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

Original: French

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

MADAGASCAR

The following communication, dated 8 October 2018, has been received from the Permanent Mission of Madagascar.

The Permanent Mission of the Republic of Madagascar to the United Nations Office and Specialized Agencies at Geneva presents its compliments to the World Trade Organization and, pursuant to Article 18.5 of the WTO Anti-Dumping Agreement, Article 32.6 of the Agreement on Subsidies and Countervailing Measures, and Article 12.6 of the Agreement on Safeguards, hereby notifies the following relevant legislative and regulatory texts:

- **Article 7 of Law No. 2018-020 of 23 August 2018 revising the law on competition;**
- **Decree No. 2017-695 of 16 August 2017 establishing applicable trade remedy procedures.**

In accordance with Articles 16.5(b) and 18.5 of the Agreement on Implementation of Article VI of the General Agreement on Tariffs and Trade 1994, Articles 25.12(b) and 32.6 of the Agreement on Subsidies and Countervailing Measures and Article 12.6 of the Agreement on Safeguards, the Government of Madagascar has adopted regulations on trade remedies, specifically Decree No. 2017-695 of 16 August 2017 establishing applicable trade remedy procedures.

The Permanent Mission of the Republic of Madagascar to the United Nations Office and Specialized Agencies at Geneva thanks the World Trade Organization for its cooperation and takes this opportunity to renew the assurances of its highest consideration.

OFFICE OF THE PRESIDENT OF THE REPUBLIC

LAW No. 2018-020

revising the law on competition

Article 7: Within the limitative framework of the implementation of international agreements and conventions to which Madagascar is a party, a trade remedies authority may, upon completion of an investigation initiated and conducted by such authority, take anti-dumping, countervailing or safeguard measures to protect domestic producers or industries.

The procedures for investigations into the appropriateness of measures to be taken, whether initiated on the investigating authority's own initiative or on the basis of an application filed by the affected industry, shall be defined by regulation.

MINISTRY OF TRADE AND CONSUMER AFFAIRS

**Decree No. 2017-695
establishing applicable trade remedy procedures**

THE PRIME MINISTER AND HEAD OF GOVERNMENT,

Having regard to the Constitution;

Having regard to Law No. 95-008 of 10 July 1995 authorizing ratification of the Agreement Establishing the World Trade Organization;

Having regard to Decree No. 95-555 of 22 August 1995 ratifying the Agreement Establishing the World Trade Organization;

Having regard to Decree No. 2014-1726 of 19 December 2014, as amended by Decree No. 2016-823 of 5 July 2016, on the establishment, organization and functioning of the National Trade Remedies Authority;

Having regard to Decree No. 2016-250 of 10 April 2016 appointing the Prime Minister and Head of Government;

Having regard to Decree No. 2016-265 of 15 April 2016, as amended and supplemented by Decrees No. 2016-460 of 11 May 2016, No. 2016-1147 of 22 August 2016, No. 2017-148 of 2 March 2017, No. 2017-262 of 20 April 2017, and No. 2017-590 of 17 July 2017, appointing members of the Government;

Having regard to Decree No. 2014-296 of 13 May 2014 defining the responsibilities of the Minister of Trade and Consumer Affairs and the overall organizational structure of the Ministry;

On a proposal by the Minister of Trade and Consumer Affairs,

In Government Council,

HEREBY DECREES:

TITLE I: GENERAL AND COMMON PROVISIONS

Chapter 1: Purpose and definitions

Article 1 - Purpose

The purpose of this Decree is to set out:

- a. the terms and conditions under which a trade remedy investigation must be conducted in order to apply, as applicable, an anti-dumping, countervailing or safeguard measure;
- b. the terms and conditions for applying a trade remedy.

Article 2 - Definitions

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

- *Competent Authority*: the National Trade Remedies Authority.
- *Determination*: the stage of an investigation that consists of demonstrating whether or not facts exist on the basis of which to impose a trade remedy.
- *Investigation*: the process during which the Competent Authority collects and verifies, by all necessary means and from interested parties, public or private bodies and any other reliable source, information and data relevant to the examination of an application, and which enables it to determine whether or not to impose a trade remedy.

- Anti-dumping measure: any measure applied to a dumped imported product and aimed at offsetting the margin of dumping or correcting the injurious effect of the dumping on a domestic industry.
- Countervailing measure: any measure aimed at offsetting any bounty or subsidy bestowed, directly, or indirectly, upon the manufacture, production or export of any merchandise to Madagascar.
- Safeguard measure: any measure applied to products imported into the territory of Madagascar in increased quantities in order to give domestic industries time to adapt to the conditions of competition and improve their competitiveness.
- Interested parties:
 - a. The exporter or foreign producer of the product under consideration, the importer of that product within the national territory, or a trade or business association, whether domestic or foreign, a majority of the members of which produce, export or import that product.
 - b. The government of the exporting country of the product under consideration.
 - c. The domestic producer of the product like the product under consideration or a trade or business association a majority of the members of which produce the product like the product under consideration.
 - d. Any other domestic or foreign party not included in the aforementioned categories that demonstrates, to the Competent Authority, its interest in an investigation that has been initiated.
- Product under consideration: the imported product under investigation that is alleged to be the subject of dumping or a specific subsidy, or imports of which have increased.
- Like product: the product identical in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.

Chapter 2 - Principles

Article 3

Without prejudice to any other action to trigger an investigation provided for under existing laws, an investigation may be initiated and conducted on the basis of a written application made by the adversely affected domestic industry and sent to the Competent Authority in the form and under the conditions specified in this Decree.

In the absence of a request from a domestic industry, the Competent Authority may only initiate an investigation if it has sufficient evidence of dumping, a specific subsidy or an increase in imports, injury and a causal link to justify the initiation of an investigation.

Article 4

The Competent Authority shall examine the application and expressly rule on its admissibility. The applicant shall be notified of the acceptance or inadmissibility of the application, and if it is inadmissible, the Authority must provide substantiation thereof.

Article 5

In all cases where the Competent Authority decides to initiate an investigation, it must publish a notice of initiation of investigation in at least two newspapers authorized to receive legal notices. The notice of initiation of investigation must indicate, *inter alia*:

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

- b. the name of the country or countries exporting the product under consideration;
- c. the date of initiation of the investigation;
- d. the basis on which dumping, subsidization or increased imports are alleged in the application;
- e. a summary of the factors on which the allegations of injury and causal link are based;
- f. the time-limit allowed for interested parties to make themselves known and submit their points of view in writing;
- g. the address to which data and information should be directed by the interested parties;
- h. a brief timetable of the period of data collection for determination purposes.

Article 6

The initiation of an investigation shall be notified to all known interested parties.

Upon receipt of a duly documented application deemed to be admissible, and before initiating an investigation, the Competent Authority shall notify the government of the exporting country or countries concerned.

Furthermore, in the case of a subsidy investigation, the Competent Authority must invite the exporting country or countries for consultations with the aim of clarifying the situation and arriving at a mutually agreed solution.

Article 7

Throughout an investigation, the investigating authority must verify the information provided by all interested parties and satisfy itself as to the accuracy thereof with a view to the determinations.

Subject to the duty to protect confidential information, evidence submitted in writing by one party must be made available to the other interested parties.

To the extent that certain interested parties do not sufficiently co-operate, the Competent Authority shall base its determinations on the best available information.

Article 8

Accordingly, in the context of an investigation, the investigating authority:

- a. shall visit the production sites or administrative offices of domestic producers and importers;
- b. may visit the factories and offices of exporters or foreign producers.

