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

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

PAKISTAN

The following communication, received 11 January 2016, is being circulated at the request of the Delegation of Pakistan.

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[AS PASSED BY THE SENATE]

PART I

ACTS, ORDINANCES, PRESIDENT'S ORDERS AND REGULATIONS

NATIONAL ASSEMBLY SECRETARIAT

*Islamabad, the 8<sup>th</sup> September, 2015*

**No. F.22 (15)/2015-Legis** - The following Act of *Majlis-e-Shoora* (Parliament) received the assent of the President on the 5th September, 2015 and is hereby published for general information: --

ACT No. XII OF 2015

*An Act to reform and repeal the National Tariff Commission Act, 1990*

**WHEREAS** it is expedient to provide for certain reforms in the National Tariff Commission by repealing the National Tariff Commission Act, 1990 (VI of 1990) and re-enacting it for the purposes hereinafter appearing;

It is hereby enacted as follows: --

**1. Short title, extent and commencement.** - (1) This Act may be called the National Tariff Commission Act, 2015.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

**2. Definitions.** - In this Act, unless there is anything repugnant in the subject or context,-

(a) "Commission" means the National Tariff Commission established under section 3;

(b) "Interested party" means any party having interest in the product under investigation including domestic producers, importers, consumers, exporters, foreign producers, trade or business associations of the investigated product or such other persons or group of persons as the Commission may specifically through notification in official Gazette;

(c) "Member" means a member of the National Tariff Commission and included the Chairman;

(d) "Prescribed" means prescribed by rules made under this Act;

(e) "Repealed Act" mean the National Tariff Commission Ordinance, 1990 (VI of 1990);

(f) "Trade Remedy Laws" includes the Anti-Dumping Law, the Countervailing Duties Law, and the Safeguard Measures Law for the time being in force.

**3. Continuation of National Tariff Commission.** - The National Tariff Commission established by the Repealed Ordinance shall be deemed to have been established under this Act, notwithstanding the repeal of the "Repealed Act", the Commission shall be deemed to have been validly constituted, subject to section 5, under this Act and shall continue to perform its functions accordingly.

**4. Constitution of the Commission.** - (1) The Commission shall comprise five members, appointed by the Federal Government in the prescribed manner. The Federal Government shall appoint one of the members to be Chairman of the Commission.

(2) The Commission shall be a body corporate having perpetual succession and a common seal. It shall have the authority and duty to exercise the functions assigned to it by or pursuant to this Act or any other law for the time being in force, shall have the power and authority to acquire, hold and dispose of property, both movable and immovable, in its own name, shall have the power and authority to open a personal ledger account in its own name and may sue and be sued in its own name.

(3) The head office of the Commission shall be at Islamabad and the Commission may establish offices at such places as it may deem necessary.

(4) No act, proceeding or decision of the Commission shall be invalid by reason only of the existence of a vacancy or defect in the Constitution of the Commission.

**5. Qualification and eligibility of members.** - (1) All members of the Commission shall be citizens of Pakistan and shall be employed with the Commission on a full-time basis.

(2) A member of the Commission shall,-

(a) have at least a masters or professional degree or qualification from an accredited university or institute in international trade laws, business and commercial laws, economics, accountancy, tariffs and trade, commerce and trade, or a trade-related subject; knowledge of trade remedy Laws would be an advantage; and

(b) have at least fifteen years of professional work experience in international trade law, business and commercial laws, economics, accountancy, harmonized tariffs, commerce and trade, tariffs and trade or other trade-related technical field; direct work experience in trade remedy laws would be an advantage.

(3) The Federal Government shall select up to two members from the Commission's experienced technical officers provided that they meet the eligibility and qualification requirements specified in sub-sections (1) and (2).

**6. Disqualification.** - (1) No person shall be appointed or continue as member or an employee of the Commission if such person;

(a) has been convicted of an offence involving moral turpitude;

(b) has been or is adjudged insolvent;

(c) is incapable of discharging his duties by reasons of physical, physiological or, mental unfitness and has been so declared by a duly constituted Medical Board appointed by the Federal Government;

(d) fails to disclose any conflict of interest at or within the time provided for such disclosure by or under this Act or contravenes any of the provisions of this Act pertaining to unauthorized disclosure of information.

**7. Term of office.** - (1) "The Chairman and members of the Commission shall hold office for a term of five years. That term shall be extendable by one year unless the Federal Government directs otherwise."

(2) If the Chairman's position becomes vacant, the Federal Government shall appoint and notify a new member or may designate and notify the most senior member as Chairman. In the absence of either notification, the most senior member, in terms of service in the Commission, shall perform the duties and functions of the Chairman.

**8. Function of the Commission.** - (1) The functions of the Commission shall be to advise the Federal Government on,-

(a) tariff and other trade measures to,-

(i) provide assistance to the domestic industry; and

(ii) improve the competitiveness of the domestic industry;

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- (b) trade remedy actions being faced by domestic producers and exporters;
  - (c) rationalization of tariff and proposals for tariff reform;
  - (d) removal of tariff anomalies; and
  - (e) any other matter relating to tariff or trade measures that the Federal Government may refer to the Commission.

(2) In addition to the functions specified in sub-section (1), the Commission shall also perform such functions with respect to international trade and other matters that may be assigned to it by the trade remedy laws or any other law for the time being in force.

(3) Where the Federal Government has adopted the recommendations of the Commission in whole or part, the Commission shall periodically review the effect of such recommendations and in consequence of the review may give further recommendations to the Federal Government.

(4) The Commission shall advise, where possible, the domestic exporters and producers facing trade remedy investigations abroad.

(5) The Commission shall assist the Federal Government at the World Trade Organization dispute settlement body in respect of matters pertaining to the Trade Remedy Laws, WTO Covered Agreements and disputes under other trade agreements. The Federal Government may hire the services of a qualified and experienced international trade lawyer or international trade consultant for this purpose on a case-to-case basis.

(6) The Commission may undertake research to facilitate effective implementation of Trade Remedy Laws and tariff rationalisation, in a manner to be prescribed.

**9. Power of Commission to make inquiries on application.** - (1) In addition to the matters falling within the scope of the Trade Remedy Laws or any other law, the Commission may initiate inquiries or investigations under this Act on,-

- (a) an application that has been submitted by or on behalf of the domestic industry in the prescribed form and accompanied by the prescribed fee;
- (b) a reference received by it from the Federal Government; or
- (c) on its own motion.

**10. Power of Commission to access information.** - (1) The Commission shall have the powers to solicit, gather, obtain, and verify any relevant information for the purposes of its functions from any Ministry, Division, Federal or Provincial Department, private or public entity or agency.

(2) Notwithstanding anything contained in this Act or in any other law for the time being in force, any business confidential information received or obtained, directly or indirectly, by the Commission pursuant to or in connection with an investigation, inquiry or study shall not be subject to disclosure by the Commission to any Ministry, Division, department, agency or instrumentality of the Federal Government or a Provincial Government without the prior permission of the party submitting such business confidential information.

(3) The Commission shall take all acts and measures necessary to provide transparent and prompt access to information to all parties, in a prescribed manner.

**11. Power of Commission as civil court.** - The Commission shall have all the powers of a civil court while trying a suit under the Code of Civil Procedure, 1908 (V of 1908), in respect of the following matters, namely: -

- (i) summoning and enforcing the attendance of any person and examining him on oath; and
- (ii) requiring the supply of any information and production of any document which may be useful for the conduct of its inquiry.

**12. Power of Commission to make recommendations.** - (1) While examining a proposal for tariff rationalisation or assistance to the domestic industry or trade measure and making recommendations to the Federal Government, the Commission shall satisfy itself on the points that,-

- (i) the quality of the product to which such protection or assistance is to be given is good and conforms to the standards laid down by the Pakistan Standards and Quality Control Authority or, where such standard has not been prescribed, it conforms to internationally accepted standards;
- (ii) the additional cost to the consumer may not be excessive; and
- (iii) the industry is not likely to need the protection or assistance after a reasonable period of time.

(2) Where it has decided to undertake any inquiry or investigation, the Commission shall take such measures as it deems necessary to ensure that all units engaged in economic activities similar to those being carried on by any industrial undertaking or trading business which has made an application or in respect of which an inquiry or investigation has been undertaken by the Commission are informed that such inquiry or investigation has been undertaken.

**13. Timelines for submission of recommendations by Commission.** - (1) The Commission shall complete inquiries and investigations under this Act and submit a report to the Federal Government within a period not exceeding one hundred and twenty days.

(2) The enquiries and investigations undertaken by the Commission under this Act shall be completed within the periods as specified in the schedule.

(3) The Federal Government shall, take a decision on the recommendations of the Commission within fifteen days of the issuance of the same.

**14. Delegation of powers of the Commission.** - (1) The Commission, may delegate any of its functions or powers to one or more of its members or one or more of the officers, employees, consultants or agents of the Commission:

Provided that the Commission may not delegate its power or authority to initiate an investigation, to make preliminary or final determination, including review, refund and termination of investigations in cases governed by Trade remedy Laws or any other law that requires the Commission to make such determination:

Provided further that a delegation under this sub-section may be revoked or modified by the Commission at any time and shall otherwise not prevent the Commission from concurrently performing or exercising any function or power so delegated.

Provided also that the person to whom powers or functions are delegated pursuant to this sub-section shall not further delegate such powers or functions.

(2) The Commission may, by and through, one or more of its members, officers, employees or agents who have been duly designated by the Commission for such purpose, carry out any inquiry, investigation or function necessary or appropriate for the proper exercise of the Commission's duties, powers and authority, whether provided under this Act or any other law in any part of Pakistan or in any foreign country.

**15. Meeting procedure and quorum.** - (1) Decisions and determinations of the Commission shall be taken by majority vote.

(2) At least two members, one of whom shall be Chairman, shall constitute a quorum, provided that in case of quorum of two Members, the decision shall be taken by consensus.

**16. Administration and Secretariat of the Commission.** - (1) The Commission shall have a Secretariat which shall be headed by a Secretary to the Commission. The Secretary shall be appointed by the Commission as prescribed.

(2) The Secretary to the Commission shall perform functions and duties, including the following, namely:-

- (a) to keep in custody the records and seal of the Commission;
- (b) to authorize payment of monthly salaries and allowances to the employees of the Commission;
- (c) to propose budget estimates and revised budget estimates and place the same before the Commission;
- (d) to receive applications for investigations on behalf of the Commission; and
- (e) to perform any other duties that may be assigned to him by the Commission.

**17. Employees of the Commission.** - (1) The Commission may do all such acts and take all such steps as are necessary for the performance of the functions of the Commission, including the appointment of such officers etc. as it considers necessary for the efficient performance of its functions, on such terms and conditions as may be prescribed.

(2) Subject to sub-section (3), the Commission may employ, on market-scale salary, consultants, agents and technical, professional and other advisers including lawyers, economists, accountants, bankers, actuaries and other professionals to do any act necessary or appropriate to the exercise of the Commission's powers or the performance of its functions as specified in section 8.

(3) The employees of the Commission and other persons authorized to perform any function under this Act shall be deemed to be a public servant within the meaning of section 21 of the Pakistan Penal Code 1860 (XLV of 1860).

**18. Terms and Conditions of services of the Commission and its Employees.** - (1) "The benefits of the Commission and of an employee appointed on full-time basis in the Commission shall be as prescribed."

(2) From the date of appointment, the pension, gratuity, GP fund and other retirement benefits of an employee appointed on full-time basis in the Commission shall be the same as Federal Government employees of the equivalent status, grade and scale.

(3) Employees appointed on full-time basis shall be provided time-scale promotions. For this purpose, the Commission shall make necessary regulations with approval of the Federal Government.

(4) All other matters relating to rules, orders, terms and conditions of services of the employees of the Commission shall be dealt with in accordance with the National Tariff Commission Employees' (Service) Rules 1995, as revised from time to time.

**19. Fund of the Commission.** - The Fund of the Commission shall consist of,-

- (a) grants from the Federal Government;
- (b) fee collected by the Commission;
- (c) aid from international agencies; and
- (d) such sums as the Federal Government may allocate to the Commission.

**20. Budget, audit and accounts.** - (1) The Commission shall cause proper accounts to be kept as prescribed by the Controller General of Accounts. As soon as practicable, after the end of the financial year, the Commission shall prepare a statement of accounts of the Commission for that year. This shall include a balance sheet and an account of income and expenditure.

(2) Within sixty days after the end of each financial year, the annual financial statements shall be audited by the Auditor-General of Pakistan.

(3) The auditors shall make a report to the Commission upon the balance sheet and accounts. They shall state whether the balance sheet is a full and fair balance sheet containing all necessary particulars and properly drawn up so as to exhibit a true and correct view of affairs of the Commission. In case the Auditors have called for any explanation or information from the Commission, it shall be stated by the Auditors as to whether such explanation or information was provided to the auditors to their satisfaction or not.

**21. Representation before the Commission.** - Any person duly authorized by a party is entitled to appear, plead and act on behalf of such party before the Commission.

**22. Penalty for false statement or failure to disclose correct information.** - (1) Any person who knowingly or willfully furnishes any information or document or book of accounts which he is bound to produce under this Act or any Trade Remedy Laws and he has reason to believe to be false or incorrect shall be liable to imprisonment for a term which may extend to three years, or a fine not exceeding five million rupees, or both.

(2) Notwithstanding anything contained in the Code of Criminal Procedure 1898 (V of 1898), no court other than a court of sessions shall have jurisdiction to try a person charged with an offence under sub-section (1).

**23. Duty of members, officers, etc., to maintain secrecy.** - (1) Except in the performance of his duties under this Act or any other Trade Remedy Law, every member, officer, consultant and adviser of the Commission shall preserve and aid in preserving secrecy with regard to all matters relating to the financial or other affairs of any undertaking or person that may come to his knowledge in the performance of his duties.

(2) Every such member, officer, consultant or adviser who communicates any such matter, except when required by law to do so or in the discharge of his duty as such, shall be punishable with imprisonment of either description for a term which may extend to three months, or with fine not exceeding five million rupees, or both.

(3) Any information referred to in sub-section (1), if prejudicial to the National Security or Defense, shall be disclosed to the Agency seeking such information, with the approval of the Commission.

**24. Disclosure of interest.** - (1) The following shall apply to all employees serving in any capacity whatsoever in the Commission.

(2) A person shall be deemed to have an interest in a matter if he has any interest, pecuniary or otherwise, in such matter which could reasonably be regarded as giving rise to a conflict between his duty to honestly perform his functions, so that his ability to consider and decide any question impartially or to give any advice without bias, may reasonably be regarded as impaired.

(3) A person having any interest in any matter to be discussed or decided by the Commission, shall prior to discharge of any function or business of the Commission, disclose in writing to the Secretary to the Commission, the fact of his interest and the nature thereof.

(4) Every person shall give written notice to the Secretary to the Commission of all direct or indirect pecuniary or other material or personal interests that he has or acquires in a body corporate involved in a matter at the Commission.

(5) A disclosure of interest under sub-section (2) shall be made a part of the record of the Commission in that particular matter.

(6) Where there is such disclosure of interest,-

(a) such person shall not, save as provided in sub-sections (7) and (8) take part nor be present in any investigation, research, deliberation or decision of the Commission as the case may be; and

(b) such person shall be disregarded for the purpose of constitution of a quorum or performance of a task, as the case may be.

