have a sufficient interest in the outcome of the investigation.

(q) "Participating interested parties" refers to those interested parties that have indicated their interest in participating in an investigation, as allowed by this law.

(r) "Equivalent concessions" refers to the equivalent level of tariff concession given by each WTO Member under the General Agreement on Tariff and Trade 1994.

(s) "Inventories" refers to items listed in a company's inventory list.

(t) "Security" refers to a financial security or other financial bond as a guarantee of payment of duties, taxes and other incidental charges in accordance with the provisions of this law.

(u) "Dumping" refers to an investigated product that is being introduced into the commerce of the Kingdom of Cambodia at a price that is less than its normal value in country of origin.

(v) "Normal Value" refers to:

1. Normal Value Based on Price in the Country of Export or Country of Origin

In this case, the normal value of the investigated product shall be determined on the basis of the comparable price paid or payable, in the ordinary course of trade, for sales of the like product when destined for consumption in the exporting country.

2. Normal Value Based on Export Price to a Third Country or on Constructed

When there are no sales of the like product in the domestic market of the exporting country, or when such sales do not permit a proper comparison because of the market situation or the low volume of the sales in the domestic market of exporting country, the normal value of the investigated product shall be established basing on either of the following:

- on the basis of a comparable price of the like product when exported from the country of origin to an appropriate third country, provided that this price is representative; or
- on the basis of the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits.

(w) "Export Price" refers to price actually paid or payable for the investigated product when exported for sale from the exporting country to the Kingdom of Cambodia.

In cases where there is no export price or where the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party:

- (1) 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
- (2) the export price may be determined based on reasonable ground if the products are not resold to an independent buyer, or not resold in the condition as imported.

In the case where the normal value is determined on the basis of the country of origin, the export price shall be the price actually paid or payable for the investigated product when exported for sale from the country of origin.

(x) "Safeguard measure" refers to measures taken by the Royal Government to protect domestic industry if there is an unanticipated surge in imports, in absolute terms or relative to Cambodian production of like or directly competitive products, which have caused or are threatening to cause serious injury to Cambodian industry.