During such visits, the investigating agents shall verify the consistency of the data provided with accounting records and documents, as well as the manufacturing processes of the product under consideration and the like product.

The Competent Authority may also:

- a. visit public or private bodies holding data and information relevant to the investigation;
- b. consult third parties that have had business dealings with the domestic and foreign producers, importers and exporters involved in the investigation.

In all the situations provided for in this article, the Competent Authority may request any type of information, data and documents, as well as other details that may be useful in connection with the investigation in progress.

Article 9

With a view to carrying out verification visits, the Competent Authority must seek the agreement of the enterprises concerned and, in the case of a visit on foreign soil, provide prior notice to the government of the country concerned.

Confidential information must be protected in all cases.

Article 10

Information that is of a confidential nature or is provided on a confidential basis must be treated as such by the Competent Authority. Such information may not be disclosed without the permission of the party that provided it. The Competent Authority shall require that party to provide a non-confidential summary of the information concerned. If the party refuses, it must state the reasons why a summary cannot be provided.

If the Competent Authority considers that confidential treatment is not warranted and if the party concerned is unwilling to authorize the disclosure of the information, the Competent Authority may disregard it. However, the Competent Authority may use the information if it is demonstrated to its satisfaction from appropriate sources that the information is correct.

All correspondence not clearly indicated to be confidential shall be treated as non-confidential.

Article 11

Before imposing a measure, the Competent Authority may hold public hearings, either on request or *ex officio*, to allow interested parties to defend their interests and to present their opposing views and arguments.

All other parties may attend the hearing upon convocation.

However, oral information may be taken into account by the Competent Authority only in so far as written reproductions thereof have been made available to the Competent Authority.

One or more closed sessions may be scheduled on the margins of the public hearing to discuss information of a confidential nature.

Article 12

The investigation may be closed without a trade remedy being imposed if the applicant domestic industry withdraws its application by means of a written statement submitted to the Competent Authority.

Article 13

Without prejudice to any legal provisions in effect regarding competence to impose trade remedies, the appropriateness of the measures to be taken shall be determined on the basis of the results of the investigation conducted by the Competent Authority.

Article 14

Once the application is accepted as admissible, imports of the product under consideration shall be monitored, and this shall entail the requirement to submit an advance import declaration where appropriate.

Importers shall be required, prior to effecting any import operation, to file an import undertaking, drawn up in accordance with the regulations in force.

In addition, products that are subject to a trade remedy must receive authorization from the Ministry of Trade prior to their importation.

TITLE II - ANTI-DUMPING AND COUNTERVAILING PROCEDURES

Chapter 1 - General

Section 1 - Definitions

Article 15

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

- *Domestic industry*: the domestic producers as a whole of the like products or those of them whose collective output of the products constitutes a major proportion of the total domestic production of the product.
- *Injury*: material injury to a domestic industry, or threat of material injury to a domestic industry producing the like product, or material retardation of the establishment of such an industry.
- *Threat of injury*: injury that is clearly imminent, based on facts and not merely on allegation or supposition.

Section 2 - Principles

Article 16

Any imported product entered for consumption in the territory of Madagascar may be made subject to an anti-dumping or countervailing duty if, following an investigation initiated and conducted by the Competent Authority in accordance with the provisions of this Decree, it is established that:

- a. the imported product is the subject of dumping or a specific subsidy;
- b. importation of the product concerned causes or threatens to cause material injury to the domestic industry producing the like product, or materially retards the establishment of a domestic industry;
- c. there is a causal link between the imports that are the subject of dumping or a specific subsidy and the injury, threat of material injury or retardation of establishment.

Article 17

To determine the likeness of products, the Competent Authority shall consider, *inter alia*:

- a. the physical characteristics of the products;
- b. the end-uses of the products;
- c. consumer tastes and habits;
- d. the customs classification of the products;
- e. the manufacturing processes of the products.

These criteria are neither limitative nor cumulative.

Article 18

In its determination of the domestic industry, the Competent Authority may exclude producers that are related to the exporters or importers or are themselves importers of the product under consideration.

A producer is related to an exporter or importer if:

- a. together they are legally recognized partners in business;
- b. they are employer and employee;
- c. one directly or indirectly owns, controls or holds stock or shares of the other;
- d. one of them directly or indirectly controls the other;
- e. both of them are directly or indirectly controlled by a third person;
- f. together they directly or indirectly control a third person.

Article 19

Except in special circumstances, a properly initiated investigation shall be concluded within one year, and no later than eighteen (18) months after the date of its initiation

The initiation and conduct of a dumping or subsidy investigation may not hinder the procedures of customs clearance of the products under investigation.

Chapter 2 - Admissibility of applications

Article 20

Any application made by or on behalf of a domestic industry for initiation of an investigation with a view to the application of an anti-dumping or countervailing measure must be accompanied by objective data and relevant documents supporting the allegations of dumping or a specific subsidy, injury to the domestic industry producing the like product, and a causal link between the imports of the product under consideration and the injury.

Article 21

The application must contain at least the following information:

- a. the identity of the applicant or applicants: business name, head office;
- b. a description of the product like the product under consideration, a description of the value and volume of production of the latter product produced by the applicant or applicants;
- c. a description of the volume and value of total domestic production of the product that is like the product under consideration;
- d. where the application is made on behalf of a domestic industry, the domestic industry on behalf of which it is made and, where appropriate, a list of the domestic producers of the like product known to the applicant, and a description of the volume and value of domestic production of the like product accounted for by such producers;
- e. as detailed a description as possible of the product under consideration and the names of the country or countries of origin or export of that product;
- f. the identity of each exporter or foreign producer of the product under consideration and the importers of that product known to the applicant;
- g. in a case of dumping, information on the normal value and export price of the product under consideration;
- h. in a case of subsidization, evidence with regard to the existence, amount and nature of the subsidy;

- i. information on the evolution of the volume of imports of the product under consideration;
- j. a description of the injury caused to the domestic industry by imports of the product under consideration.

Article 22

Two versions of the application must be filed, one confidential and the other non-confidential. The non-confidential version shall contain non-confidential summaries of information that is by nature confidential or is provided on a confidential basis.

Article 23

Domestic producers supporting an application must express in writing their commitment and accountability with regard to the information provided and their collaboration in the subsequent investigation.

Those opposing the application may also express their views in writing.

Article 24

An application shall be considered to have been made by or on behalf of a domestic industry if it is supported by domestic producers accounting for more than fifty per cent of the total production of the like product produced by all producers expressing either support for or opposition to the application.

However, an investigation may be initiated only if the application is expressly supported by domestic producers accounting for more than twenty-five per cent of total domestic production of the like product.

These percentages shall be calculated on the basis of production for the last twelve (12) months or the last season immediately preceding the date of submission of the application, for which information is available.

Article 25

Only applications meeting the conditions set forth in Article 3 and this Chapter shall be admissible.

Chapter 3 - Information gathering

Article 26

Anyone wishing to come forward as an interested party or to comment on the investigation initiated shall be given thirty (30) days to do so from the date of publication of the notice of initiation of the investigation.

Article 27

Upon initiation of the investigation, the investigating authority shall, directly or through diplomatic channels, notify the full non-confidential version of the application to the known exporters, the authorities of the exporting country and, upon request, to any other interested party.

If the number of exporters concerned is particularly high, the full copy of the application shall be sent to the authorities of the exporting country or countries and to the relevant trade association.