(7) Any person who fails to disclose his interest as required by this section shall, on proof of such act, be liable to removal from the Commission.

(8) It shall be a valid defense for a person charged with the allegation of failure to disclose such interest under sub-section (7), if such person proves that he was not aware of the facts constituting such allegation and that he exercised due care and diligence in discovering the facts which he ought reasonably to have known in the circumstances.

**25. Removal.** - Appointment of any member or employee of the Commission may, at any time, be revoked by order of the Federal Government if it is found that such person stands disqualified on the grounds and in the manner as prescribed.

**26. Powers to make rules.** - (1) The Commission may, with the prior approval of the Federal Government, and by notification in the official Gazette, make rules for carrying out the purposes of this Act.

(2) The Commission shall make regulations for terms and conditions of employment for its employees.

**27. Indemnity.** - No suit, prosecution or other legal proceeding shall lie against any member or any officer or employee of the Commission or any other person in respect of anything which is in good faith done or intended to be done in pursuance of this Act, Any Trade Remedy Laws, any rules or orders made thereunder or in respect of the publication by or under the authority of the Commission of any report, paper or proceedings.

**28. Repeal.** - The National Tariff Commission Act, 1990 (VI of 1990) is hereby repealed.

**29. Savings.** - (1) Notwithstanding the repeal under section 28, nothing in this Act shall affect or be deemed to affect anything done, action taken, investigation or proceedings commenced, order, rule, regulation, appointment, document, or agreement made, fee directed, resolution passed, direction given, proceedings taken, or instrument executed or issued under or pursuant to the Repealed Act and any such thing, action, investigation, proceedings, order, rule, regulation, appointment, document, agreement, fee, resolution, direction, proceedings or instrument shall, if in force on the commencement date and not inconsistent with any of the provisions of this Act, continue in force and have effect as if it had been respectively done, taken, commenced, made, directed, passed, given, executed or issued under this Act.

(2) Notwithstanding anything contained in any other Law, judgment or decision of the Courts, all acts, procedures and decisions of the Commission made from September 2013 shall till date be deemed to have been validly made by the Commission.

**30. Act to override other laws.** - The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force.



**THE SCHEDULE**  
**[See section 13 (2)]**

The Commission shall complete its enquiries and investigations under this Act as follows, namely: -

- (i) an enquiry or investigation for tariff and non-tariff protection or assistance to domestic industry shall, except in special circumstances, be completed within a period not exceeding sixty days, and in no case more than one hundred and twenty days after initiation;
- (ii) an enquiry or investigation for increase or decrease in tariff on the application of trading business or importers shall, except in special circumstances, be completed within a period not exceeding sixty days, and in no case more than one hundred and twenty days after initiation;
- (iii) an enquiry or investigation for removal of tariff anomaly shall, except in special circumstances, be completed within a period no exceeding thirty days, and in no case more than one hundred twenty days after initiation;
- (iv) any other matter relating to tariffs or tariff policies shall be completed expeditiously but in any event no later than one hundred and twenty days; and
- (v) an enquiry or investigation initiated on the request of the Federal Government or on its own motion depending on the nature thereof shall be completed within the time periods given in clauses (i), (ii), (iii) and (iv) above:

Provided that the Federal Government may, in situations constituting an urgency direct the Commission to expedite the enquiry or investigation to the extent possible as may be required to protect or assist the domestic industry.

MOHAMMAD RIAZ  
*Secretary*

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**[AS PASSED BY THE SENATE]**

**PART I**

**ACTS, ORDINANCES, PRESIDENT'S ORDERS AND REGULATIONS**

**NATIONAL ASSEMBLY SECRETARIAT**

*Islamabad, the 8<sup>th</sup> September, 2015*

**No. F.22 (17)/2015-Legis** - The following Act of *Majlis-e-Shoora* (Parliament) received the assent of the President on the 5th September, 2015 and is hereby published for general information: --

ACT NO. XIV OF 2015

*An Act to reform and repeal the Anti-Dumping Duties Ordinance, 2000*

**WHEREAS** it is expedient to give effect in Pakistan to the provisions of Article VI of the General Agreement on Tariffs and Trade, 1994, and to the Agreement on Implementation thereof and to amend and consolidate the law relating to imposition of anti-dumping duties to offset such dumping, to provide a framework for investigation and determination of dumping and injury in respect of goods imported into Pakistan and for matters ancillary thereto or connected therewith;

**AND WHEREAS** the imposition of anti-dumping duties to offset injurious dumping is in the public interest;

**AND WHEREAS** it is expedient to provide for certain reforms in the Anti-Dumping Duties Ordinance 2000 (LXV of 2000) by repealing the said Ordinance and re-enacting the law for the purposes hereinafter appearing;

It is hereby enacted as follows: --

**PART I**

**PRELIMINARY**

**1. Short title, extent and commencement.** - (1) This Act may be called the Anti-Dumping Duties Act, 2015.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

**2. Definitions.** - In this Act unless there is anything repugnant in the subject or context,-

(a) "Appellate Tribunal" means the Appellate Tribunal established under section 64;

(b) "Commission" means the National Tariff Commission established under the law for the time being in force;

(c) "Country" means any country or territory whether a member of the World Trade Organisation or not and includes a customs union or separate customs territory;

(d) "Domestic industry" means the domestic producers as a whole of a domestic like product or those whose collective output of that product constitutes a major proportion of the total domestic production of that product; except when any such

domestic producers are related to the exporters or importers, or are themselves importers of the allegedly dumped investigated product. In such a case "domestic industry" may mean the rest of the domestic producers:

**Explanation.** - For the purposes of this clause, producers shall be deemed to be related to exporters or importers only if -

- (i) one of them directly or indirectly controls the other;
- (ii) both of them are directly or indirectly controlled by the same third person; or
- (iii) together they directly or indirectly control a third person:

Provided that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers. For that purpose 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;

Provided further that, in exceptional circumstances, as may be determined by the Commission, domestic industry in relation to a product in question may be divided into two or more competitive markets and producers within each such market may be regarded as a separate industry if -

- (i) the producers within such a market sell all or almost all of their production of the product in question in such a market; and
  - (ii) the demand in such a market is not, to any substantial degree, supplied by producers of the product in question located elsewhere in Pakistan;
- (e) "Domestic like product" means a "like product" that is produced by the domestic Industry;
  - (f) "Dumping margin" in relation to a product, means the amount by which its normal value exceeds its export price;
  - (g) "Export price" means export price determined in accordance with Part IV of this Act;
  - (h) "Exporting country" means, save as provided in sub-section (3) of section 5, a country from which an investigated product is exported to Pakistan;
  - (i) "Injury" means, unless otherwise specified, material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of a domestic industry, when dumped imports are causing such injury;
  - (j) "Interested party" includes -
    - (i) any exporter or foreign producer of an investigated product;
    - (ii) any importer of an investigated product;
    - (iii) trade or business association a majority of the members of which are producers, exporters or importers of an investigated product;
    - (iv) the government of an exporting country;
    - (v) any producer of a domestic like product in Pakistan;
    - (vi) trade or business associations a majority of the members of which produce a domestic like product in Pakistan; and
    - (vii) such other person or group of persons as the Commission may, by notification in the official Gazette, specify;
  - (k) "Investigated product" means a product which is subject to an anti-dumping investigation as described in the notice of initiation of the investigation;
  - (l) "Investigation" means an investigation conducted under this Act;

- (m) "like product" means a product which is alike in all respects to an investigated product or, in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the investigated product;
- (n) "Normal value" means normal value determined in accordance with Part III of this Act;
- (o) "prescribed" means prescribed by rules made under this Act; and
- (p) "WTO" means the World Trade Organisation established pursuant to the Marrakesh Agreement concluded in Marrakesh, Morocco, on the 15th of April 1994.

## PART II

### ANTI-DUMPING MEASURES

**3. Levy of anti-dumping duty.** - (1) The Commission shall, by notification in the official Gazette, impose anti-dumping measures on products imported into Pakistan when it determines, pursuant to an investigation initiated and conducted in accordance with the provisions of this Act that -

- (a) an investigated product is dumped within the meaning of this Act; and
- (b) injury is being caused to domestic industry within the meaning of this Act.

## PART III

### IDENTIFICATION OF DUMPING AND DETERMINATION OF NORMAL VALUE

**4. Identification of dumping.** - For the purposes of this Act an investigated product shall be considered to be dumped if it is introduced into the commerce of Pakistan at a price which is less than its normal value.

**5. Normal value based on prices in exporting country.** - (1) Save as provided for in section 6, the Commission shall establish normal value of an investigated product on the basis of comparable price paid or payable, in the ordinary course of trade, for sales of a like product when destined for consumption in an exporting country.

(2) Notwithstanding anything contained in sub-section (1), the Commission may establish normal value of an investigated product on the basis of comparable price paid or payable in the ordinary course of trade for sales of a like product when destined for consumption in the country of origin of the investigated product if -

- (a) such products are not produced in an exporting country; or
- (b) there is no comparable price for them in an exporting country.

(3) In the event the Commission decides to establish normal value on the basis of the country of origin of an investigated product pursuant to sub-section (2), any reference to an exporting country in this Act shall be deemed to refer to the country of origin of the investigated product.

**6. Normal value based on export price to a third country or on constructed value.** - (1) When there are no sales of a like product in the ordinary course of trade in domestic market of an exporting country, or when such sales do not permit a proper comparison because of any particular market situation or low volume of the sales in the domestic market of the exporting country, the Commission shall establish normal value of an investigated product on the basis of either -

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

(2) Sales of the like product destined for consumption in the domestic market of the exporting country or sales to an appropriate third country shall normally be considered to be a sufficient quantity for the determination of normal value if such sales constitute five per cent or more of the sales of the investigated product to Pakistan:

Provided that, if such sales constitute less than five per cent of the sales of the investigated product to Pakistan, the Commission shall accept a lower ratio if, on the basis of evidence submitted by interested parties or otherwise available to it, it is satisfied that sales at such lower ratio are nonetheless of sufficient magnitude to provide for a proper comparison.

**7. Circumstances in which certain sales may be disregarded in determining normal value.** - (1) The Commission may treat sales of a like product in domestic market of an exporting country or sales to a third country at prices below per unit, fixed and variable, cost of production plus administrative, selling and other costs as not being in the ordinary course of trade by reason of price and may disregard such sales in determining normal value only if the Commission determines that such sales were made -

- (a) within an extended period of time which shall normally be a period of one year and in no case less than a period of six months;
- (b) in substantial quantities; and
- (c) at prices which do not provide for the recovery of all costs within a reasonable period of time.

(2) For the purposes of sub-clause (b) of sub-section (1), sales below per unit cost shall be deemed to be in substantial quantities if the Commission establishes that -

- (a) a weighted average selling price of transactions under consideration for the determination of normal value is below a weighted average cost; or
- (b) the volume of sales below per unit cost represents twenty per cent or more of the volume sold in transactions under consideration for the determination of normal value.

(3) If prices which are below per unit cost at the time of sale are above the weighted average cost for the period of investigation, the Commission shall consider such prices as providing for recovery of costs within a reasonable period of time.

**8. Calculation of costs for the purposes of sections 6 and 7.** - (1) For the purposes of sections 6 and 7, the Commission shall normally calculate costs on the basis of records kept by an exporter or a producer under investigation provided that such records are in accordance with the generally accepted accounting principles of an exporting country and reasonably reflect the costs associated with the production and sale of a like product.

(2) For the purposes of sections 6 and 7, the amounts for administrative, selling and general costs and for profits shall be based on actual data pertaining to production and sales in the ordinary course of trade of a like product for consumption in an exporting country by any exporter or producer under investigation:

Provided that where the Commission is satisfied that such amounts cannot be determined on the basis set out in sub-section (2), the amounts may be determined on the basis of -

- (a) the actual amounts incurred and realised by an exporter or a producer in question in respect of production and sales in domestic market of an exporting country of the same general category of products;
- (b) the weighted average of the actual amounts incurred and realised by other exporters or producers subject to investigation in respect of production and sales of a like product in domestic market of an exporting country; or

- (c) any other reasonable method provided that the amount for profit so established shall not exceed the profit normally realised by other exporters or producers on sales of products of the same general category in domestic market of an exporting country of a like product.

(3) The Commission shall consider all available evidence on the proper allocation of costs, including such information as is made available by any exporter or producer of a like product in the course of an investigation provided that such allocations have been historically utilised by the exporter or producer, in relation to establishing appropriate amortisation and depreciation periods and allowances for capital expenditures and other development cost, as the case may be.

(4) Unless already reflected in the cost allocations under this section, the Commission shall adjust costs appropriately for those non-recurring items of cost which benefit either future or current production or both, or, for circumstances in which costs during the period of investigation are affected by start-up operations. Such adjustment made for start-up operations shall reflect the costs at the end of the start-up period or, if that period extends beyond the period of investigation, the most recent costs which can reasonably be taken into account by the Commission during the investigation.

**9. Exports from a country in which the government exercises sufficient control over economic decisions so that the domestic market does not operate freely.** - (1) Where the Commission determines that the government of an exporting country exercises sufficient control over economic decisions so that domestic market of such exporting country does not operate freely, the Commission may, determine normal value on the basis of -

- (a) a comparable price paid or payable, in the ordinary course of trade, for sales of a like product when destined for consumption in an appropriate market economy country;
- (b) where the Commission determines that the provisions of clause (a) cannot be applied, a comparable price paid or payable, in the ordinary course of trade, for exports of a like product from an appropriate market economy country to other countries, including Pakistan;
- (c) where the Commission determines that the provisions of clauses (a) and (b) may not be applied, a price actually paid or payable in Pakistan for a domestic like product, duly adjusted if necessary to include a profit margin corresponding to the margin to be expected under the existing economic circumstances for the sector concerned; or
- (d) where the Commission determines that the provisions of clauses (a), (b) and (c) may not be applied, any other reasonable basis.

(2) In identifying an appropriate market economy country for the purposes of sub-section (1), the Commission shall take into account factors such as -

- (a) similarity of the product in terms of materials and end use;
- (b) similarity of production methods; and
- (c) availability of necessary information to the Commission.

#### PART IV

#### DETERMINATION OF EXPORT PRICE

**10. Export price.** - (1) Save as provided for in sub-sections (2) and (3), an export price shall be a price actually paid or payable for an investigated product when sold for export from an exporting country to Pakistan.

(2) In cases where there is no export price or where it appears to the Commission that an export price is unreliable because of association or a compensatory arrangement between an exporter and an importer or a third party -

- (a) the export price may be constructed on the basis of a price at which imported products are first resold to an independent buyer; or
- (b) if the imported products are not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as the Commission may determine.

(3) Where, the Commission determines normal value on the basis of the country of origin pursuant to sub-section (2) of section 5, an export price shall be a price actually paid or payable, as determined by the Commission, for an investigated product when sold for export in the country of origin of the investigated product.

## PART V

### COMPARISON BETWEEN NORMAL VALUE AND EXPORT PRICE

**11. Comparison.** - (1) To ensure a fair comparison between export price and normal value, the Commission shall, where possible, compare export price and normal value with the same characteristics in terms of level of trade, time of sale, quantities, taxes, physical characteristics, conditions and terms of sale and for delivery at the same place which shall normally be at ex-factory level. Where an interested party demonstrates to the Commission that any of the factors set out in this sub-section or any other factors identified by such interested party affect price comparability, the Commission shall make due allowance for differences in such factors to the extent that the same affect price comparability.