Article 28

The Competent Authority shall send questionnaires to the interested parties to gather the information it deems necessary for the investigation.

They shall be given a period of thirty (30) working days to respond, which may be extended upon request, where justified. Any request for extension must be made during the five (5) days preceding the expiry of the initial response period.

This period shall begin to run upon receipt of the questionnaires, which shall be deemed to have been received seven (7) days after the date of sending to an interested party or of transmittal to a diplomatic representative.

Article 29

Following receipt of the responses to the questionnaires and in the light of the data available to it, the Competent Authority shall carry out a preliminary evaluation of the information concerned.

The purpose of the preliminary evaluation shall be to make a preliminary determination as to whether or not there is dumping or a specific subsidy, injury to the domestic industry, and a causal link between the dumping or specific subsidy and the injury to the domestic industry.

If there are no responses to the questionnaires within the prescribed time-limit, the evaluation shall be carried out on the basis of the best information available, including the information contained in the application.

Chapter 4 - Determinations

Section 1 - Determination of dumping

Article 30

An imported product shall be considered as being dumped if the export price is less than the normal value.

§ 1 - Export price

Article 31

The export price of the product under consideration shall be understood to mean the price actually paid or payable for the product when sold for export to Madagascar.

However, if there is no price actually paid or payable for the product under consideration sold for export to Madagascar, or where there is association or a compensatory arrangement between the exporter and the importer or a third party, the export price shall be established:

- a. on the basis of the price at which the product is first resold to an independent buyer in Madagascar; or
- b. on any basis deemed reasonable if the product is not resold to an independent buyer or not resold in the condition as imported.

The prices to be considered are those of sales occurring over a 12-month period immediately preceding the initiation of the investigation and for which data are available.

Article 32

If the export price is established on the basis of the price of the first resale of the product under consideration to an independent buyer in Madagascar, the Competent Authority must take account of:

- a. all import costs, duties and taxes incurred between importation and resale; and
- b. a reasonable amount for profits accruing.

Article 33

If the product under consideration is not resold to an independent buyer or is not resold in the condition as imported, the Competent Authority must take account of all kinds of costs and charges incurred by the importer between the importation and resale of the product in a condition other than the condition as imported.

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

§ 2 - Normal value

Article 34

The normal value of the product under consideration shall be determined on the basis of:

- a. the price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country;
- b. the price for the like product when destined for consumption in the country of origin where the product under consideration is merely transhipped through the country of export or where the product is not produced or there is no comparable price for it in the country of export.

For this purpose, the Competent Authority must consider the price, in the ordinary course of trade, over a 12-month period immediately preceding the initiation of the investigation and for which data are available.

Article 35

The following shall be excluded from the basis of calculation:

- a. transactions effected at prices below per unit costs of production plus administrative, selling and general costs, as they are treated as not being in the ordinary course of trade;
- b. transactions effected with parties related to the exporter or foreign producer unless the exporter or foreign producer informs the Competent Authority of the prices for such transactions at the time of resale to an independent buyer on its domestic market.

Article 36

Where no sale of the like product can provide guidance for determining the normal value of the product under consideration, or where sales of the product do not permit a determination of the normal value, the normal value shall be established on the basis of:

- a. the comparable price of the like product when exported to a third country, provided however that export sales to such a third country are effected at a representative price; or
- b. the cost of production in the country of origin plus an amount representing administrative, selling and general costs, and a reasonable profit margin.

Article 37

Sales of the like product destined for consumption in the domestic market of the exporting country shall normally be considered a sufficient quantity for the determination of the normal value if such sales constitute five per cent (5%) or more of the sales of the product under consideration to Madagascar.

However, a lower ratio should be acceptable where the evidence demonstrates that domestic sales at such lower ratio are nonetheless of sufficient magnitude to provide for a proper comparison.

Sales below per unit costs are made in substantial quantities when it is established 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 twenty per cent (20%) of the volume sold in transactions under consideration for the determination of the normal value.

Article 38

The choice of the third country referred to in Article 37 shall be made on the basis of the following criteria:

- a. the like product exported to such third country is more alike to the product under consideration exported to Madagascar than is the like product exported to other third countries; and
- b. the volume of sales from the exporting country to the third country concerned is analogous to the volume of sales from that country to Madagascar.

Article 39

All amounts for administrative, selling and general costs shall be based on actual data pertaining to production and sales in the ordinary course of trade.

When such amounts cannot be determined on this basis, the amounts may be determined on the basis of any other reasonable method.

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

§ 3 - Margin of dumping

Article 40

The margin of dumping of the product under consideration shall be understood to be the difference between its export price and its normal value.

The margin of dumping shall be determined individually for each known exporter or producer in the country of export.

Where the number of exporters, producers or importers is too large for an individual dumping margin to be determined, the investigation may be limited either to a representative sample of such exporters, producers or importers or to the largest percentage of the volume of the exports able to be examined.

Article 41

The determination of the margin of dumping must be made following a fair comparison between the export price and the normal value. This comparison shall be made at the same level of trade, preferably at the ex-factory level, and in respect of sales made at as nearly as possible the same time.

Adjustments may be necessary to take account of differences which affect the comparison between the export price and the normal value, such as differences in conditions and terms of sale, taxation, levels of trade, quantities sold, product characteristics, and any other differences that are demonstrated to affect the comparability of the export price and normal value.

Where the comparison requires a conversion of currencies, such conversion should be made using the rate of exchange on the date of sale, which shall be based on the document that establishes the material terms of sale.

Article 42

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

- a. a comparison of a weighted average of normal values with a weighted average of prices of all export transactions; or
- b. a comparison of normal values with export prices on a transaction-to-transaction basis; or
- c. a comparison of a weighted average of normal values with transaction-to-transaction export prices, if there is found to be a pattern of export prices that differ significantly among different purchasers, regions and time-periods, and if an explanation is provided as to why such differences cannot be taken into account appropriately by the use of the other two methods of comparison.

Article 43

The margin of dumping shall be expressed as a percentage of the adjusted export price. Accordingly, the difference between the adjusted normal value and the adjusted export price shall be divided by the adjusted export price.

Article 44

In cases where products are not imported directly from the country of origin but are exported to Madagascar from an intermediate country, the export price shall be compared with the comparable price in the country of export. However, comparison may be made with the price in the country of origin if the products are merely transhipped through the country of export or there is no comparable price for them in the country of export.

Article 45

Where the investigation is limited to a representative sample, the Competent Authority shall establish:

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

- b. a weighted average margin of dumping for exporters or foreign producers that have provided the requested data but have not been selected within the representative sample. Such average shall be calculated on the basis of the individual dumping margins established for those selected within the sample. In this case, no account shall be taken of zero margins and margins of less than 2%;
- c. the highest margin of dumping for exporters or foreign producers that have refused to cooperate in the investigation and unknown exporters or producers. Such margin shall be calculated on the basis of the data supplied by those selected within the sample.

Section 2 - Determination of subsidy

Article 46

A subsidy is deemed to exist with respect to an imported product if a direct or indirect financial contribution has been made by a government or any other public body within the territory of the exporting country and has thereby conferred a benefit on the producer or exporter of the product under consideration.