(2) In cases where export price is constructed on the basis of a price at which imported products are first resold to an independent buyer pursuant to sub-clause (a) of sub-section (2) of section 10, allowances for costs including duties and taxes incurred between importation and resale, and a reasonable amount for profits accruing, may also be made. If in such cases price comparability has been affected, the Commission shall establish normal value at a level of trade equivalent to a level of trade of a constructed export price, or shall make due allowance as warranted under this section.

(3) The Commission shall indicate to the parties in question what information is necessary to ensure a fair comparison and shall not impose an unreasonable burden of proof on those parties.

**12. Comparison methods.** - (1) Subject to section 11, existence of dumping margin shall normally be established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions or by a comparison of normal value and export prices on a transaction-to- transaction basis.

(2) Normal value established on a weighted average basis may be compared to prices of individual export transactions if -

- (a) the Commission finds a pattern of export prices, which differs significantly among different purchasers, regions or time periods; and
- (b) the Commission provides an explanation as to why such differences cannot be taken into account appropriately by the use of a weighted average-to-weighted average or transaction-to-transaction comparison.

**13. Currency conversion.** - (1) Should the price comparison under sections 11 and 12 require a conversion of currencies, the Commission shall make such conversion using the rate of exchange on the date of sale.

(2) For the purposes of sub-section (1) the date of sale shall normally be the date of contract, purchase order, order confirmation or invoice, whichever establishes the material terms of sale.

(3) Notwithstanding anything in sub-sections (1) and (2), when a sale of foreign currency on forward markets is used in direct relation to an export sale, the Commission shall use the rate of exchange in the forward sale for all the related transactions.

(4) The Commission shall ignore fluctuations in exchange rates and shall allow exporters at least sixty days to have adjusted their export prices to reflect sustained movements in exchange rates during the period of investigation.

**14. Individual dumping margin.** - (1) The Commission shall determine an individual dumping margin for each known exporter or producer of an investigated product.

(2) Notwithstanding anything contained in sub-section (1), where the Commission is satisfied that the number of exporters, producers or importers, or types of products involved is so large as to make it impracticable to determine an individual dumping margin for each known exporter or producer concerned of an investigated product, the Commission may limit its examination to a reasonable number of interested parties or investigated products by using samples which are statistically valid on the basis of information available to the Commission at the time of selection, or to the largest percentage of volume of exports from the country in question which can reasonably be investigated.

(3) The selection of exporters, producers, importers or types of products shall normally be made by the Commission in consultation with the exporters, producers or importers concerned:

Provided that the final selection of the exporters, producers, importers or types of products shall rest with the Commission.

(4) In cases where the Commission has limited its examination as provided for in sub-sections (2) and (3), the Commission shall nevertheless determine an individual dumping margin for any exporter or producer who voluntarily submits the necessary information in time for that information to be considered during the course of an investigation:

Provided that where the Commission determines that the number of exporters or producers is so large that individual examinations would be unduly burdensome to the Commission and prevent the timely completion of the investigation, the Commission may decline to determine an individual dumping margin on the basis of such voluntary responses and limit its examination to such exporters and producers selected pursuant to sub-section (2).

## PART VI

### DETERMINATION OF INJURY

**15. Determination of injury.** - (1) A determination of injury, for the purposes of this Act shall be based on an objective examination of all relevant factors by the Commission which shall include but shall not be limited to -

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

(2) With regard to volume of dumped imports, the Commission shall consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in Pakistan.



(3) With regard to effect of dumped imports on prices in domestic market, the Commission shall consider whether -

- (a) there has been a significant price undercutting by the dumped imports as compared with price of a domestic like product; or
- (b) whether the effect of dumped imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.

(4) No one or several of the factors identified in sub-section (2) or (3) shall be deemed to necessarily give decisive guidance and the Commission may take into account such other factors as it considers relevant for the determination of injury.

(5) In circumstances where domestic industry in relation to a product in question has been divided into two or more competitive markets, and producers within each such market are regarded as a separate industry under the second proviso to the explanation to clause (e) of section 2, injury may be found to exist even where a major portion of the total domestic industry does not suffer injury provided that, there is a concentration of dumped imports into such a market, and provided further that dumped imports are causing injury to the producers of all or almost all of the production within such market.

**16. Cumulation.** - Where imports of a like product from more than one country are the subject of simultaneous investigations under this Act the Commission may cumulatively assess the effects of such imports on domestic industry only if it determines that -

- (a) dumping margin in relation to an investigated product from each country is more than the negligible amount as specified in clause (a) of sub-section (3) of section 41, and volume of dumped imports from each investigated country is not less than the negligible quantity as specified in clause (b) of sub-section (3) of section 41; and
- (b) a cumulative assessment of the effects of the imports is appropriate in the light of -
  - (i) the conditions of competition between the imports; and
  - (ii) the conditions of competition between the imports and a domestic like product.

**17. Examination of impact of dumped imports on domestic industry.** - (1) An examination of impact of dumped imports on domestic industry concerned shall include an evaluation by the Commission of all relevant economic factors and indices having a bearing on the state of the domestic industry, including, but not limited to -

- (a) actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilisation of capacity;
- (b) factors affecting domestic prices;
- (c) magnitude of dumping margin; and
- (d) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments.

**Explanation.** - The list of factors specified in sub-section (1) shall not be exhaustive, nor shall one or several of these factors be deemed to necessarily give decisive guidance.

(2) The Commission shall assess effect of dumped imports in relation to production of a domestic like product in Pakistan when available data permit separate identification of that production on the basis of criteria of production process, producer's sales and profits:

Provided that if such separate identification of that production is not possible, the Commission shall assess effects of dumped imports by examination of the production of the narrowest group or range of products, which includes a domestic like product, for which necessary information can be provided.

**18. Causation.** - (1) The Commission shall satisfy itself that dumped imports are, through the effects of dumping, as provided in sections 15 and 17, causing injury within the meaning of this Act. The consideration of a causal relationship between dumped imports and injury to domestic industry shall be based on an examination by the Commission of all relevant evidence before it.

(2) The Commission shall examine any known factors other than dumped imports which are injuring domestic industry and injuries caused by such other factors shall not be attributed by the Commission to the dumped imports.

(3) Factors which may be relevant for the purposes of an examination by the Commission pursuant to sub-section (2) may include the following, namely: -

- (a) volume and price of imports not sold at dumping prices;
- (b) contraction in demand or changes in the patterns of consumption;
- (c) trade restrictive practices of and competition between foreign and domestic producers;
- (d) developments in technology; and
- (e) export performance and productivity of domestic industry.

**19. Threat of material injury.** - (1) In making a determination regarding existence of a threat of material injury, the Commission shall consider all relevant factors, including but not limited to, such factors as -

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

(2) No one factor specified in sub-section (1) shall by itself, be deemed to necessarily give decisive guidance and in making a determination regarding a threat of material injury the Commission shall, on the basis of the totality of the factors considered, satisfy itself that further dumped exports are imminent and that, unless protective action is taken, material injury shall occur.

## PART VII

### INITIATION AND CONDUCT OF INVESTIGATIONS

**20. Requirement of a written application.** - (1) Subject to section 24 and save as provided for in section 25, an investigation by the Commission shall only be initiated upon a written application by or on behalf of domestic industry.

- (2) An application under sub-section (1) shall -
- (a) be submitted to the Commission in such manner, number and form and with such fee as may be prescribed;
  - (b) include evidence of dumping and injury within the meaning of this Act and the causal link between the dumped imports and the alleged injury, as is reasonably available to the applicant; and
  - (c) contain such further information as may be prescribed.

**21. Notice to government of exporting country.** - Upon receipt of a duly documented application compliant with the requirements of sections 20 and 24, the Commission shall promptly give notice to the government of each exporting country of the receipt of such application.

**22. Withdrawal of application before initiation.** - An application under section 20 may be withdrawn prior to initiation, in which case it shall be considered not to have been made:

Provided that upon the withdrawal of an application any fee paid along with the application pursuant to clause (i) of sub-section (2) of section 20 shall stand forfeited in favour of the Commission.

**23. Initiation of an investigation.** - (1) Subject to section 24, the Commission shall examine accuracy and adequacy of evidence provided in an application to determine whether it is compliant with the requirements of section 20 and if so whether there is sufficient evidence to justify initiation of an investigation.

(2) An application under section 20 shall be rejected as soon as the Commission is satisfied that sufficient evidence is not available to indicate dumping or any injury to justify initiation of an investigation.

(3) The Commission may seek additional information from an applicant before deciding whether to initiate an investigation and such information shall be provided by the applicant to the Commission within such time and in such manner as may be prescribed.

(4) When the Commission is satisfied that -

- (a) an application under section 20 has been made by or on behalf of domestic industry; and
- (b) there is sufficient evidence of dumping and injury within the meaning of this Act, the Commission shall initiate an investigation.

(5) Where the Commission does not consider it appropriate to initiate an investigation, it shall inform all the applicants of the reasons for not initiating the investigation and shall inform the exporting country of its decision.

**24. Application by or on behalf of domestic industry.** - (1) For the purposes of section 20, an application shall be considered to have been made by or on behalf of domestic industry only if it is supported by those domestic producers whose collective output constitutes more than fifty per cent of the total production of a domestic like product produced by that portion of the domestic industry expressing either support for or opposition to the application.

(2) For the purposes of section 23, no investigation shall be initiated when domestic producers expressly supporting an application account for less than twenty- five percent of the total production of a domestic like product produced by domestic industry.

(3) In the case of fragmented industries involving an exceptionally large number of producers, the Commission may determine support and opposition for an application submitted under section 20 by using statistically valid sampling techniques.

**25. Self-initiation.** - The Commission may, *suo moto*, initiate an investigation without having received a written application by or on behalf of domestic industry if it has sufficient evidence of dumping and injury, within the meaning of this Act to justify initiation of an investigation.

**26. Imposition of anti-dumping measures on behalf of a third country.** - (1) An application for imposition of anti-dumping measures may be made to the Commission on behalf of a third country by its authorities provided that -

- (a) such application is supported by price information to show that imported goods are being dumped and by detailed information to show that such dumping is causing injury to domestic industry concerned in the third country; and

- (b) the government of the third country affords all assistance to the Commission to obtain such further information as the Commission may require.

(2) In considering an application received under sub-section (1), the Commission shall consider the effects of alleged dumping on the industry concerned as a whole in the third country and injury shall not be assessed in relation only to the effect of the alleged dumping on the industry's exports to Pakistan or on the industry's total exports of the product.

(3) The decision whether or not to initiate an investigation pursuant to an application received under sub-section (1) shall rest with the Commission:

Provided that the Commission shall not initiate such investigation until the Federal Government has requested and received approval for such an initiation from the Council for Trade in Goods of the WTO.

**27. Notice of decision to initiate investigation.** - (1) When the Commission has decided to initiate an investigation it shall -

- (a) give notice to all exporters, importers and any representative associations of importers or exporters known to the Commission to be concerned, as well as representatives of the exporting country, the applicant and other interested parties known to the Commission to have an interest therein; and
- (b) publish a copy of such notice in the official Gazette and in at least one issue each of a daily newspaper in the English language and a daily newspaper in the Urdu language having wide circulation in Pakistan.

(2) The notice of initiation of an investigation referred to in sub-section (1) shall be in such form and contain such information as may be prescribed and the initiation of investigation shall be effective on the date on which such notice is published in the newspapers as provided for in clause (b) of sub-section (1).

**28. Provision of copy of an application.** - Subject to the requirement to protect confidential information pursuant to section 31, the Commission shall, after initiation of an investigation, provide to any interested party the full text of the written application received by the Commission under sub-section (1) of section 20:

Provided that where the Commission determines that the number of interested parties is particularly high, the Commission shall only provide the full text of the written application received by it under sub-section (1) of section 20 to exporting country or to the relevant trade association of exporting country.

## PART VIII

### CONDUCT OF INVESTIGATIONS

**29. Duration of investigation.** - The Commission shall, except in special circumstances, conclude an investigation within twelve months, and in no case more than eighteen months, after its initiation.

**30. Customs clearance.** - Any proceedings or investigation under this Act shall not hinder the procedures of customs clearance.

**31. Confidentiality.** - (1) Subject to sub-section (2), the Commission shall, during and after an investigation, keep confidential any information submitted to it and such information shall not be disclosed without specific permission of the party submitting it.

(2) Any information which is -

- (a) by nature confidential, because its disclosure shall be of significant competitive advantage to a competitor, or because its disclosure would have a significantly adverse effect upon a person supplying the information, or upon a person from whom the information was acquired;
- (b) determined by the Commission to be of a confidential nature for any other reason; or
- (c) provided as confidential by parties to an investigation, shall, on good cause shown, be kept confidential by the Commission.

(3) The following types of information shall be deemed to be by nature confidential, unless the Commission determines that disclosure in a particular case would neither be of significant competitive advantage to a competitor nor have a significantly adverse effect upon a person supplying the information or upon a person from whom such information was acquired, namely:-

- (a) business or trade secrets concerning the nature of a product, production processes, operations, production equipment, or machinery;
- (b) information concerning financial condition of a company which is not publicly available; and
- (c) information concerning costs, identification of customers, sales, inventories, shipments, or amount or source of any income, profit, loss or expenditure related to manufacture and sale of a product.

(4) Any party seeking any information to be kept confidential shall request for the same at the time the information is submitted, along with the reasons warranting confidentiality. The Commission shall consider such request expeditiously and inform the party submitting the information if it determines that the request for keeping the information confidential is not warranted.

(5) Any party submitting any information with the request to keep it confidential shall furnish non-confidential summary of all such information. Such summary may take the form of ranges or indexation of figures provided in the confidential version or marked deletions in text or in such other form as the Commission may require:

Provided that such non-confidential summary shall permit a reasonable understanding of the substance of the information submitted in confidence:

Provided further that any deletion in text shall, unless otherwise allowed by the Commission, only relate to names of the buyer or supplier.

(6) In exceptional circumstances, any party submitting confidential information may indicate that such information is not susceptible of summary, in which case a statement of the reasons why summarisation is not possible shall be provided. If the Commission concludes that the non-confidential summary provided fails to satisfy the requirements of sub-section (5), it may determine that the request for keeping the information confidential is not warranted.

(7) If the Commission finds that a request for keeping the information confidential is not warranted, and if the supplier of such information is unwilling to make it public or to authorise the disclosure in generalised or summary form, the Commission shall disregard such information and return the same to the party submitting it.

(8) Subject to sub-section (9), notwithstanding anything contained in this Act or in any other law for the time being in force, any confidential information received or obtained, directly or indirectly, by the Commission pursuant to or in connection with an investigation shall not be subject to disclosure by the Commission to any Ministry, Division, department, agency or instrumentality of the Federal Government or a Provincial Government without the prior permission of the party submitting such confidential information.

(9) The provisions of sub-section (8) shall not preclude the supply of any information called for by the Appellate Tribunal pursuant to section 72:

Provided that the obligation to protect confidential information as provided for in this Chapter shall, *mutatis mutandis*, extend to the Appellate Tribunal.

**32. Reliance on best information available.** - (1) Subject to sub-section (2), if, at any time during an investigation, any interested party -

- (a) refuses access to, or otherwise does not provide, necessary information within the period of time as may be prescribed; or
- (b) otherwise significantly impedes the investigation, the Commission may reach preliminary and final determinations, whether affirmative or negative, on the basis of the best information available.