Article 47

The financial contribution referred to in Article 47 may take various forms:

- a. a direct transfer of funds;
- b. a potential direct transfer of funds or liabilities;
- c. government revenue otherwise due that is foregone or not collected;
- d. government provision of goods or services other than general infrastructure, or government purchase of goods;
- e. government payment into a funding mechanism;
- f. a situation where a government entrusts a private body to carry out one or more of the type of functions illustrated in (a) to (d) of this article, and the practice, in no real sense, differs from that of governments;
- g. income or price support.

Whatever the form of the financial contribution, a benefit must be conferred on its recipient.

Article 48

A subsidy, even if in one of the forms set out in Article 48, shall be countervailable only if it is specific.

A subsidy shall be said to be specific if:

- a. access thereto is limited to one or certain enterprises or one or certain industries; or
- b. it is limited to certain recipients located in a geographic region within the jurisdiction of the granting authority.

A limitation may not be explicit but arise instead from observation of the circumstances surrounding the granting of the subsidy.

Article 49

In addition to the criteria set out in Article 49, the following are deemed to be specific:

- a. subsidies contingent, whether solely or among other conditions, upon export performance;
- b. subsidies contingent, whether solely or among other conditions, upon the use of domestic over imported goods.

Article 50

A benefit is conferred on the recipient of the subsidy when the terms or conditions of the government financial contribution are more favourable than those that the recipient could have obtained on the market or would have had to fulfil under the rules of ordinary law.

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

Article 51

Where the existence of a specific subsidy is established, its amount shall be calculated in terms of the benefit conferred on its recipient. This amount shall be calculated on the basis of the per unit value of the product under consideration, and shall be expressed as a percentage thereof.

However, certain items are to be deducted from the total amount of the subsidy, such as:

- a. application fees and other costs necessarily incurred in order to qualify for, or to obtain, the subsidy;
- b. export taxes, duties or other charges levied on the export of the product concerned to Madagascar, and specifically intended to offset the subsidy.

It shall be the responsibility of the party requesting such deductions to provide evidence of these items.

Article 52

Where the investigation is limited to a representative sample, the Competent Authority shall proceed in the same manner as with respect to dumping.

Section 3 - Determination of injury and causal link

Article 53

A determination of injury shall involve the objective examination of the following elements:

- a. the volume of the dumped or subsidized imports;
- b. the effect of the dumped or subsidized imports on prices for like products sold on the domestic market;
- c. the consequent impact of these imports on the domestic producers of such products.

Article 54

Accordingly, the Competent Authority shall examine:

- a. Whether there has been a significant increase in the volume of dumped or subsidized imports, whether in absolute terms or relative to domestic production or consumption of the like product during the 12-month period immediately preceding the date of initiation of the investigation.
- b. Whether there has been significant price undercutting by imports of the product under consideration as compared with the price of the like domestic product or whether the effect of such imports is to depress prices to a significant degree or prevent price increases to a significant degree.

Article 55

Price undercutting exists when the product under consideration is placed on sale in the domestic market at a price below the selling price of the like domestic product.

Price undercutting is assessed by comparing, on an equitable basis, the selling price for all transactions involving the like domestic product with the selling price for all transactions involving the product under consideration over the 12-month period taken into account for the determination of dumping.

Article 56

Price depression exists when the selling price of the like domestic product has declined over the relevant 12-month period.

Price suppression shall be deemed to exist if the ratio between the cost of production and the ex-factory price of the like domestic product on the domestic market has increased during that 12-month period.

Article 57

A causal link between imports of the product under consideration and injury to the domestic industry may be demonstrated by means of any evidence at the disposal of the Competent Authority.

Factors independent of or external to the imports in question may also be examined if they have, at the same time, to any extent, contributed to injury to the domestic industry, but the injury caused by such factors may not be attributed to imports of the product under consideration.

Article 58

The examination of the impact of imports of the product under consideration on the domestic industry shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including, *inter alia*:

- a. actual and potential decline in sales, profits, output, market share, productivity, return on investment and utilization of production capacity;
- b. actual or potential influence on domestic prices;
- c. the magnitude of the margin of dumping;
- d. actual and potential negative effects on cash flow, inventories, employment, wages, growth, and financing and reinvestment capacity.

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

Article 59

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

Article 60

A determination of a threat of material injury shall be based on facts and not merely on allegation. The change in circumstances which would create a situation in which the dumping or subsidy would cause injury must be clearly foreseen and imminent.

The Competent Authority's determination must therefore be based on the examination of certain factors, such as:

- a. a significant rate of increase of imports of the product under consideration into the domestic market, indicating the likelihood of substantially increased importation of the product;
- b. the likely increase in demand for imports of the product under consideration on account of their low price, to the detriment of the like domestic product;
- c. the existence of sufficient freely disposable production capacity of the exporter or foreign producer, or an imminent, substantial increase in the capacity of the exporter or foreign producer, indicating the likelihood of substantially increased exports of the product under consideration to Madagascar, taking into account the availability of other markets to absorb any additional exports;
- d. available stocks held by the exporter or foreign producer of the product under consideration; and
- e. the nature of a subsidy or subsidies and their likely effects on exports of the product under consideration to Madagascar.

Such an examination shall be based on data collected in the course of the investigation.

Chapter 5 - Provisional measures

Article 61

A provisional measure may be imposed provided that:

- a. an investigation has been initiated in accordance with the terms of this Decree;
- b. a notice to that effect has been published;
- c. interested parties have had the opportunity to submit information, make comments and learn of differing arguments;
- d. the preliminary evaluation has led to an affirmative determination of dumping or a specific subsidy, injury and a causal link; and
- e. such a measure is necessary in order to prevent further injury during the course of the investigation.

Article 62

A provisional anti-dumping or countervailing measure shall take the form of a provisional anti-dumping duty or a provisional countervailing duty, applied in the form of a deposit in an amount no higher than the provisionally calculated margin of dumping or the amount of the provisionally determined subsidy.

A deposit shall be required for the release for consumption on Malagasy territory of the products concerned by the measure.

The removal of the goods concerned shall therefore be contingent on signature by the declarant of an undertaking to pay the amounts corresponding to the provisional duty.

Article 63

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

The application of a provisional anti-dumping measure shall be for a period of four (4) months, and shall not exceed six (6) months upon request by exporters representing a significant percentage of the trade involved. A provisional countervailing measure may be applied only for a period not exceeding four (4) months.

Article 64

Where the preliminary evaluation does not result in a determination of dumping or specific subsidization, injury or causal link, no provisional measure shall be imposed on imports of the product under consideration.

Article 65

The results of the preliminary evaluation shall be published by the Competent Authority in the form of a notice in at least two national newspapers authorized to receive legal notices. The same notice shall be notified to known interested parties.

All provisional measures taken shall be published in the Official Journal of the Republic of Madagascar.

Chapter 6 - Final evaluation and definitive measure

Article 66

When the investigation has been concluded, the Competent Authority shall undertake a final evaluation of all the information gathered during the course of the investigation, taking account of verifications effected, submissions after public hearings, comments and observations throughout the investigation, including after the publication of the results of the preliminary determination.

Following such evaluation and prior to a final determination of dumping or specific subsidization, injury and a causal link, the Competent Authority shall notify the interested parties in writing of the key facts examined and on the basis of which a decision will be taken on whether or not to apply a definitive anti-dumping or countervailing measure. The interested parties shall have a period of fifteen (15) days to make comments and observations.

Article 67

Where the investigation results in a final determination of dumping or specific subsidization, injury and a causal link, a definitive anti-dumping measure or definitive countervailing measure may be taken. The definitive anti-dumping duty or definitive countervailing duty shall be an additional duty on top of customs duties.