(2) The provisions of the Schedule to this Act shall be followed in the application of sub-section (1).

(3) The Commission shall take due account of any difficulties experienced by interested parties, in particular, small companies, in supplying information requested by it and may, where it deems fit, provide such assistance as is practicable including, but not limited to, extension of any time period prescribed for submission of information under this Act.

(4) The Commission shall satisfy itself of the accuracy of the information supplied by interested parties during the course of an investigation in such manner as may be prescribed.

**33. Information to parties.** - The Commission shall provide an opportunity to all interested parties to see information submitted to it, which is not confidential and is relevant to the presentation of their case.

## PART IX

### INVESTIGATION PROCEDURES, PRELIMINARY AND FINAL DETERMINATIONS

**34. Proposed schedule for investigation.** - The Commission shall, in a notice of initiation of an investigation referred to in section 27, include the proposed schedule for conduct of an investigation, including the proposed time limits for submission of written arguments, the proposed date for any hearing, if requested, the proposed date for preliminary determination, and the proposed date for final determination.

**35. Acquisition of information by the Commission.** - The Commission shall solicit, gather, obtain, verify, accept and reject information for the purposes of an investigation in such manner as may be prescribed.

**36. Assessments to be on the basis of data relating to defined periods.** - (1) The Commission shall base its assessments of dumping and injury on data relating to defined periods which shall be the periods for which information is required by the Commission.

(2) For the purposes of an investigation of dumping, an investigation period shall normally cover twelve months preceding the month of initiation of the investigation for which data is available and in no case the investigation period shall be shorter than six months.

(3) For the purposes of an investigation of injury, the investigation period shall normally cover thirty-six months:

Provided that the Commission may at its sole discretion, select a shorter or longer period if it deems it appropriate in view of available information regarding domestic industry and an investigated product.

**37. Preliminary determination.** - (1) The Commission shall make a preliminary determination of dumping and injury, if any, not earlier than sixty days and not later than one hundred and eighty days, after initiation of an investigation. Such preliminary determination shall be based on the information available to the Commission at that time.

(2) The Commission shall issue a notice of preliminary determination, whether affirmative or negative, which shall, subject to the requirements of section 31, set forth in sufficient detail the findings and conclusions reached on all issues of fact and law considered material. Such notice of preliminary determination may also contain such other information as may be prescribed.

(3) The Commission shall publish a copy of the notice of preliminary determination in the official Gazette and in at least one issue each of a daily newspaper in the English language and a daily newspaper in the Urdu language having wide circulation in Pakistan.

(4) The Commission shall forward a copy of the notice of preliminary determination to exporting country and to other known interested parties.

**38. Written arguments.** - In an investigation, any interested party may submit written arguments to the Commission in such form and manner and within such time as may be prescribed.

**39. Final determination.** - (1) The Commission shall normally make a final determination of dumping and injury within one hundred and eighty days of the date of publication of a notice of preliminary determination in the official Gazette under sub-section (3) of section 37.

(2) The final determination shall be based on information obtained by the Commission during the course of the investigation that has been disclosed by the interested parties:

Provided that the Commission shall not be precluded from taking into consideration information or data received or collected from any other source.

(3) The Commission shall, subject to the requirements for the protection of confidential information under section 31, issue a notice of the final determination, whether affirmative or negative, containing relevant information on the matters of fact and law and reasons that have led to the determination.

(4) Without prejudice to the generality of the provisions of sub-section (3) and in addition to such further information as may be prescribed, the notice of the final determination referred to in sub-section (3) shall specify:-

- (a) the amount of the dumping margin, if any, found to exist and the basis for such determination;
- (b) the amount of the definitive anti-dumping duties to be imposed, where applicable; and
- (c) if definitive anti-dumping duties are to be collected with regard to the imports to which provisional measures were applied along with the reasons for the decision to do so.

(5) The Commission shall publish a copy of the notice of the final determination referred to in sub-section (3) in the official Gazette and in at least one issue each of a daily newspaper in the English language and a daily newspaper in the Urdu language having wide circulation in Pakistan:

Provided that such notice may, if the Commission deems it fit, only contain a summary of the salient features of the final determination:

Provided further that where the notice of the final determination contains only a summary of the salient features of the final determination, the Commission shall make available to any interested party applying for the same in writing a copy of the complete notice of final determination.

(6) The copy of the notice of the final determination shall be forwarded by the Commission to the exporting country and to other known interested parties.

## PART X

### TERMINATION OF INVESTIGATION WITHOUT ADOPTION OF MEASURES

**40. Withdrawal of an application.** - An application submitted pursuant to section 20 may be withdrawn at any time after an investigation has been initiated, in which case the Commission shall terminate the investigation without imposition of any measures provided for in this Act:

Provided that the Commission may, if it considers it fit to do so, continue an investigation notwithstanding the withdrawal of an application as provided for in this section in which event, the Commission may, subject to the provisions of this Act impose such measures as are provided for in this Act.

**41. Termination for insufficient evidence, negligible dumping margin or negligible volume.** - (1) An investigation may be terminated at any time by the Commission if it is satisfied that there is not sufficient evidence of either dumping or injury to justify proceeding with an investigation.

(2) The Commission shall immediately terminate an investigation if it determines that dumping margin is negligible or that volume of dumped imports, actual or potential, or injury, is negligible.

(3) For the purposes of sub-section (2) -

- (a) dumping margin shall be considered to be negligible if it is less than two per cent, expressed as a percentage of the export price; and
- (b) volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports of an investigated product is found to account for less than three per cent of total imports of a like product unless imports of the investigated product from all countries under investigation which individually account for less than three per cent of the total imports of a like product collectively account for more than seven per cent of imports of a like product.

**42. Notice of conclusion of an investigation without imposition of measures.** - (1) The Commission shall, subject to the requirements for the protection of confidential information under section 31, issue a notice of the conclusion of an investigation without imposition of measures which shall set forth in sufficient detail the findings and conclusions reached on all issues of fact and law considered material by the Commission including the matters of fact and law which have led to arguments being accepted or rejected.

(2) The Commission shall publish a copy of the notice of conclusion of an investigation without imposition of measures referred to in sub-section (1) in the official Gazette and summary thereof in at least one issue each of a daily newspaper in the English language and a daily newspaper in the Urdu language having wide circulation in Pakistan.

(3) Termination of an investigation under sections 40 or 41 or conclusion of an investigation without imposition of measures shall not be a bar to filing of a *de novo* application for a new investigation immediately after termination or conclusion of the investigation. The Commission shall treat the application in accordance with provisions of this Act.



## PART XI

### PROVISIONAL MEASURES

**43. Imposition of provisional measures.** - (1) The Commission may impose provisional measures if it makes an affirmative preliminary determination of dumping and injury, and determines that provisional measures are necessary to prevent injury being caused during the course of an investigation:

Provided that provisional measures shall not be applied sooner than sixty days from the date of initiation of the investigation:

Provided further that the amount of the provisional anti-dumping duty shall not exceed the margin of dumping as provisionally established, but it may be less than the margin if such lesser duty would be adequate to remove the injury to the Domestic Industry.

(2) A negative preliminary determination of dumping shall not automatically terminate an investigation, but no provisional measures shall be imposed in such case.

(3) The provisions of sections 51 and 52 shall be followed in the application of provisional measures.

**44. Form of provisional measures.** - Provisional measures shall take the form of security by way of cash deposit in an amount equal to the provisionally determined dumping margin set forth in the notice of preliminary determination referred to in sub-section (2) of section 37:

Provided that release of a product concerned for free circulation in Pakistan shall be subject to provision of such security by way of cash deposit.

**45. Duration of application of provisional measures.** - Provisional measures shall be applied for a period not exceeding four months:

Provided that the Commission may, upon request by exporters which the Commission considers to be representing a significant percentage of the trade involved, extend the period of application of provisional measures to a period not exceeding six months.

## PART XII

### PRICE UNDERTAKINGS

**46. Acceptance of price undertaking.** - (1) Where the Commission has made a preliminary affirmative determination of dumping and injury in accordance with the provisions of this Act the Commission may suspend or terminate an investigation without imposition of anti-dumping duties, whether preliminary or definitive, upon receipt of satisfactory price undertaking from an exporter to revise its prices or to cease export to the area in question at dumped prices so that the Commission is satisfied that injurious effect of dumping in question is eliminated:

Provided that the Commission shall not seek or accept any price undertaking from an exporter unless the Commission has made a preliminary affirmative determination of dumping and injury in accordance with the provisions of this Act.

(2) Price increases under such price undertakings shall not be higher than necessary to eliminate dumping margin and shall be less than the provisionally determined dumping margin set forth in the notice of preliminary determination referred to in sub-section (2) of section 37 if, the Commission determines that such lesser price increase would be adequate to remove injury to domestic industry.

(3) The Commission may suggest price undertakings, but no exporter shall be forced to enter into any such undertaking and the fact that exporters do not offer such undertakings, or do not accept an invitation to do so, shall not prejudice consideration of the case by the Commission:

Provided that in such circumstances the Commission shall be free to determine that a threat of injury is more likely to be realised if the dumped imports continue.

**47. Conditions for acceptance of price undertaking.** - (1) Except in extraordinary circumstances, a price undertaking shall not be offered later than sixty days before the proposed date of final determination as set forth in a notice of initiation of an investigation in accordance with the provisions of section 34.

(2) Notwithstanding anything contained in this section, the decision to accept a price undertaking shall rest with the Commission.

**Explanation.** - The Commission may not accept a price undertaking if it considers the acceptance thereof to be impractical because the number of actual or potential exporters is too great, or for reasons of general policy or for any other reason.

(3) If the Commission decides not to accept a price undertaking, it shall provide to an exporter the reasons which have led it to consider acceptance of a price undertaking as inappropriate and the exporter may, not later than seven days from the submission of such reasons, submit its written response to the Commission on the reasons given by the Commission.

(4) The Commission may require an exporter from whom a price undertaking has been accepted, to provide, periodically, information relevant to the fulfilment of such undertaking, and to permit verification of such information. The communication of such information shall be subject to the provisions of section 31.

(5) Failure to provide any information requested by the Commission pursuant to sub-section (4) shall be deemed to be a violation of a price undertaking.

(6) Where the Commission accepts a price undertaking or a price undertaking is terminated, it shall publish a notice to this effect in the official Gazette and in at least one issue each of a daily newspaper in the English language and a daily newspaper in the Urdu language having wide circulation in Pakistan. Such notice shall contain the non-confidential part of the price undertaking accepted, when applicable, and details of the findings and conclusions reached by the Commission on all the issues of fact and law considered material by the Commission and such other information as the Commission may determine necessary:

Provided that where the notice relates to acceptance by the Commission of a price undertaking it shall contain such further information as may be prescribed.

(7) A notice of acceptance of a price undertaking or termination thereof referred to in sub-section (6) shall be forwarded by the Commission to the country the product of which is the subject of such notice and to other interested parties known to have an interest therein.

(8) Where the Commission continues an investigation pursuant to sub-section (1) of section 48, it shall publish a notice of the continuation of the investigation, setting forth the proposed date for final determination, and any other modifications to the proposed schedule of the investigation as originally set out in the notice of initiation of the investigation in accordance with section 34:

Provided that the final determination in such case shall be made by the Commission no later than one hundred and eighty days from the date of publication of the notice of acceptance of a price undertaking referred to in sub-section (6) in the official Gazette.

**48. Completion of an investigation.** - (1) If one or more price undertakings are accepted by the Commission, it shall nevertheless complete an investigation of dumping and injury if it receives a request from an exporter in writing to continue such investigation, or where the Commission so decides of its own accord.

(2) In the event the Commission makes a negative determination of dumping or injury pursuant to an investigation continued under sub-section (1), a price undertaking in question shall automatically lapse except in a case where the Commission determines that such a determination is due in large part to the existence of such price undertaking in which case, the Commission may require that an undertaking be maintained for a reasonable period of time to be determined by the Commission.

(3) In the event the Commission makes an affirmative determination of dumping and injury pursuant to an investigation continued under sub-section (1), a price undertaking in question shall continue consistent with its terms and the provisions of this Act.

**49. Violation of price undertaking.** - If a price undertaking is violated or deemed to be violated, the Commission may, subject to the provisions of this Act take expeditious action, which may include immediate application of provisional measures using the best information available. In such cases, definitive duties may be levied in accordance with the provisions of this Act on products imported for consumption not more than ninety days before the application of such provisional measures, except that any such retroactive assessment shall not apply to imports entered before such violation of the price undertaking.

### PART XIII

#### IMPOSITION AND COLLECTION OF ANTI-DUMPING DUTIES

**50. Mandatory imposition of anti-dumping duty.** - (1) When the Commission has established the existence of dumping and injury in accordance with the provisions of this Act, it shall, by notification in the official Gazette, impose an anti-dumping duty.

(2) The amount of the anti-dumping duty shall not exceed the margin of dumping established but it may be less than the margin if such lesser duty would be adequate to remove injury to the Domestic Industry.

**51. Imposition and collection of anti-dumping duties.** - (1) Anti-dumping duties, whether provisional or definitive, as the case may be, imposed under this Act shall -

(a) take the form of *ad valorem* or specific duties:

Provided that provisional measures shall take the form of security by way of cash deposit;

(b) be imposed in addition to other import duties levied on an investigated product;

(c) be collected in the same manner as customs-duties under the Customs Act, 1969 (IV of 1969);

(d) be levied and collected on a non-discriminatory basis on imports of such product from all sources found to be dumped and causing injury, except as to imports from those sources from which price undertakings have been accepted by the Commission in accordance with the provisions of Part XII of this Act; or

(e) will not be levied on imports that are to be used as inputs in products destined solely for export and are covered under any scheme exempting customs duty for exports under the Customs Act, 1969.

(2) Save as provided for in sub-section (3), the Commission shall establish an individual anti-dumping duty for each known exporter or producer of dumped imports.

(3) Subject to sub-sections (4) and (7), where the Commission has limited its examination of dumping margin in accordance with sub-sections (2) and (3) of section 14, any anti-dumping duty applied to imports from exporters or producers not included in an examination by the Commission shall not exceed a weighted average dumping margin established with respect to selected exporters or producers.

(4) The Commission shall disregard for the purposes of sub-section (3) any negligible margins, as defined in sub-section (3) of section 41, and margins established under the circumstances referred to in section 32.

(5) Save as provided for in sub-section (4) of section 14, the Commission shall apply individual anti-dumping duties to imports from any exporter or producer not included in an examination who has provided the necessary information during the course of an investigation.

(6) The Commission may apply a residual anti-dumping duty rate for imports from exporters and producers not known to the Commission at time of final determination at a rate which shall not exceed a weighted average of individual dumping margins established for exporters and producers examined during an investigation, excluding margins established in accordance with section 32.

(7) Where all dumping margins are established pursuant to section 32, the Commission shall use such alternative method of determining dumping margins for exporters or producers not included in its examination as it considers reasonable in the circumstances.

**52. Refund of anti-dumping duties paid in excess of dumping margin.** - (1) An importer shall be granted a refund of the actual amount of anti-dumping duties collected if the Commission determines that dumping margin, on the basis of which such anti-dumping duties were paid, has been eliminated or reduced to a level which is below the level of the anti-dumping duty in force.

(2) An importer may submit an application for refund of anti-dumping duties collected within any twelve months period to the Commission not later than sixty days from the end of such period.

(3) An application under sub-section (2) shall contain such information as may be prescribed.

**Explanation.** - When investigating an application for refund under this section, the Commission shall apply the relevant provisions of this Act to its determinations. In particular, when determining whether and to what extent a refund should be made when an export price is constructed on the basis of a price at which imported products are first resold to an independent buyer due to the absence of export price or because it appears that the export price is unreliable pursuant to sub-section (2) of section 10, the Commission shall take account of any change in normal value, any change of costs incurred between importation and resale, and any movement in resale price which is duly reflected in subsequent selling prices, and shall calculate the export price with no deduction for the amount of anti-dumping duties paid when satisfactory evidence of the above is provided.

(4) The Commission shall provide an importer making an application under sub-section (2) with an explanation of the reasons for the decision concerning a request for refund.

(5) A refund of anti-dumping duties under this section shall normally take place within twelve months, and in no case later than eighteen months, after the date on which an application for refund compliant with the requirements of sub-section (3) is received by the Commission.

**53. Anti-dumping and countervailing duties and fees to be held in a non-lapsable personal ledger account.** - (1) The Commission shall establish and maintain a non-lapsable personal ledger account in its name for the purposes of Anti-Dumping Duties and Countervailing Duties.

(2) All anti-dumping and countervailing duties collected under the laws specified in sub-section (1) shall be held in that account.

(3) The account established under sub-section (1) shall be maintained and operated in such manner as may be prescribed.

**PART XIV****RETROACTIVITY**

**54. Retroactive application of definitive anti-dumping duties in certain circumstances.** - A definitive anti-dumping duty may be collected on products, which were imported for consumption not more than ninety days prior to the date of application of provisional measures if, the Commission determines, for a 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 practices dumping and that such dumping would cause injury; and
- (b) injury is caused by massive dumped imports of a product in a relatively short time which in the light of timing and volume of dumped imports and other circumstances including, but not limited to, a rapid build-up of inventories of the imported product, is likely to seriously undermine the remedial effect of the definitive anti-dumping duty to be applied, provided that the importers concerned have been given an opportunity of being heard in respect of such proposed action.

**55. Imposition of definitive anti-dumping duties retroactively.** - (1) Where the Commission makes a final determination of injury but not of a threat thereof or of material retardation of the establishment of an industry or, in the case of a final determination of a threat of injury, where the Commission determines that the effect of dumped imports would, in the absence of provisional measures, have led to a determination of injury, definitive anti-dumping duties may be levied retroactively for the period for which provisional measures, if any, have been applied.

(2) If definitive anti-dumping duty imposed under sub-section (1) is higher than the amount of provisionally determined dumping margin set forth in the notice of preliminary determination referred to in sub-section (2) of section 37, the difference shall not be collected, and if such definitive anti-dumping duty is lower than the amount of such provisionally determined dumping margin the difference shall be refunded by the Commission within forty-five days of such determination.

(3) Save as provided for in sub-section (1), where the Commission makes a determination of threat of injury or material retardation, but no injury has yet occurred, definitive anti-dumping duties may be imposed only from the date of the determination of threat of injury or material retardation and any cash deposit made during the period of application of provisional measures shall be refunded by the Commission within forty-five days of such determination.

(4) Where the Commission makes a negative final determination, any cash deposit made during the period of application of provisional measures shall be refunded by the Commission within forty-five days of such determination.

**56. Circumstances in which provisional measures and anti-dumping duties shall apply.** - Save as provided for in sections 49, 54 and 55, provisional measures and definitive anti-dumping duties shall only be applied to products which enter into Pakistan for consumption on or after the date of publication of a notice of affirmative preliminary or final determination in an investigation.

**PART XV****DURATION AND REVIEW OF ANTI-DUMPING DUTIES AND PRICE UNDERTAKINGS**

**57. Duration of anti-dumping duty.** - Subject to the provisions of this Act any anti-dumping duty imposed under this Act shall remain in force only as long as and to the extent necessary to counteract dumping, which is causing injury.

**58. Review of anti-dumping duty.** - (1) Any definitive anti-dumping duty imposed under this Act shall be terminated on a date not later than five years from the date of its imposition or from the date of the most recent review under section 59, if such review has covered both dumping and injury.

(2) The Commission shall, not later than ninety days preceding the date of expiry of a definitive anti-dumping duty, publish a notice of impending expiry of such anti-dumping duty in the official Gazette and in at least one issue each of a daily newspaper in the English language and a daily newspaper in the Urdu language having wide circulation in Pakistan.

(3) A definitive anti-dumping duty shall not expire if the Commission determines, in a review initiated before the date of expiry on its own initiative or upon a duly substantiated request made by or on behalf of domestic industry within forty-five days from public notice of impending termination of the definitive anti-dumping duty concerned, that the expiry of such anti-dumping duty would be likely to lead to continuation or recurrence of dumping and injury and such anti-dumping duty shall remain in force pending the outcome of such a review.

**59. Review for change of circumstances.** - (1) The Commission shall review the need for continued imposition of anti-dumping duty, where warranted, on its own initiative or, provided that a period of twenty-four months has elapsed since the imposition of definitive anti-dumping duty, upon a written request submitted by any interested party, which contains positive information substantiating the occurrence of changed circumstances justifying a need for a review including sufficient information to enable the Commission to calculate export price and normal value of a product in question.

(2) The Commission shall, upon initiation of a review under sub-section (1), publish a notice in the official Gazette and in at least one issue each of a daily newspaper in the English language and a daily newspaper in the Urdu language having wide circulation in Pakistan.

(3) In undertaking a review under sub-section (1), the Commission shall consider whether continued imposition of anti-dumping duty is necessary to offset dumping and whether injury would be likely to continue to recur if anti-dumping duty were removed or varied and if, as a result, the Commission determines that continued imposition of anti-dumping duty is no longer warranted it shall be terminated immediately.

(4) The Commission may require an applicant requesting a review under this section to fill in an additional questionnaire provided by it requiring such information and for such period as the Commission deems necessary before such review is initiated in which case the review shall be initiated following the receipt by the Commission of such questionnaire duly filled in.

**60. Newcomer review.** - (1) If a product is subject to definitive anti-dumping duties, the Commission shall carry out a review for the purpose of determining individual dumping margins for any exporters or producers in an exporting country concerned who did not export the product to Pakistan during the period of investigation if such exporters or producers can show that they are not related to any of the exporters or producers in the exporting country who are subject to the anti-dumping duties on an investigated product.

(2) A review under sub-section (1) shall be initiated within thirty days following the date of receipt of an application for such review by any producer or exporter concerned and shall normally be completed within six months from its initiation and, in any event, no later than twelve months:

Provided that the Commission may require an applicant requesting a review under sub-section (1) to fill in an additional questionnaire provided by it requiring such information and for such period as the Commission deems necessary before such review is initiated in which case a review under sub-section (1) shall be initiated within thirty days following the receipt by the Commission of such questionnaire duly filled in.

(3) No anti-dumping measures shall be imposed on imports from any exporters or producers referred to in sub-section (1) while the review under sub-section (2) is being carried out:

Provided that the Commission may require a cash deposit in the amount of the residual anti-dumping duty rate determined pursuant to sub-section (5) of section 51 to ensure that, should such a review result in a determination of dumping in respect of such producers or exporters, anti-dumping duties can be levied retroactively to the date of initiation of the review.

**61. Duration and review of price undertakings.** - The provisions of sections 57, 58 and 59 shall apply, *mutatis mutandis*, to price undertakings accepted in accordance with Part XII of this Act.

**62. Evidence and procedure.** - (1) The provisions of sections 27, 31, 32, 33, 35, 39, and 46 shall apply, *mutatis mutandis*, to any review carried out under Part XV of this Act.

(2) Any review conducted under sections 58 and 59 shall be carried out expeditiously and shall normally be concluded within twelve months of the date of initiation of the review.

**63. Anti-circumvention measures.** - (1) Anti-dumping duties imposed pursuant to this Act may be extended to imports from third countries, of the like product, whether slightly modified or not, or to imports of the slightly modified like product from the country subject to measures, or parts thereof, when circumvention of the measures in force is taking place. Anti-dumping duties not exceeding the residual anti-dumping duty imposed in accordance with section 39 may be extended to imports from companies benefiting from individual duties in the countries subject to measures when circumvention of the measures in force is taking place. Circumvention shall be defined as a change in the pattern of trade between third countries and Pakistan or between individual companies in the country subject to measures by Pakistan, which stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty, and where there is evidence of injury or that the remedial effects of the duty are being undermined in terms of the prices or quantities of the like product, and where there is evidence of dumping in relation to the normal values previously established for the like product, if necessary in accordance with the provisions of this Act.

(2) The practice, process or work referred to in sub-section (1) includes, *inter alia*, the slight modification of the product concerned to make it fall under customs tariff which are normally not subject to the measures, provided that the modification does not alter its essential characteristics, the consignment of the product subject to measures *via* third countries, the re-organisation by exporters or producers of their patterns and channels of sales in the country subject to measures in order to eventually have their products exported to Pakistan through producers benefiting from an individual duty rate lower than that applicable to the products of the manufacturers, and, in the circumstances indicated in sub-section (3), the assembly of parts by an assembly operation in Pakistan or a third country.

(3) An assembly operation in Pakistan or a third country shall be considered to circumvent the measures in force where,-

- (a) the operation started or substantially increased since, or just prior to, the initiation of the anti-dumping investigation and the parts concerned are from the country subject to measures;
- (b) the parts constitute 60% or more of the total value of the parts of the assembled product, except that in no case shall circumvention be considered to be taking place where the value added to the parts brought in, during the assembly or completion operation, is greater than 25% of the manufacturing cost;
- (c) the remedial effects of the duty are being undermined in terms of the prices or quantities of the assembled like product and there is evidence of dumping in relation to the normal values previously established for the like or similar products.

(4) Investigations shall be initiated pursuant to this section on the initiative of the Commission or at the request of any interested party on the basis of sufficient evidence regarding the factors set out in sub-sections (1) and (2). Investigations shall be concluded by the Commission within nine months.

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**PART XVI****APPEAL TO APPELLATE TRIBUNAL**

**64. Establishment of the Appellate Tribunal.** - (1) The Federal Government shall, by notification in the official Gazette, establish an Appellate Tribunal for the purposes of exercising jurisdiction under this Act.

(2) The Appellate Tribunal shall be composed of three members appointed by the Federal Government, consisting of a Chairman and two members.

(3) All members of the Appellate Tribunal shall be citizens of Pakistan and shall be employed on a full-time basis.

(4) The Members of the Appellate Tribunal shall have no past record of any specific activities or conduct that could reasonably call into question their ability to discharge their duties as members of the Appellate Tribunal with honesty, integrity, reliability, competence and objectivity.

(5) In making such appointments the Federal Government shall ensure that the membership of the Appellate Tribunal, taken as a whole, possesses substantial and directly relevant professional experience and qualifications needed to properly discharge its functions.

**65. Qualifications and eligibility.** - (1) The members of the Appellate Tribunal shall,-

- (a) have at least a masters or professional degree or qualification from an accredited university or institute in international trade laws, business and commercial laws, economics, accountancy, tariffs and trade, commerce and trade, or a trade-related subject; knowledge of trade remedy laws would be an advantage;
- (b) have at least fifteen years of professional work experience in international trade law, business and commercial laws, economics, accountancy, harmonized tariffs, commerce and trade, tariffs and trade or other trade-related technical field; direct work experience in trade remedy laws would be an advantage;
- (c) have no past record of criminal conviction, other than for minor offences; and
- (d) have no past record of any specific activities or conduct that could reasonably call into question their ability to discharge their duties as a members of the Appellate Tribunal with honesty, integrity, reliability, competence and objectivity.

**66. Disqualification.** - (1) No person shall be appointed or continue as member or an employee of the Tribunal if such person;

- (a) has been convicted of an offence involving moral turpitude;
- (b) has been or is adjudged insolvent;
- (c) is incapable of discharging his duties by reasons of physical, physiological or, mental unfitness and has been so declared by a duly constituted Medical Board appointed by the Federal Government; or
- (d) fails to disclose any conflict of interest at or within the time provided for such disclosure by or under this Act or contravenes any of the provisions of this Act pertaining to unauthorized disclosure of information;
- (e) is or has been a Member or employee of the Commission unless a period of two years has elapsed after he has ceased to be such Member or employee of the Commission.

**67. Terms and Conditions.** - (1) The Chairman and Members of the Tribunal shall be appointed for the period of five years. This term shall be extendable for a period of one year unless the Federal Government notifies otherwise.



(2) The terms and conditions of the Chairman and Members of the Tribunal shall be as prescribed.

(3) The Chairman and Members appointed under the repealed Anti-Dumping Duties Ordinance, 2000 (LXV of 2000) shall continue to act as Chairman and Members only till the appointment of Chairman and Members under this Act:

Provided that the Federal Government shall ensure the establishment of Appellate Tribunal along with appointment of its Chairman and Members within a period of ninety days from commencement of this Act.

**68. Decisions and determinations; Quorum.** - (1) Decisions and determinations of the Appellate tribunal shall be taken by majority.

(2) If there are less than three members of the Tribunal, the presence of two members serving shall constitute a quorum.

(3) In the case of a quorum of two, the decision shall be taken by consensus.

(4) Any decision or determination taken at a meeting where a quorum is present shall constitute a valid and enforceable decision or determination of the Tribunal.

**69. Operation of the Appellate Tribunal in the absence of the Chairman or a Member.** -

(1) If the Chairman's or any of the member's position becomes vacant, the Government shall designate a new member or one of the existing members to serve as Chairman.

(2) The absence of a Chairman, or the temporary incapacity of the Chairman, shall not affect the other members' ability to act as the Appellate Tribunal and to exercise its powers and authority under this Act.

**70. Appellate procedures.** - (1) Any interested party may prefer an appeal to the Appellate Tribunal against -

- (i) the initiation of an investigation or a preliminary determination, where it is alleged that it does not satisfy the requirements laid down in sections 23 and 37 respectively;
- (ii) an affirmative or negative final determination by the Commission under section 39;
- (iii) any final determination pursuant to a review;
- (iv) an order of the Commission for termination of investigation under Section 41; or
- (v) a determination of the Commission under section 52.

(2) An appeal under clause (i) of sub-section (1) shall be filed within thirty days of the publication of notice of initiation or notice preliminary determination, as the case may be.

(3) The Appellate Tribunal shall handle such an appeal as a priority and shall issue its decision on the appeal within thirty days of the filing of an appeal with the Appellate Tribunal:

Provided that the filing of an appeal under clause (i) of sub-section (1) shall have no effect on the Commission's conduct of investigation.

(4) All appeals under clauses (ii), (iii), (iv) and (v) of sub-section (1) shall be filed within forty-five days from the date of publication in newspapers of a public notice or as the case may be, date of the decision of the Commission of any affirmative or negative final decision or determination or termination of investigation by the Commission, and shall be in such form and contain such information as may be prescribed.

(5) Such an appeal shall be disposed of and the decision of the Appellate Tribunal pronounced, as expeditiously as possible as but not later than forty-five from the date of receipt of an appeal compliant with the requirements contained in this Act.

(6) The Appellate Tribunal shall hear the appeal from day-to-day.