The final determination and, where applicable, the definitive measure, shall be published and notified under the same conditions as those prescribed for provisional measures.

Article 68

The period of application of a definitive anti-dumping measure or a definitive countervailing measure may not exceed five (5) years from the date on which it was taken.

Article 69

Where the amount of a definitive anti-dumping duty or a definitive countervailing duty is lower than the amount of the provisional anti-dumping duty or provisional countervailing duty, the difference must be refunded within no more than ninety (90) days.

Where the final determination has not resulted in a finding of dumping or specific subsidization, injury and a causal link, but a provisional measure has been applied, the deposit lodged under the provisional measure shall be refunded as from the date of publication of the decision terminating the investigation.

Article 70

Definitive anti-dumping and countervailing duties may be levied only subsequent to an affirmative final determination.

Measures and duties may be applied only to products entered for consumption after the date of entry into force of the decision imposing such measures and duties.

However:

- a. Definitive duties may be levied with respect to the period during which a provisional measure was applied, where a final determination of injury is made or, in the absence of provisional measures, the threat of injury established would have become actual injury.
- b. Definitive anti-dumping duties may be levied on products entered for consumption not more than 90 days prior to the date of application of provisional measures, where it is established that there is a history of injurious dumping and that the injury caused by massive dumped imports of a product in a short time is likely to seriously undermine the remedial effect of the anti-dumping duty applied. In this case, the importers are given an opportunity to comment.
- c. Definitive countervailing duties may be levied on products entered for consumption not more than 90 days prior to the date of application of provisional measures where injury difficult to repair is caused by massive imports of subsidized products in a short time.

In no event may duties be levied with respect to a period prior to the date of initiation of the investigation.

Article 71

Provisional or definitive anti-dumping or countervailing duties shall be levied in the same manner as customs duties and:

- a. independently of taxes applicable to imports of the product under consideration;
- b. individually for each exporter or foreign producer of the dumped or subsidized product;
- c. on a non-discriminatory basis on imports of the product under consideration from all sources once they have been found to be the subject of dumping or a specific subsidy and to be causing injury.

In no event may the amount of the definitive anti-dumping duty or definitive countervailing duty exceed the definitively calculated margin of dumping or the amount of the definitively determined subsidy.

Article 72

Where the investigation is limited to a representative sample, the following shall be applied:

- a. individual anti-dumping duties or individual countervailing duties not exceeding the individual dumping margins or individual subsidy amounts established for exporters or foreign producers selected within the representative sample;
- b. an anti-dumping duty or countervailing duty not exceeding the weighted average of the dumping margins or subsidy amounts established for exporters or foreign producers that cooperate in the investigation but have not been selected within the representative sample used in the investigation;
- c. an anti-dumping duty or a countervailing duty not exceeding the highest margin of dumping or the highest subsidy amount established for exporters or foreign producers that declined to cooperate in the investigation or unknown exporters.

Chapter 7 - Termination of investigation

Article 73

The investigation must be terminated without the imposition of an anti-dumping or countervailing measure where:

- a. the margin of dumping is less than two per cent (2%) of the export price;
- b. the subsidy amount represents less than one per cent (1%) of the unit value of the product under consideration;
- c. the volume of dumped imports, actual or potential, from a country accounts for less than three per cent (3%) of total imports of the like product, unless countries that individually account for less than three per cent (3%) of total imports of the like product collectively account for more than seven per cent (7%);
- d. the degree of injury is negligible.

With respect to products originating in a developing country, an investigation shall be terminated once it is determined that:

- a. the overall level of subsidies granted upon the product in question does not exceed two per cent (2%) of its unit value; or
- b. the volume of the subsidized imports represents less than four per cent (4%) of the total imports of the like product, unless countries that individually account for less than four per cent (4%) of total imports of the product under consideration collectively account for more than nine per cent (9%).

Article 74

An application submitted to the Competent Authority shall be rejected and the relevant investigation terminated without the imposition of an anti-dumping measure or countervailing measure as soon as the Competent Authority demonstrates that there is not sufficient evidence of either dumping or a specific subsidy, or of injury or a causal link, to justify proceeding with the case.

Article 75

A notice of termination of investigation without imposition of measures shall be published in at least two newspapers authorized to receive legal notices. The same notice shall be notified to known interested parties.

Article 76

The notice of termination of investigation so published must contain at least the following elements:

- a. identification of the applicant producers;
- b. description of the product under consideration;
- c. name of the country or countries of export of the product under consideration;
- d. date of initiation of the investigation;
- e. considerations and reasons leading to the decision to initiate the investigation;
- f. considerations and reasons leading to the decision to terminate the investigation without the application of measures;
- g. date of termination of the investigation.

Chapter 8 - Miscellaneous provisions

Article 77

The Competent Authority may ask the customs authorities to take the appropriate steps to register certain imports. The purpose of such registration is to keep track of imports that may be subject to a retroactive anti-dumping or countervailing duty.

Article 78

The notice concerning the evaluation and determination, whether preliminary or final, affirmative or negative, must set forth in sufficient detail, or otherwise make available through a separate report, the findings and conclusions reached on the following points, *inter alia*:

- a. the names of the exporters or, where appropriate, of the countries of export of the product under consideration;
- b. a description of the product under consideration and its tariff classification for customs purposes;
- c. the margins of dumping established and an explanation of the reasons for the methodology used in the establishment and comparison of the export price and the normal value in the case of a dumping investigation;
- d. the amount of the subsidy and the basis on which the existence of a subsidy was determined in the case of a subsidy investigation;
- e. explanations relevant to the determination of injury and causal link;
- f. the main reasons leading to the preliminary or final determination, whether affirmative or negative;
- g. an account of the arguments put forward by the interested parties and the reasons for the acceptance or rejection of those arguments; and
- h. where applicable, the form and amount of the anti-dumping duty or countervailing duty, whether provisional or definitive, to be applied.

Chapter 9 - Undertakings

Article 79

A dumping investigation may be suspended or terminated without the imposition of provisional or definitive anti-dumping duties where:

- a. the exporter has provided a satisfactory undertaking to revise its dumped prices or to cease exporting at dumped prices; and
- b. the Competent Authority finds that the injurious effect of dumping will thereby be eliminated.

Article 80

A subsidy investigation may be suspended or terminated without the imposition of provisional or definitive countervailing duties where:

- a. the government of the country of origin and/or of export undertakes to eliminate or limit the subsidy or take other measures concerning its effects;
- b. the exporter undertakes to revise its prices or to cease exporting products benefiting from the countervailable subsidy to Madagascar.

In all cases, the undertakings must eliminate the injury to the domestic industry.

Article 81

Undertakings may not be requested or accepted unless the Competent Authority has made a preliminary affirmative determination of dumping or subsidization and of injury caused by such dumping or subsidization.

In the sole case of undertakings from exporters regarding subsidies, the consent of the exporting country must also be obtained.

Article 82

Undertakings must be submitted in writing to the Competent Authority and must include all relevant information in support of the undertaking offered and its implementation, together with a non-confidential version of such information which may be communicated, on request, to the parties concerned by the investigation.

Notification of the acceptance or rejection of the undertaking shall be given within thirty (30) days from the date of receipt of the offer of an undertaking. In the event of acceptance of the undertaking, the exporter shall also be informed of its obligation periodically to provide information on the fulfilment of the undertaking and to permit verification of that information.

Article 83

The price revisions effected in the cases provided for under Articles 80 and 81 must be equivalent to the margin of dumping or the amount of the subsidy. However, price revisions lower than the margin of dumping or the amount of the subsidy may be accepted if the Competent Authority considers that they are sufficient to efface the injury to the domestic industry.

Article 84

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

- a. do not permit the elimination of the injurious effects of dumping or subsidies;
- b. do not lend themselves to verification or their implementation is uncertain; or
- c. involve an agreement or scheme which is inconsistent with free competition or in any other way hinders free competition.

The Competent Authority must communicate the reasons for the rejection of the undertaking to the exporters or foreign producers concerned, and shall give them the opportunity to make comments on the subject.

Article 85

If an undertaking is accepted, the investigation of dumping or subsidy and injury will nevertheless be carried out to completion if the exporter or, in the case of a subsidy, the exporting country so wishes or if the Competent Authority so decides. Thus, if a negative determination is made with respect to dumping, subsidy or injury, the undertaking shall automatically lapse, except in cases where such a determination is due in large part to the existence of an undertaking. In those cases, the undertaking may be maintained for a reasonable period consistent with the provisions of this Decree.

If there is an affirmative determination of dumping or subsidy and injury, the undertaking shall continue consistent with its terms and the provisions of this Decree.

Article 86

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

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

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

Article 87

A notice concerning the acceptance or rejection of an undertaking or of its expiry shall be published in at least two national newspapers authorized to receive legal notices and shall be notified to the parties concerned by the undertaking.

The public notice regarding an undertaking shall contain the following information, as applicable:

- a. a description of the product under consideration;
- b. the name of the exporter or foreign producer concerned by the undertaking and the name of the exporting country;
- c. the nature and level of the undertaking having regard to the dumping margins or subsidy amounts determined;
- d. the duration of the undertaking and the date from which it takes effect;
- e. the decision to suspend or continue the investigation in the event of acceptance of the undertaking following a preliminary determination;

- f. the reasons for acceptance or rejection of the undertaking;
- g. the procedures agreed for implementation of the undertaking and the monitoring of such implementation;
- h. the date of expiry of the undertaking.

Chapter 10 - Review

Article 88

A review of a definitive anti-dumping duty or a definitive countervailing duty may be carried out under the following circumstances:

- a. At any time at the request of new exporters or producers of the product under consideration that are not related to any exporter or producer subject to the anti-dumping or countervailing duty imposed and that have not exported the product to Madagascar during the period covered by the investigation. Such a review shall be carried out with a view to determining their individual anti-dumping duties or specific countervailing duties.
- b. After a period of one year from the application of a definitive anti-dumping duty or a definitive countervailing duty, pursuant to the same initiative as for an initial investigation or at the request of any interested party that can demonstrate the need for such a review on the basis of objective data. Such review shall be carried out with a view to revising, maintaining or eliminating the anti-dumping or countervailing duty applied.
- c. Within a period of one year preceding the expiry of the measure imposed, pursuant to the same initiative as for an initial investigation or upon a request made by or on behalf of the domestic industry, with a view to determining whether the removal of the measure would lead to continuation or recurrence of dumping or subsidization and injury.

Requests for review that are found admissible shall be investigated in the same form and under the same procedures as those provided for in this Decree for the initial investigation.

The review investigation may have a duration of no longer than twelve (12) months from the date of its initiation. This duration shall, however, be shortened to nine (9) months in the case of reviews related to new exporters.

Article 89

Any request for review must, as in the case of the initial application, be submitted to the Competent Authority in writing and contain the following information:

- a. identification of the applicant producers;
- b. description of the product under consideration;
- c. the anti-dumping or countervailing duty in force;
- d. the nature of the review requested.

The request must be drafted in two versions, one confidential and the other non-confidential. The non-confidential version shall contain non-confidential summaries of the information provided on a confidential basis and must be sufficiently detailed to permit understanding.

Article 90

In addition, all requests for review must contain objective and documented data which demonstrate, as applicable, that:

- a. continued imposition of the entire definitive anti-dumping or countervailing duty is no longer necessary to offset dumping or subsidization, or that continued imposition of a portion of the duty is sufficient;
- b. the existing duty is not or is no longer sufficient to offset the dumping or subsidization that has caused the injury; or
- c. the injury would be likely to continue or recur if the anti-dumping or countervailing duty were removed or reduced.

Article 91

In the event of a review under Article 89(b), during the period of the review investigation, collection of the anti-dumping duty or the countervailing duty shall be suspended and replaced by the levying of an equivalent amount collected in the form of a deposit. Where the anti-dumping duty or countervailing duty revised in consequence of the review is less than the amount of the deposit, the difference between that amount and the revised duty shall be refunded. On the other hand, where the anti-dumping duty or countervailing duty revised in consequence of the review is greater than the deposit, the amount of the deposit shall be assessed.

In the event of a review prior to expiry as provided for under Article 89(c), the anti-dumping or countervailing duty shall remain in force in the form of a deposit pending the outcome of the review.

Article 92

The request for review referred to in Article 89(a) must be submitted by a new exporter that has not exported the product under consideration to Madagascar in the course of the initial investigation period. An exporter that has exported the product under consideration to Madagascar during the initial investigation period but has not made itself known during the investigation shall not be considered a new exporter.

The request must be accompanied by evidence demonstrating that:

- a. the new exporter in question was not and is not related to the exporters subject to the definitive anti-dumping duty or the definitive countervailing duty that is applied;
- b. the new exporter actually exported the product under consideration to Madagascar only after the application of the definitive anti-dumping duty or the definitive countervailing duty; and
- c. the new exporter entered into an irrevocable contractual obligation to export a reasonable quantity of the product under consideration to Madagascar.

Article 93

Any decision following review of an anti-dumping duty or a countervailing duty shall be published in the Official Journal of the Republic of Madagascar and shall be notified to the interested parties.

Chapter 11 - Circumvention of anti-dumping duties

Article 94

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

Article 95

In order to determine whether there is circumvention, an investigation shall be initiated and conducted under the same conditions as the initial investigation. Only requests accompanied by a file comprising objective and documented data showing good cause for the initiation of an investigation shall be admissible.

Article 96

The request for the initiation of an investigation in order to determine circumvention must be sent to the Competent Authority and accompanied by objective and documented data which demonstrate:

- a. the appearance of changes in the pattern of trade in the product subject to the anti-dumping duty between the exporting country concerned and Madagascar or between third countries and Madagascar;
- b. that the changes in the pattern of trade are the result, as applicable, of one of the practices, operations or processes;
- c. that there are no economic justifications and reasons for the practices, operations or processes applied to the product under consideration, other than circumvention of the anti-dumping duty; and
- d. that the changes in the pattern of trade occurred after the application of the anti-dumping duty or after initiation of the investigation that gave rise to the anti-dumping duty in force.

The duration of the circumvention investigation shall be no more than nine (9) months as from the date of publication of the notice of its initiation.

Article 97

Where the Competent Authority determines that a definitive anti-dumping measure is being circumvented, the definitive anti-dumping duty applied to the product under consideration shall be extended to imports:

- a. of the modified product, alike to the product subject to the definitive anti-dumping duty, consigned by exporters subject to the anti-dumping duty, provided that the modification concerned does not entail a change in the essential characteristics of the product;
- b. of the product alike to the product subject to the definitive anti-dumping duty, whether or not modified, consigned by exporters established in a third country, provided that the product concerned has not acquired origin from the said third country;
- c. of the parts and components of the product subject to the anti-dumping duty, destined for assembly of a product alike to the product subject to the definitive anti-dumping duty, when consigned by exporters that are themselves subject to the anti-dumping duty.