(7) In examining an appeal under sub-section (1), the Appellate Tribunal may make such further inquiry as it may consider necessary, and after giving the Commission and an appellant an opportunity of being heard, pass such order as it thinks fit, confirming, altering or annulling a determination of the Commission appealed against.

Provided that in case the Appellate Tribunal decision requires action by the Commission, it shall remand the case to the Commission.

(8) After examining the appeal, the Appellate tribunal shall assess the facts related to the impugned determination of the Commission. The Appellate Tribunal shall determine whether the establishment of the facts of the Commission was proper and whether the commission's evaluation of those facts was unbiased and objective. The Appellate tribunal shall base this determination on the official record maintained by the Commission or any other documents relied upon by the Commission in reaching the determination being appealed.

(9) Where the Appellate Tribunal determines that the Commission's establishment of the facts was proper and its evaluation was unbiased and objective, it shall confirm the appealed determination of the Commission provided that the Appellate Tribunal is satisfied that in reaching its determination, the Commission complied with the relevant provisions of this Act.

(10) The decision of the Appellate Tribunal shall be in writing, detailing the issues raised in the appeal and the arguments adopted by the appellant and the Commission. The Appellate tribunal shall also provide reasons for reaching its decision with reference to the provisions of this Act and the facts of the case.

(11) The Appellate Tribunal shall provide copies of its decision to all the appellants and the respondents including the Commission no later than five days from the date of rendering its decision.

(12) The Appellate Tribunal may, if it deems necessary, require an appellant to provide security in such form as may be prescribed, at the time of filing of an appeal.

(13) The decision of the Appellate Tribunal shall be appealable in the High Court. The High Court shall render a decision within ninety days of receiving an appeal from the decision of the Appellate Tribunal.

Provided that the High Court shall not make an interim order against the conduct of investigation by the Commission unless the Commission has been given notice of the application and has had an opportunity of being heard and the High Court, for reasons to be recorded in writing, is satisfied that the interim order would not have the effect of prejudicing or interfering with the carrying out of a public work or of otherwise being harmful to the public interest [or State property] or of impeding the assessment or collection of public revenues.

Provided that The Appellate Tribunal may, if it thinks fit, accept an application from any party to an appeal in which the Appellate Tribunal has rendered its decision, for a clarification of any of the issues raised by the Appellate Tribunal in its decision:

Provided also that such application shall specify the precise issue in respect of which a clarification is sought and give reasons as to why a clarification is necessary.

(14) The Appellate Tribunal shall only accept such application if it is satisfied that a material issue discussed in its decision requires further clarification or elaboration. The party likely to be adversely affected by such clarification shall also be given a notice by the Appellate Tribunal:

Provided that no application under this sub-section shall be accepted by the Appellate Tribunal later than thirty days of its decision.

(15) The Appellate Tribunal shall perform its functions under this Act in accordance with such procedures as may be prescribed.

(16) A determination of the Commission shall be given full force and effect during the pendency of any appeal of such determination.

(17) A person duly authorized by any interested party is entitled to appear, plead and act on behalf of such party before the Appellate Tribunal.

**71. Disclosure of interest.** - (1) The following shall apply to members of the Appellate Tribunal including the Chairman.

(2) A Member shall be deemed to have an interest in a matter if he has any interest, pecuniary or otherwise, in such matter which could reasonably be regarded as giving rise to a conflict between his duty to honestly perform his functions, so that his ability to consider and decide any question impartially or to give any advice without bias, may reasonably be regarded as impaired.

(3) A Member having any interest in any matter to be discussed or decided by the Tribunal, shall prior to discharge of any function or business of the Commission, disclose in writing to the Secretary to the Tribunal, the fact of his interest and the nature thereof.

(4) A Member shall give written notice to the Secretary to the Tribunal of all direct or indirect pecuniary or other material or personal interests that he has or acquires in a body corporate involved in a matter before the Tribunal.

(5) A disclosure of interest under sub-section (2) shall be made a part of the record of the Tribunal in that particular matter.

**72. Powers of the Appellate Tribunal.** - The Appellate Tribunal shall, for the purpose of deciding an appeal, be deemed to be a civil court and shall have the same powers as are vested in such court under the Code of Civil Procedure, 1908 (V of 1908), including the powers of -

- (a) enforcing the attendance of any person and examining him on oath;
- (b) compelling the production of documents; and
- (c) issuing commission for the examination of witnesses and documents.

**73. Power of the Appellate Tribunal to call for and examine record.** - The Appellate Tribunal may call for and examine the official records of an investigation conducted by the Commission and any other information or documents relied upon by the Commission in reaching a determination appealed against for the purpose of satisfying itself as to the legality or propriety of an impugned determination of the Commission.

**74. Power to make rules.** - The Federal Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

**75. Protection to persons prejudiced in employment because of assisting the Commission.** - (1) An employer shall not -

- (a) dismiss an employee, or prejudice an employee in his employment, because the employee has assisted the Commission in connection with an inquiry or investigation under this Act; or
- (b) dismiss or threaten to dismiss an employee, or prejudice or threaten to prejudice an employee in his employment, because the employee proposes to assist the Commission in connection with an inquiry or investigation under this Act.

(2) For the purposes of sub-section (1), a person shall be taken to assist the Commission in connection with an inquiry if the person -

- (a) gives information, whether orally or in writing, or gives documents, to the Commission in connection with an inquiry or investigation under this Act; or
- (b) gives evidence or produces documents, at an inquiry, investigation or hearing held under this Act.

**76. Appointment of advisers and consultants.** - (1) Subject to sub-section (2), the Commission may, employ and pay consultants and agents, and technical, professional and other advisers, including bankers, economists, actuaries, accountants, lawyers and other persons to do any act required to be done in the exercise of its powers, the performance of its functions or for the better implementation of the purposes of this Act.

(2) The decision to employ and the terms and conditions of employment of external advisers and consultants pursuant to sub-section (1) shall be made by the Commission in accordance with such policy guidelines as may be established by the Federal Government, in consultation with the Commission, from time to time.

**77. Removal of difficulty.** - If any difficulty arises in giving effect to any of the provisions of this Act, the Federal Government may make such order, not inconsistent with the provisions of this Act, as may appear to it to be necessary for the purpose of removing the difficulty:

Provided that no such power shall be exercised after the expiry of one year from the coming into force of this Act.

**78. Act to override other laws.** - The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force;

Provided that this provision shall not apply on the National Tariff Commission law for the time being in force.

**79. Repeal.** - The Anti-Dumping Ordinance, 2000 (LXV of 2000) is hereby repealed.

**80. Savings.** - Notwithstanding the repeal under section 79, nothing in this Act shall affect or be deemed to affect anything done, action taken, investigation or proceedings commenced, order, rule, regulation, appointment, document, or agreement made, fee directed, resolution passed, direction given, proceedings taken or instrument executed or issued under or pursuant to the repealed Anti-Dumping Ordinance 2000 (LXV of 2000), and any such thing, action, investigation, proceedings, orders, rule, regulation, appointment, document, agreement, fee, resolution, direction, proceedings or instrument shall, if in force at the commencement of this Act and not inconsistent with any of the provisions of this Act continue in force and have effect as if had been respectively done, taken, commenced, made, directed, passed, given, executed or issued under this Act.

**THE SCHEDULE**  
**[ See section 32(2) ]**  
**BEST INFORMATION AVAILABLE**

1. As soon as possible after initiation of an investigation, the Commission should specify in detail the information required from any interested party, and the manner in which that information should be structured by the interested party in its response. The Commission should also ensure that the interested party is aware that if information is not supplied within a reasonable time, the Commission shall be free to make determination on the basis of facts available, including those contained in an application for initiation of an investigation by domestic industry.
  2. The Commission may also request an interested party to provide its response in a particular medium such as computer tape or computer language. Where such a request is made, the Commission should consider the reasonable ability of the interested party to respond in the preferred medium or computer language, and should not request the party to use for its response a computer system other than that used by the party. The Commission should not maintain a request for a computerised response if the interested party does not maintain computerised accounts and if presenting the response as requested would result in an unreasonable extra burden on the interested party or it would entail unreasonable additional cost and trouble. The Commission should not maintain a request for a response in a particular medium or computer language if the interested party does not maintain its computerised accounts in such medium or computer language and if presenting the response as requested would result in an unreasonable extra burden on the interested party or it would entail unreasonable additional cost and trouble.
  3. All information which is verifiable, which is appropriately submitted so that it can be used in an investigation without undue difficulties, which is supplied in a timely fashion, and, where applicable, which is supplied in a medium or computer language requested by the Commission, should be taken into account when determinations are made. If a party does not respond in the preferred medium or computer language but the Commission finds that the circumstances set out in para 2 have been satisfied, any failure to respond in the preferred medium or computer language shall not be considered to significantly impede the investigation.
  4. Where the Commission does not have the ability to process information if provided in a particular medium such as computer tape, the information should be supplied in the form of written material or any other form acceptable to the Commission.
  5. If an information provided is not ideal in all respects, this shall not justify the Commission from disregarding it, provided an interested party has acted to the best of its ability.
  6. If evidence or information is not accepted by the Commission, the supplying party shall be informed forthwith of the reasons therefore, and shall be given an opportunity to provide further explanations within a reasonable period, as may be determined by the Commission, due account being taken of the time-limits of an investigation. If the explanations are considered by the Commission as not being satisfactory, the reasons for rejection of such evidence or information should be given in any published determinations.
  7. If the Commission has to base its findings, including those with respect to normal value, on any information from a secondary source, including any information supplied in an application for initiation of an investigation, it shall do so with special circumspection. In such cases, the Commission shall, where practicable, check the information from other independent sources at their disposal, such as published price lists, official import statistics and customs returns, and from the information obtained from other interested parties during the investigation provided that if an interested party does not co-operate and thus relevant information is being withheld from the Commission, this situation may lead to a result which is less favourable to the party than if the party did co-operate.
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**[AS PASSED BY THE SENATE]**

**PART I**

**ACTS, ORDINANCES, PRESIDENT'S ORDERS AND REGULATIONS**

**NATIONAL ASSEMBLY SECRETARIAT**

*Islamabad, the 8<sup>th</sup> September, 2015*

**No. F.22 (16)/2015-Legis** - The following Act of *Majlis-e-Shoora* (Parliament) received the assent of the President on the 5th September, 2015 and is hereby published for general information: --

ACT No. XIII OF 2015

*An Act to reform and repeal the Countervailing Duties Ordinance, 2001*

**WHEREAS** it is expedient to give effect in Pakistan to the provisions of Articles VI and XVI of the General Agreement on Tariffs and Trade, 1994, and to the Agreement on Subsidies and Countervailing Measures and to further strengthen the law relating to imposition of countervailing duties to offset such subsidies, to provide a framework for investigation and determination of such subsidies and injury in respect of goods imported into Pakistan;

**AND WHEREAS** the imposition of countervailing duties to offset injurious subsidization is in the public interest;

**AND WHEREAS** it is expedient to provide for certain reforms in the Countervailing Duties Ordinance, 2001, (I of 2001) by repealing it and re-enacting the law for the purposes hereinafter appearing;

**PART I**

**PRELIMINARY**

**1. Short title, extent and commencement.** - (1) This Act may be called the Countervailing Duties Act, 2015.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

**2. Definitions.** - In this Act, unless there is anything repugnant in the subject or context,-

(a) "Agreement on Subsidies" means the Agreement on Subsidies and Countervailing Measures included in Annex (1A) to the Final Ordinance of the Results of the Uruguay Round concerning the Implementation of Article XVI of the General Agreement on Tariffs and Trade, 1994;

(b) "Appellate Tribunal" means the Appellate Tribunal established under the Anti-Dumping Duties Law for the time being in force;

(c) "Application" means an application submitted to the Commission pursuant to sub-section (1) of section 11;

(d) "Commission" means the National Tariff Commission established under the Law for the time being in force;

- (e) "country" means any country or territory whether a member of the World Trade Organisation or not and includes a customs union or customs territory;
- (f) "countervailing measures" means any measures that may be taken by the Commission under this Act including imposition of countervailing duties, whether provisional or definitive, or the acceptance of an undertaking;
- (g) "definitive countervailing duty" means a duty imposed by the Commission under section 16, sub-section (15) of section 14 or sub-section (2) of section 17;
- (h) "domestic industry" means the domestic producers as a whole of a like product or those whose collective output of that product constitutes a major proportion of the total domestic production of that product; except when any such domestic producers are related to the exporters or importers, or are themselves importers of the allegedly subsidised product. In such a case "domestic industry" shall mean the rest of the domestic producers:

**Explanation.** - For the purposes of this clause, producers shall be deemed to be related to exporters or importers only if -

- (i) one of them directly or indirectly controls the other;
- (ii) both of them are directly or indirectly controlled by the same third person; or
- (iii) together they directly or indirectly control a third person:

Provided that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers and for that purpose 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:

Provided further that, in exceptional circumstances, as may be determined by the Commission, the domestic industry in relation to a product in question may be divided into two or more competitive markets and producers within each such market may be regarded as a separate industry if the -

- (i) producers within such a market sell all or almost all of their production of the product in question in such a market; and
  - (ii) demand in such a market is not, to any substantial degree, supplied by producers of the product in question located elsewhere in Pakistan;
- (i) "Exporting country" means a country granting subsidy in respect of an investigated product, which country may be either -
    - (i) the country of origin of the investigated product; or
    - (ii) where the investigated product is not exported directly to Pakistan but is transported through an intermediate country, such intermediate country;
  - (j) "government" means the government or any public body within the territory of an exporting country;
  - (k) "injury" means, unless otherwise specified, material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of a domestic industry, when subsidised imports are causing such injury;
  - (l) "interested party" includes -
    - (i) an exporter, foreign producer, an importer of an investigated product or an association a majority of the members of which are producers, exporters or importers of such product;
    - (ii) a producer of a like product in Pakistan or an association a majority of the members of which produce a like product in Pakistan; and

- (iii) such other person or group of persons as the Commission may, by notification in the official Gazette, specify;
- (m) "investigated product" means a product which is subject to an investigation under this Act;
- (n) "investigation" means an investigation conducted under this Act;
- (o) "like product" means a product which is alike in all respects to an investigated product or, in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the investigated product;
- (p) "prescribed" means prescribed by rules made under this Act;
- (q) "provisional countervailing duty" means a duty imposed by the Commission under section 13;
- (r) "public notice" means a notice published by the Commission in at least one issue each of a daily newspaper in the English language and a daily newspaper in the Urdu language having wide circulation in Pakistan;
- (s) "Schedule" mean the Schedule to this Act;
- (t) "subsidy" means a subsidy as defined in section 4 and "subsidization" shall be construed accordingly; and
- (u) "WTO" means the World Trade Organisation established pursuant to the Marrakesh Agreement concluded in Marrakesh, Morocco, on the 15th April, 1994.

## PART II

### COUNTERVAILING MEASURES

**3. Levy of countervailing duty.** - (1) Where the Commission determines in accordance with the provisions of this Act that any exporting country pays or bestows, directly or indirectly, any subsidy upon the manufacture or production therein or the exportation therefrom of any investigated product including any subsidy on transportation of such product and such subsidy causes injury then, upon the importation of any such product into Pakistan, the Commission shall, by notification in the official Gazette, impose a countervailing duty thereon as provided for in this Act.

(2) For the purposes of this Act, a product shall be considered to be subsidised if it benefits from a countervailable subsidy as provided for in section 4 and 5.