TITLE III - PROCEDURES FOR SAFEGUARD MEASURES

Chapter 1 - General

Section 1 - Definitions

Article 98

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

- Increased imports: a substantial, sudden and sharp increase in the volume of imports of the product under consideration.
- Domestic industry: the producers as a whole of the products that are like or directly competitive with the product under consideration operating within the territory of Madagascar, or those whose collective output of the like or directly competitive product constitutes a major proportion of the total domestic production of those products.
- Injury: serious injury consisting of a significant overall impairment in the position of a domestic industry.
- Threat of injury: serious injury that is clearly imminent, based on facts and not merely on allegation or supposition.
- Directly competitive product: the product other than the like product that directly competes with the product under consideration.

Section 2 - Principles

Article 99

Any imported product entered for consumption in the territory of Madagascar may be made subject to a safeguard measure if, following an investigation initiated and conducted in accordance with the provisions of this Decree, it is established that:

- a. the product is imported in such increased quantities, absolute or relative to domestic production;
- b. the product is imported under such conditions as to cause or threaten to cause serious injury to the domestic industry that produces like or directly competitive products.

A safeguard measure may be applied only for the duration and to the extent necessary to prevent or remedy serious injury and to facilitate adjustment of the domestic industry.

Article 100

Except in special circumstances, a properly initiated investigation shall be concluded within nine (9) to twelve (12) months after the date of initiation.

The initiation and conduct of a safeguard investigation may not hinder the procedures of customs clearance of the products under investigation.

Article 101

During the investigation process, each interested party may submit its evidence and views, which shall be communicated to the other interested parties by the Competent Authority.

Chapter 2 - Admissibility of the application

Article 102

Any application filed with a view to the conduct of a safeguard investigation must be accompanied by objective and documented data supporting the allegations of increased imports of the product under consideration, serious injury or threat thereof to the domestic industry and a causal link between the increase and the serious injury or threat thereof.

Article 103

The application, submitted in two versions, one confidential and the other non-confidential, must contain at least the following elements:

- a. identification of the applicant or applicants: business name, head office;
- b. a sufficiently detailed description of the product that is like or directly competitive with the product under consideration produced by the applicant or applicants;
- c. a description of the volume and value of production of the product that is like or directly competitive with the product under consideration produced by the applicant or applicants;
- d. a description of the volume and value of total domestic production of the product that is like or directly competitive with the product under consideration;
- e. where the application is filed on behalf of a domestic industry, the industry on behalf of which it is filed, with, if possible, a list of domestic producers of the product that is like or directly competitive with the product under consideration or of their associations or professional groups; and a description of the volume and value of production of that product accounted for by such domestic producers or such associations or groups;
- f. a sufficiently detailed description of the product under consideration and a list of the importers of the product known to the applicant or applicants;
- g. relevant data regarding increased imports of the product under consideration;
- h. information on the unforeseen circumstances responsible for such increase; and
- i. a description of the serious injury or threat thereof caused to the domestic industry by the increased imports of the product under consideration.

The non-confidential version of the application shall contain non-confidential summaries of information that is confidential or is provided on a confidential basis.

Article 104

An application regarding a safeguard measure shall be deemed to be submitted by or on behalf of the domestic industry if it is supported by those domestic producers whose collective output constitutes a major proportion of total domestic production of the product that is like or directly competitive with the product under consideration.

In order to determine whether one or more products are directly competitive with the product under consideration, the Competent Authority shall examine the conditions of competition on the domestic market.

Article 105

Domestic producers supporting an application must expressly make themselves known by means of a duly signed writing and must give an undertaking with respect to the information provided in the application and the subsequent investigation.

Chapter 3 - Information gathering

Article 106

All persons with a demonstrated interest shall have thirty (30) days from the date of publication of the notice of initiation of the investigation to make themselves known to the Competent Authority as an interested party and to comment on the subject matter of the proceedings.

Article 107

Upon initiation of the investigation, the Competent Authority shall, directly or through diplomatic channels, send to all interested parties the non-confidential version of the application and questionnaires intended to gather information needed for the investigation.

They shall be given a period of thirty (30) working days to respond, which may be extended upon request, where justified. Any request for extension must be made during the five (5) days preceding the expiry of the initial response period.

This period shall begin to run upon receipt of the questionnaires, which shall be deemed to have been received seven (7) days after the date of sending to an interested party or of transmittal to a diplomatic representative.

Article 108

Following receipt of the responses to the questionnaires and in the light of the data available to it, the Competent Authority shall carry out a preliminary evaluation of the information concerned.

The purpose of the preliminary evaluation shall be to make a preliminary determination as to whether or not there are imports in such increased quantities, injury to the domestic industry, and a causal link between imports in such increased quantities and the injury to the domestic industry.

In the absence of any response to the questionnaires within the prescribed time-limit, the evaluation shall be carried out on the basis of the best information available, including the information contained in the application.

Chapter 4 - Determinations

Section 1 - Increased imports

Article 109

A determination of increased imports of the product under consideration must be based on:

- a. unforeseen developments, and
- b. changes and trends in a recent period in the volume of imports of the product under consideration, in absolute terms or relative to domestic production.

Article 110

To this end, the Competent Authority shall consider trends in the volume of imports of the product under consideration over a period of at least three (3) successive years immediately preceding the initiation of the investigation and shall consider to what extent those trends reflect a significant and sudden increase in such imports during a recent period immediately preceding the date of initiation of the investigation.

Section 2 - Injury, threat of injury and causal link

Article 111

In order to determine whether such increase has caused or threatens to cause serious injury to the domestic industry, the Competent Authority shall examine and evaluate:

- a. the rate and amount of the increase in imports of the product concerned in absolute terms and relative to domestic production of the product concerned;
- b. the share of the domestic market taken by the massive imports;
- c. changes in the level of sales, production, productivity, utilization of production capacity, profits, losses and employment.

In no event may injury caused to the domestic industry by factors other than increased imports of the product under consideration be attributed to that such increased imports.

Article 112

In determining a threat of serious injury, the establishment of the facts must be based on events which, although they have not yet occurred, must be clearly foreseen and imminent. Accordingly, the Competent Authority shall also consider:

- a. a significant rate of increase in imports of the product under consideration on the domestic market, indicating the likelihood of substantially increased importation;
- b. the likely increase in demand for imports of the product under consideration to the detriment of the like or directly competitive domestic product;
- c. the existence of sufficient freely disposable production capacity of the exporter, or an imminent and substantial increase in the exporter's capacity, indicating the likelihood of a substantial increase in exports of the product under consideration to Madagascar, taking into account the availability of other export markets to absorb any additional exports; and
- d. inventories of the product under consideration available to foreign exporters.

Article 113

For the purpose of assessing serious injury or threat of serious injury, the Competent Authority shall in the course of the investigation collect the information required for such assessment relating to a period covering at least the last three (3) years immediately preceding the date of initiation of the investigation, for which data are available.

Chapter 5 - Provisional measure

Article 114

Following receipt of the responses to the questionnaires, or in the absence thereof on the basis of the best information available, a provisional safeguard measure may be taken where:

- a. the circumstances indicate that the lack of such a measure would cause harm that would be more difficult to repair; and
- b. on a preliminary basis, the assessment indicates that there is sufficient evidence that the massive increase in imports of the product under consideration has caused or threatens to cause serious injury to the domestic industry of the like product.

Article 115

A provisional safeguard measure shall take the form of an additional *ad valorem* or specific duty, on top of customs duties, applied to imports of the product under consideration in the form of a deposit that may be reimbursed if, upon completion of the investigation, a final evaluation does not support a definitive determination that the massive increase in imports of the product under consideration causes or threatens to cause serious injury to the domestic industry of the like product.

The assessment and collection of such additional duty shall be carried out in the same manner as with respect to customs duties.

Article 116

The period of application of a provisional safeguard measure may not exceed 200 days.

Each provisional safeguard measure shall be published in the Official Journal of the Republic of Madagascar and a notice thereof shall be published in at least two national newspapers authorized to receive legal notices. Such notice shall be notified to the interested parties and contain information on the findings made by the Competent Authority.

The public notice concerning application of a provisional safeguard measure shall include or indicate the existence of a report setting forth the findings and reasoned conclusions on the following points:

- a. description of the product under consideration;
- b. preliminary finding of a massive increase in imports of the product under consideration, injury or threat of injury to the domestic industry;
- c. preliminary finding of a causal link between the massive increase in imports and the serious injury or threat thereof;
- d. rate of the provisional additional customs duty and its period of application;
- e. rate of the provisional additional duty;
- f. reasons for the application of the provisional measure.

Chapter 6 - Definitive measure**Article 117**

At the end of the investigation, the Competent Authority may impose a definitive safeguard measure once:

- a. the initiation of the investigation has been widely publicized to all interested parties, and the latter have had the opportunity to comment and submit their views regarding the views of other parties;
- b. a final evaluation has led to a determination, on the basis of relevant and objective evidence, that the massive increase in imports of the product under consideration has caused or threatens to cause serious injury to the domestic industry of the like product;
- c. a report has been published setting out the findings made and conclusions reached by the Competent Authority after examination of the pertinent issues of fact and law, and demonstrating the relevance of the factors taken into account.

Article 118

A definitive safeguard measure may take the form of:

- a. an additional duty on top of customs duties,
- b. quantitative restrictions,
- c. quotas, or
- d. any other border measure deemed appropriate for eliminating the injury to the domestic industry and enabling the latter to adapt to the new conditions of competition.

The report referred to in Article 117 must specify the nature of the proposed measure, how it functions, and its relationship to the adjustment of the domestic industry.

Article 119

As in the case of provisional measures, a measure applied in the form of an additional customs duty shall be levied on top of the duties and taxes applicable to imports of the product under consideration, and such duty shall be assessed and collected in the same manner as a customs duty.

Article 120

If a quantitative restriction is used, such a measure shall not reduce the quantity of imports below the level of a recent period which shall be the average of imports in the last three (3) representative years for which statistics are available, unless clear justification is given that a different level is necessary to prevent or remedy serious injury.

Article 121

In cases in which a quota is allocated among several supplying countries, an agreement may be reached with respect to the allocation of shares in the quota with all other countries having a substantial interest in supplying the product concerned. In cases in which this method is not reasonably practicable, countries having a substantial interest in supplying the product shall be allotted shares based upon the proportions, supplied by such countries during a previous representative period, of the total quantity or value of imports of the product. Any special factors which may have affected or may be affecting the trade in the product must also be taken into account.

Chapter 7 - Review

Article 122

The maximum initial period of application of a definitive safeguard measure shall be four (4) years. This period may be extended under certain conditions.

No extension shall be possible unless, in a written application filed by or on behalf of the domestic industry under the same conditions as the initial application:

- a. a review is carried out in accordance with the procedures for an initial investigation;
- b. an evaluation upon completion of the review supports a determination that it is necessary to maintain the measure to prevent or remedy serious injury; and
- c. there are elements indicating that the domestic industry has been adjusting.

A safeguard measure that has been extended shall not be more restrictive than it was at the end of the initial period, and should continue to be liberalized.

In any event, the total period of application of a safeguard measure including the period of application of the provisional measure, the period of initial application of the definitive measure and any extension thereof, shall not exceed ten (10) years.

Article 123

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

If the duration of the measure exceeds three (3) years, the Competent Authority shall review the situation not later than the mid-term of the measure and, if appropriate, withdraw it or increase the pace of liberalization.

Article 124

A new safeguard measure may be taken against a product already subject to a definitive safeguard measure pursuant to a new application and in accordance with the procedures provided by regulation.

Article 125

A safeguard measure shall be applied to all imports of the product like the product under consideration, irrespective of their source.

All definitive safeguard measures shall be published in the Official Journal of the Republic of Madagascar.

A notice indicating the findings and conclusions of the Competent Authority and the reasons for imposing a definitive safeguard measure shall be published in at least two newspapers authorized to receive legal notices.

This notice shall include or indicate the existence of a report setting forth the findings and reasoned conclusions on the following points:

- a. description of the product under consideration;
- b. definitive finding of a massive increase in imports of the product under consideration, injury or threat of serious injury to the domestic industry;
- c. definitive finding of a causal link between the massive increase in imports of the product under consideration and the serious injury or threat thereof;
- d. description of the proposed definitive safeguard measure;
- e. period of application of the measure and timetable for progressive liberalization; and
- f. reasons for the adoption of the definitive safeguard measure.

Chapter 8 - Termination of investigation

Article 126

The investigation must be terminated without the application of a definitive safeguard measure if the final evaluation does not result in an affirmative determination of a massive increase in imports of the product under consideration, serious injury or threat thereof, or a causal link.

In such case, a notice of termination of investigation without imposition of a definitive safeguard measure shall be published in at least two national newspapers authorized to receive legal notices and shall be notified to the interested parties.

The notice of termination of investigation without application of measures must contain the following information:

- a. identification of the applicants;
- b. description of the product under consideration;
- c. date of initiation of the investigation;
- d. considerations and reasons leading to the decision to initiate the investigation;
- e. considerations and reasons leading to the decision to terminate the investigation; and
- f. date of termination of the investigation.

TITLE IV - FINAL PROVISIONS

Article 127

Where necessary, regulatory texts may be adopted in implementation of this Decree.

Article 128

All previous provisions contrary to the provisions of this Decree are hereby definitively repealed.

Article 129

The Minister of Trade and Consumer Affairs, the Minister of Finance and the Budget, the Minister for Industry and Private Sector Development, and the Secretary of State for Economic Affairs to the Minister of Foreign Affairs shall be responsible, in their respective spheres of competence, for implementing the provisions of this Decree.

Article 130

For reasons of urgency and in accordance with Articles 4 and 6 of Ordinance No. 62-041 of 19 September 1962 on domestic and private international law, this Decree shall enter into force immediately upon sufficient public broadcast:

Done at Antananarivo, **16 August 2017**

**By the Prime Minister
and Head of Government**

MAHAFALY Solonandrasana Olivier

Minister of Trade and Consumer Affairs

Minister of Finance and the Budget

TAZAFY Armand

**ANDRIAMBOLOLONA Vonintsalama
Sehenosoa**

**Minister for Industry and Private Sector
Development**

Minister of Foreign Affairs

NOURDINE Chabani

ATALLAH Béatrice

**Secretary of State for Economic Affairs
to the Minister of Foreign Affairs**

RAFATROLAZA Bary Emmanuel

Authenticated copy

Antananarivo, 6 October 2017

CHIEF SECRETARY OF THE GOVERNMENT

FARATIANA Tsihoara Eugène