(3) A subsidy may be granted by a government of the country of origin of an investigated product or by the government of an intermediate country from which the investigated product is exported to Pakistan.

(4) Notwithstanding anything contained in this Act, where an investigated product is not directly imported from the country of origin but exported to Pakistan from an intermediate country, the provisions of this Act shall be fully applicable and such transaction shall, where considered appropriate by the Commission, be regarded as having taken place between the country of origin of the investigated product and Pakistan.



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**PART III****DEFINITION OF SUBSIDY, COUNTERAVAILABLE AND  
NON-COUNTERAVAILABLE SUBSIDIES**

**4. Circumstances in which subsidy shall be deemed to exist.** - A subsidy shall be deemed to exist if -

- (a) there shall be financial contribution by a government, where -
  - (i) the government practice involves direct transfer of funds including grants, loans and equity infusion, or potential direct transfer of funds or liabilities, or both;
  - (ii) government revenue that is otherwise due is foregone or not collected including fiscal incentives such as tax credits:  

Provided that exemption of an exported product from duties or taxes borne by a like product when destined for domestic consumption, or remission of such duties or taxes in amounts not in excess of those which have accrued, shall not be deemed to be a subsidy provided that such exemption is granted in accordance with the provisions of the First, Second and Third Schedules;
  - (iii) the government provides goods or services other than general infrastructure or purchases goods; or
  - (iv) the government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions specified in sub-clauses (i), (ii) and (iii) which would normally be vested in the government and the practice in, no real sense, differs from practices normally followed by governments;
- (b) there is any form of income or price support within the meaning of Article XVI of the General Agreement on Tariffs and Trade, 1994; and
- (c) a benefit is thereby conferred.

**5. Countervailable subsidies.** - (1) A subsidy shall be subject to countervailing measures under this Act only if the Commission determines that such subsidy is specific in accordance with the principles set out in sub-sections (2), (3), (4) and (5).

(2) In order to determine whether a subsidy is specific to an enterprise, industry or a group of enterprises or industries, hereinafter referred to as "certain enterprises", within the jurisdiction of a granting authority, the Commission shall apply the following principles, namely: -

- (a) where the granting authority, or the legislation pursuant to which the granting authority operates, explicitly limits access to a subsidy to certain enterprises, such subsidy shall be specific;
- (b) where the granting authority, or the legislation pursuant to which the granting authority operates, establishes objective criteria or conditions governing the eligibility for, and the amount of, a subsidy, specificity shall not exist, provided that the eligibility is automatic and that such criteria and conditions are strictly adhered to;

**Explanation.** - For the purposes of clause (b), objective criteria or conditions mean criteria or conditions which are neutral, which do not favour certain enterprises over other, and which are economic in nature and horizontal in application, such as, number of employees or size of enterprise. Such criteria or conditions must be clearly set out by law, regulation, or other official document, so as to be capable of verification; and

- (c) if, notwithstanding any appearance of non-specificity resulting from the application of the principles laid down in clauses (a) and (b), there are reasons to believe that the subsidy may in fact be specific, the following other factors may be considered by the Commission, namely: -
- (i) use of a subsidy programme by a limited number of certain enterprises;
  - (ii) predominant use by certain enterprises;
  - (iii) granting of disproportionately large amounts of subsidy to certain enterprises; and
  - (iv) manner in which discretion has been exercised by the granting authority in the decision to grant a subsidy.

**Explanation.** - For the purposes of clause (c), information on the frequency with which applications for a subsidy are refused or approved and the reasons for such decisions shall, in particular, be considered.

(3) In applying the provisions of clause (c) of sub-section (2), the Commission shall take into account the extent of diversification of economic activities within the jurisdiction of a granting authority and the length of time during which subsidy programme has been in operation.

(4) A subsidy which is limited to certain enterprises located within a designated geographical region within the jurisdiction of a granting authority shall be specific.

(5) The setting or changing of generally applicable tax rates by all levels of the government entitled to do so shall not be deemed to be a specific subsidy.

(6) Notwithstanding anything contained in sub-sections (2), (3), (4) and (5), the following subsidies shall be deemed to be specific, namely: -

- (a) subsidies contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance, including those illustrated in the First Schedule:

Provided that subsidies shall be considered by the Commission to be contingent in fact upon export performance when the facts demonstrate that granting of a subsidy, without having been made legally contingent upon export performance, is in fact tied to actual or anticipated exportation or export earnings:

Provided further that the mere fact that a subsidy is accorded to enterprises which export shall not for that reason alone be considered by the Commission to be an export subsidy for the purposes of this clause; and

- (b) subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods.

(7) Any determination of specificity by the Commission under this section shall be substantiated on the basis of positive evidence.

**6. Non-countervailable subsidies.** - Subsidies which are not specific as determined in accordance with the provisions of section 5, shall not be subjected to countervailing measures under this Act.

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**PART IV****CALCULATION OF THE AMOUNT OF COUNTERAVAILABLE SUBSIDY**

**7. Calculation of amount of countervailable subsidy.** - (1) The amount of countervailable subsidy, for the purposes of this Act, shall be calculated by the Commission in terms of any benefit conferred on a recipient which is found to exist during an investigation period for subsidization, which period shall normally be the most recent accounting year of the beneficiary but may be any other period of at least six months prior to initiation of an investigation for which reliable financial and other relevant data are available.

(2) In determining the amount of countervailable subsidy the Commission shall apply the following principles to calculate any benefit conferred on the recipient as referred to in sub-section (1), namely:-

- (a) government provisions of equity capital shall not be considered to confer any benefit, unless an investment can be regarded as inconsistent with the usual investment practice including, for the provision of risk capital of private investors in the territory of an exporting country;
- (b) a loan by a government shall not be considered to confer any benefit, unless there is a difference between the amount that a firm receiving the government loan pays on it and the amount that the firm would pay for a comparable commercial loan which the firm could actually obtain on the market, in which event the benefit shall be the difference between these two amounts;
- (c) a loan guarantee by a government shall not be considered to confer any benefit, unless there is a difference between the amount that a firm receiving the guarantee pays on the loan guaranteed by the government and the amount that the firm would pay for a comparable commercial loan in the absence of the guarantee, in which case the benefit shall be the difference between these two amounts, adjusted for any difference in fees; and
- (d) a provision of goods or services or purchase of goods by a government shall not be considered to confer any benefit, unless the provision is made for less than adequate remuneration or the purchase is made for more than adequate remuneration, and the adequacy of remuneration shall be determined in relation to prevailing market conditions for the product or service in question in the country of provision or purchase including price, quality, availability, marketability, transportation and other conditions of purchase or sale.

**8. General provisions on calculation of countervailable subsidies.** - (1) Subject to sub-section (2), the amount of countervailable subsidies shall be determined by the Commission in terms of subsidization per unit of an investigated product exported to Pakistan and in establishing such amount the following elements may be deducted from the total subsidy, namely:-

- (a) any fee or other costs necessarily incurred in order to qualify for or, to obtain a subsidy; and
- (b) export taxes, duties or other charges levied on export of an investigated product to Pakistan specifically intended to offset a subsidy.

(2) Where an interested party claims a deduction under sub-section (1) such party shall prove to the Commission that the claim is justified.

(3) Where a subsidy is not granted by reference to the quantities manufactured, produced, exported or transported, the amount of countervailable subsidy shall be determined by allocating the value of the total subsidy, as appropriate, over the level of production, sales or exports of the products concerned during an investigation period for subsidization.

(4) Where a subsidy can be linked to acquisition or future acquisition of fixed assets, the amount of countervailable subsidy shall be calculated by spreading the subsidy across a period

which reflects normal depreciation of such assets in the industry concerned, and the amount so calculated which is attributable to an investigation period, including that which derives from fixed asset acquired before such period, shall be allocated as provided for in sub-section (2):

Provided that where assets are non-depreciating, a subsidy shall be valued as an interest-free loan, and be treated in accordance with the provisions of clause (b) of sub-section (2) of section 7.

(5) Where a subsidy cannot be linked to acquisition of fixed assets, the amount of any benefit received during an investigation period shall, in principle, be attributed to this period, and allocated as provided for in sub-section (2), unless special circumstances arise justifying attribution over a different period.

## PART V

### DETERMINATION OF INJURY

**9. Determination of injury.** - (1) A determination of injury by the Commission shall be based on positive evidence and shall involve an objective examination of -

- (a) volume of any subsidised imports and their effect on prices in domestic market for like products; and
- (b) consequent impact of subsidised imports on domestic industry:

**Explanation.** - With regard to volume of any subsidised imports, consideration shall be given by the Commission to whether there has been a significant increase in subsidised imports, either in absolute terms or relative to production or consumption in Pakistan. With regard to effect of any subsidised imports on prices, consideration shall be given by the Commission to whether there has been significant price undercutting by the subsidised imports as compared with the price of a like product of domestic industry, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases which would otherwise have occurred, to a significant degree, provided that no one or more of these factors shall be deemed to necessarily give decisive guidance.

(2) Where imports of a product from more than one country are simultaneously subject to an investigation, the effects of such imports may be cumulatively assessed by the Commission only if it determines that -

- (a) the amount of subsidisation established in relation to the imports from each country is more than *de minimis* as defined in sub-section (3) of section 15 and the volume of imports from each country is not negligible; and
- (b) a cumulative assessment of the effects of the imports is appropriate in the light of conditions of competition between imported products and the conditions of competition between the imported products and a like domestic product.

(3) An examination by the Commission of an impact of subsidized imports on a domestic industry concerned may include an evaluation of all relevant economic factors and indices having a bearing on the state of the domestic industry including the fact that the domestic industry is still in the process of recovering from the effects of past subsidisation or dumping, the magnitude of the amount of countervailable subsidies, actual and potential decline in sales, profits, output, market share, productivity, return on investments, utilization of capacity, factors affecting domestic prices, actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments and, in the case of agriculture, whether there has been an increased burden on Government support programmes.

(4) The Commission shall satisfy itself that subsidised imports are, through the effects of subsidies, as set forth in sub-sections (1) and (3), causing injury within the meaning of this Act. The consideration of a causal relationship between subsidised imports and injury to domestic industry shall be based on an examination by the Commission of all relevant evidence before it.

(5) The Commission shall examine known factors other than subsidised imports which are injuring domestic industry to ensure that injury caused by such other factors is not attributed to subsidised imports. Such other factors may include factors such as the volume and prices of non-subsidised imports, contraction in demand or changes in patterns of consumption, restrictive trade practices of and competition between a foreign country and domestic producers, developments in technology and export performance and productivity of domestic industry.

(6) The effect of subsidised imports shall be assessed by the Commission in relation to the production by domestic industry of a like product when available data permits separate identification of that production on the basis of such criteria as the production process, producers' sales and profits:

Provided that where such separate identification of that production is not possible, the effects of subsidised imports shall be assessed by the Commission by examination of the production of the narrowest group or range of products including a like product, for which the necessary information can be provided.

(7) A determination of a threat of material injury by the Commission shall be based on facts and not merely on allegation, conjecture or remote possibility and any change in circumstances which would create a situation in which subsidy would cause injury must be foreseen and imminent.

(8) In making a determination regarding the existence of a threat of material injury, the Commission shall take into consideration factors such as -

- (a) the nature of subsidy or subsidies in question and any trade effects likely to arise therefrom;
- (b) any significant rate of increase of subsidised imports into a domestic market indicating the likelihood of substantially increased imports;
- (c) sufficient freely disposable capacity of an exporter or an imminent substantial increase in such capacity indicating the likelihood of substantially increased subsidised exports into Pakistan, account being taken of the availability of other export markets to absorb any additional exports;
- (d) whether imports are entering at prices that would, to a significant degree, depress prices or prevent price increases which otherwise would have occurred and would probably increase demand for further imports; and
- (e) inventories of an investigated product.

**Explanation.** - None of the factors specified in sub-section (8) by itself shall be deemed to necessarily give decisive guidance but the totality of the factors considered by the Commission must lead to the conclusion that further subsidised exports are imminent and that, unless protective action is taken, material injury will occur.

**10. Further circumstances in which injury may be found to exist.** - (1) Where domestic industry in relation to a product in question has been divided into two or more competitive markets and the producers within each such market regarded as a separate industry in accordance with the second proviso to clause (i) of section 2, injury may be found to exist even where a major portion of the total domestic industry does not suffer injury provided that, there is a concentration of subsidised imports into such a separated market, and provided further that the subsidised imports are causing injury to the producers of all or almost all of the production within such market.

(2) Where injury is found to exist in the circumstances referred to in sub-section (1), the exporters or the government granting countervailable subsidies shall be given an opportunity to offer an undertaking in accordance with section 14 in respect of the region concerned or to cease

exporting at subsidised prices to the region concerned prior to any countervailing measures being applied by the Commission under this Act.

(3) In the circumstances referred to in sub-section (2), special account shall be taken by the Commission of any interest of the region and if an adequate undertaking is not offered promptly or if the situations set out in sub-sections (13) and (14) of section 14 apply, a provisional or definitive countervailing duty may be imposed by the Commission in respect of domestic industry as a whole.

(4) The provisions of sub-section (6) of section 9 shall apply to this section.

## PART VI

### INVESTIGATION

**11. Initiation of investigation.** - (1) Save as provided for in sub-section (11), the Commission shall initiate an investigation to determine the existence, degree and effect of any alleged subsidy only upon receipt of a written application by or on behalf of domestic industry.

(2) An application shall be submitted to the Commission in such manner, number and form and with such fee as may be prescribed. It shall include sufficient evidence of the existence of a subsidy and, if possible, its amount, injury within the meaning of this Act and a causal link between the subsidized imports and the alleged injury. The application shall also contain such information as is reasonably available to an applicant on the following, namely: -

(a) identity of the applicant and a description of the volume and value of domestic production of a like product by the applicant:

Provided that where an application is made on behalf of domestic industry, the application shall identify the industry on behalf of which the application is made by a list of all known domestic producers of the like product or, association of domestic producers of the like product and, to the extent possible, a description of the volume and value of domestic production of the like product accounted for by such producers;

(b) a complete description of an allegedly subsidised product including its current customs tariff classification number as contained in the First Schedule to the Customs Act, 1969 (IV of 1969), the name of exporting country, identity of each known exporter or foreign producer, and a list of known persons importing the product in question;

(c) evidence with regard to the existence, amount, nature and countervailability of subsidy in question; and

(d) information on changes in volume of allegedly subsidised imports, the effect of those imports on prices of a like product in domestic market and the consequent impact of the imports on domestic industry as demonstrated by relevant factors and indices having a bearing on the state of domestic industry, such as those listed in the explanation to sub-section (1) of section 9, and in sub-section (3) of section 9.

(3) The Commission shall examine the accuracy and adequacy of the evidence provided in an application to determine whether it is compliant with the requirements of sub-section (2) and in order to determine whether there is sufficient evidence to justify initiation of an investigation.

(4) An investigation may be initiated by the Commission in order to determine whether or not the alleged subsidies are specific in accordance with the principles set out in section 5.

(5) An investigation may also be initiated by the Commission in respect of subsidies which are non-countervailable in accordance with the provisions of section 6 in order to determine whether or not the conditions set out therein have been met.

(6) An investigation may be initiated by the Commission in respect of measures of any type to the extent that they contain an element of subsidy as defined in section 4.

(7) An investigation shall not be initiated by the Commission pursuant to sub-section (1) unless the Commission is satisfied, on the basis of an examination as to the degree of support for, or opposition to, an application expressed by domestic producers of a like product, that the application has been made by or on behalf of domestic industry.

(8) An application shall be considered to have been made by or on behalf of domestic industry if it is supported by those domestic producers whose collective output constitutes more than fifty percent of the total production of a like product produced by that portion of domestic industry expressing either support for or opposition to the application:

Provided that no investigation shall be initiated by the Commission when domestic producers expressly supporting an application account for less than twenty-five percent of the total production of a like product produced by domestic industry.

(9) The Commission shall, as soon as possible after receipt of a properly documented application in accordance with the requirements of section 11, and in any event before initiation of an investigation, give notice to an exporting country, which shall be invited for consultations with the aim of clarifying the situation as to matters referred to in sub-section (2) and arriving at a mutually agreed solution.

(10) The Commission may, *suo moto*, initiate an investigation without having received a written application by or on behalf of domestic industry if it has sufficient evidence of the existence of countervailable subsidies and injury within the meaning of this Act.

(11) The evidence both of subsidy and of injury shall be considered simultaneously by the Commission in the decision on whether or not to initiate an investigation and an application shall be rejected where there is insufficient evidence of either countervailable subsidies or of injury to justify initiation of an investigation:

Provided that an investigation shall not be initiated against countries whose imports represent a market share of below one per cent unless such countries collectively account for three per cent or more of domestic consumption.

(12) An application may be withdrawn by an applicant prior to initiation of an investigation by the Commission, in which case it shall, subject to the provisions of sub-section (1) of section 15, be deemed not to have been made:

Provided that upon withdrawal of an application any fee paid by an applicant pursuant to sub-section (2) shall stand forfeited in favour of the Commission.

(13) Where, after consultation with an exporting country as provided for in sub-section (10), the Commission is satisfied that there is sufficient evidence to justify initiating an investigation, the Commission shall give notice of such decision by means of a public notice of initiation of an investigation, and the initiation of an investigation shall be effective on the date on which such notice is published.

(14) Where the Commission does not consider it appropriate to initiate an investigation it shall inform an applicant of its decision.

(15) The public notice of initiation of an investigation referred to in sub-section (14) shall announce initiation of an investigation, indicate the product and countries concerned, give a summary of the information received, provide that all relevant information is to be communicated to the Commission, state the periods within which any interested party may make itself known, present its views in writing and submit information if such views and information are to be taken into account during the investigation and shall also state the period within which interested parties may apply to be heard by the Commission in accordance with sub-section (4) of section 12.

(16) The Commission shall advise any exporters, importers and any association of importers or exporters known to it to be concerned, as well as an exporting country and an applicant, of initiation of an investigation and, subject to the requirements of section 29, provide the full text of an application to the known exporters and to the authorities of an exporting country, and make it available upon request to other interested parties involved:

Provided that, where the Commission determines that the number of exporters involved is particularly high, the full text of a written complaint may instead be provided by the Commission only to the authorities of an exporting country or to a relevant association.

(17) An investigation shall not hinder the procedures of customs clearance.

**12. Principles governing investigation.** - (1) Following initiation of an investigation, the Commission shall commence an investigation and such investigation shall cover both subsidisation and injury which, shall be investigated simultaneously.

(2) For the purpose of,-

- (a) a representative finding, an investigation period shall be selected by the Commission which, in the case of subsidisation shall, normally, cover an investigation period provided for in section 7 and information relating to a period subsequent to the investigation period shall not, normally, be taken into account by the Commission; and
- (b) an investigation of injury, the investigation period shall normally cover thirty-six months:

Provided that the Commission may at its sole discretion, select a shorter or longer period if it deems it appropriate in view of available information regarding domestic industry and an investigated product.

(3) Parties receiving questionnaires from the Commission used in a countervailing duty investigation shall be given at least thirty days to reply and such time limit for exporters shall be counted from the date of receipt of the questionnaire which, for this purpose shall be deemed to have been received one week from the day on which it was sent to a respondent or transmitted to an appropriate diplomatic representative of an exporting country:

Provided that where a party shows due cause for an extension to the satisfaction of the Commission, an extension of not more than thirty days may be granted by the Commission at its discretion.

(4) Any interested party which has made itself known in accordance with sub-section (16) of section 11 shall be heard by the Commission if it has, within the period prescribed in a public notice of initiation of an investigation made a written request for hearing showing that it is an interested party likely to be affected by the result of an investigation and that there are particular reasons why it should be heard.

(5) Opportunities shall, on request, be provided for any importers, exporters and an applicant, which have made themselves known in accordance with sub-section (16) of section 11 and the government of an exporting country to meet those parties having adverse interests, so that opposing views may be presented and rebuttal arguments offered. Provision of such opportunities shall take account of the need to preserve confidentiality and of convenience of the parties. There shall be no obligation on any party to attend such meeting and failure to do so shall not be prejudicial to that party's case. Oral information provided under this sub-section shall only be taken into account by the Commission to the extent that the same is subsequently confirmed in writing and provided to the Commission.

(6) Without prejudice to the provisions of section 42, an applicant, the government of an exporting country, importers and exporters and their representative associations, which have made themselves known in accordance with sub-section (16) of section 11, may, upon written request, inspect all information made available to the Commission by any party to an investigation, as distinct from internal documents prepared by the Commission, which is relevant



to presentation of their cases and is not confidential within the meaning of section 29, and that it is used in an investigation. Such parties may respond to such information and their comments shall be taken into consideration wherever they are sufficiently substantiated in a response.

(7) Save as provided for in section 28, any information which is supplied by interested parties and upon which findings are based shall, to the extent possible, be examined for accuracy by the Commission.

(8) An investigation shall, whenever possible, be concluded within one year and in no event later than eighteen months from its initiation, in accordance with the findings made pursuant to section 14 for undertakings or the findings made pursuant to section 16 for definitive action.

(9) Throughout an investigation, the Commission shall afford an exporting country a reasonable opportunity to continue consultations with a view to clarifying the factual situation and arriving at a mutually agreed solution:

Provided that the Commission may continue an investigation during such consultations.

(10) The Commission shall allow industrial users of an investigated product in Pakistan, and representative consumer organisations in cases where the investigated product is commonly sold at retail level in Pakistan to provide to the Commission, in writing, no later than two months after initiation of an investigation, information concerning matters relevant to the investigation regarding subsidisation dumping and injury.

## PART VII

### PROVISIONAL COUNTERVAILING MEASURES

**13. Provisional countervailing duties.** - (1) Provisional countervailing duty shall be imposed by the Commission if -

- (a) an investigation has been initiated by the Commission in accordance with section 11;
- (b) a public notice of initiation of an investigation has been given and interested parties have been given adequate opportunities to submit information and make comments in accordance with sub-section (16) of section 11; and
- (c) a provisional affirmative determination has been made by the Commission that a subsidy exists and that there is consequent injury to domestic industry.

(2) A provisional countervailing duty shall not be imposed earlier than sixty days from initiation of an investigation but no later than nine months from initiation of the investigation and shall be in an amount equal to the total amount of countervailable subsidies as provisionally established by the Commission:

Provided that the amount of the provisional countervailing duty shall not exceed the total amount of subsidisation as provisionally established, but it may be less than the margin if such lesser duty would be adequate to remove the injury to the Domestic Industry.

(3) A provisional countervailing duty shall be in the form of cash deposit equal to or less than, the amount of the provisionally calculated amount of subsidisation, if such lesser duty would be adequate to remove the injury:

Provided that the release of a product concerned for free circulation in Pakistan shall be subject to provisions of such cash deposit.

(4) A provisional countervailing duty shall be imposed for a period not exceeding four months.

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**PART VIII****UNDERTAKINGS AND TERMINATION WITHOUT MEASURES**

**14. Undertakings.** - (1) An investigation may be terminated by the Commission without imposition of provisional or definitive countervailing duties upon receipt of a satisfactory voluntary undertaking under which -

- (a) an exporting country agrees to eliminate or limit subsidy or take other measures concerning its effects; or
- (b) any exporter undertakes to revise its prices or to cease exports in question as long as such exports benefit from countervailable subsidies, so that the Commission is satisfied that the injurious effect of the subsidies is eliminated.

(2) Price increases under such undertakings shall not be higher than those which are necessary to offset the amount of countervailable subsidies and shall be less than the amount of countervailable subsidies if such increases would be adequate to remove injury to domestic industry.

(3) Undertakings may be suggested by the Commission but no country or exporter shall be obliged to enter into such an undertaking and the fact that countries or exporters do not offer such undertakings, or do not accept an invitation to do so, shall in no way prejudice the outcome of an investigation by the Commission:

Provided that the Commission may in such circumstances determine that a threat of injury is more likely to be realised if the subsidised imports continue.

(4) Undertakings shall not be sought or accepted by the Commission from countries or exporters unless a provisional affirmative determination of subsidisation and injury caused by such subsidisation has been made by the Commission.

(5) Save in exceptional circumstances, undertakings may not be offered later than the end of the period during which representations may be made pursuant to sub-section (7) of section 30.

(6) The decision to accept an undertaking shall rest with the Commission.

**Explanation.** - The Commission may not accept a price undertaking if it considers the acceptance thereof to be impractical because the number of actual or potential exporters is too great or for reasons of general policy or for any other reason.

(7) An exporting country or exporter concerned may be provided with the reasons for which it is proposed to reject an offer of an undertaking and may be given an opportunity to make comments thereon and the reasons for rejection shall be set out in a definitive decision by the Commission.

(8) Parties which offer an undertaking shall be required to provide a non- confidential version of such undertaking so that it may be made available to interested parties to an investigation.

(9) If an undertaking is accepted by the Commission, it shall nevertheless complete an investigation if it receives a request from an exporting country or exporter in writing to continue such investigation or where the Commission so decides on its own accord.

(10) In the event the Commission makes a negative determination of subsidisation and injury pursuant to an investigation continued under sub-section (9), an undertaking in question shall automatically lapse except in cases where the Commission determines that such a determination is due in large part to the existence of such undertaking in which case the Commission may require that such undertaking be maintained for a reasonable period of time to be determined by the Commission.

(11) In the event the Commission makes an affirmative determination of subsidisation and injury pursuant to an investigation continued pursuant to sub-section (9), an undertaking in question shall continue consistent with the provisions of this Act.

(12) The Commission may require any country or exporter from whom an undertaking has been accepted to provide, periodically, information relevant to the fulfilment of such undertaking and to permit verification of such information.

(13) Failure to provide any information requested by the Commission pursuant to sub-section (12) shall be deemed to be a violation of an undertaking in question.

(14) Where undertakings are accepted from certain exporters during the course of an investigation, they shall, for the purpose of sections 19, 20, 21 and 23 be deemed to take effect from the date on which the investigation is concluded for an exporting country.

(15) If an undertaking is violated or deemed to be violated, the Commission may, subject to the provisions of this Act, take expeditious actions, which may include immediate application of provisional measures using the best information available. In such cases, a definitive countervailing duty may be levied in accordance with the provisions of this Act on products entered for domestic consumption not more than ninety days before the application of such provisional measures, except that any such retroactive assessment shall not apply to imports entered before such violation of the undertaking.

**15. Termination of investigation without measures.** - (1) An application submitted pursuant to section 11 may be withdrawn at any time after an investigation has been initiated, in which case the Commission shall terminate the investigation without imposition of any measures provided for in this Act:

Provided that the Commission may, if it considers it fit to do so, continue an investigation notwithstanding the withdrawal of an application in which event, the Commission may, subject to the provisions of this Act impose such measures as are provided for in this Act.

(2) Where, the Commission determines in accordance with the provisions of sub-sections (3), (4), (5), and (6) that the amount of countervailable subsidies is negligible or, where the volume of subsidised imports, whether actual or potential, or injury is negligible then it shall immediately terminate an investigation.

(3) The amount of countervailable subsidies shall be considered to be negligible if such amount is less than one per cent *ad valorem*, except that in the case of investigations concerning imports from developing countries the negligible subsidy threshold shall be two per cent *ad valorem*.

(4) Injury shall normally be regarded as negligible where the market share of any imports is less than the amounts set out in the proviso to sub-section (12) of section 11.

(5) In the case of an investigation concerning imports from developing countries, the volume of subsidised imports shall be considered negligible if it represents less than four per cent of the total imports of a like product in Pakistan, unless imports from developing countries whose individual shares of total imports represent less than four per cent collectively account for more than nine per cent of the total imports of a like product in Pakistan.

(6) In the case of an investigation concerning imports from countries other than developing countries, the volume of subsidised imports shall be considered negligible if it represents less than three per cent of the total imports of a like product in Pakistan, unless imports from such countries under investigation which individually account for less than three per cent of the total imports of a like product in Pakistan collectively account for more than seven per cent of imports of the like product in Pakistan.

(7) Termination of an investigation under this Act or conclusion of an investigation without imposition of measures shall not be a bar to filing of a *de novo* application for a new investigation immediately after termination or conclusion of the investigation. The Commission shall treat the application in accordance with provisions of this Act.

## PART IX

### DEFINITIVE COUNTERVAILING DUTIES

**16. Imposition of definitive countervailing duties.** - (1) Where the Commission has established the existence of countervailable subsidies and injury caused thereby, a definitive countervailing duty shall be imposed by the Commission, unless the subsidy in question is withdrawn or it has been demonstrated to the satisfaction of the Commission that the subsidies no longer confer any benefit on any exporters involved.

(2) A definitive countervailing duty shall be an amount equal to or less than the amount of countervailable subsidies from which any exporters have been found to benefit, as established by the Commission in accordance with the provisions of this Act:

Provided that the amount of the countervailing duty shall not exceed the total amount of subsidisation established but it may be less than the total amount if such lesser duty would be adequate to remove injury to the domestic industry.

(3) A definitive countervailing duty shall be imposed in an appropriate amount in each case, on a non-discriminatory basis, on imports of a product from all sources found to benefit from countervailable subsidies and causing injury except as to imports from those sources from which undertakings under section 14 have been accepted by the Commission.

(4) When the Commission has limited its examination in accordance with section 27, any definitive countervailing duty applied to imports from exporters or producers which have made themselves known in accordance with section 27 but were not included in an examination shall not exceed the weighted average amount of countervailable subsidies established for parties in a sample.

(5) For the purposes of sub-section (4), the Commission shall disregard any negligible amounts of countervailable subsidies and amounts of countervailable subsidies established in the circumstances referred to in section 28.

(6) Individual duties shall be applied to imports from any exporter or producer for which an individual amount of subsidisation has been calculated as provided for in section 27.

## PART X

### RETROACTIVITY

**17. Retroactivity.** - (1) Save as otherwise provided in this section, provisional and definitive countervailing duties shall only be applied to products which enter Pakistan for consumption after the time when the requirements set out in sub-section (1) of section 13 and sub-section (1) of section 16, as the case may be, have been fulfilled.

(2) Where the Commission makes a final determination of injury, but not of a threat thereof or of material retardation of the establishment of an industry or, in the case of a final determination of a threat of injury, where the Commission determines that the effect of subsidised imports would, in the absence of provisional measures, have led to a determination of injury, definitive countervailing duties shall be levied by the Commission retroactively for the period for which provisional duty, if any, have been applied.

(3) If a definitive countervailing duty imposed by the Commission pursuant to sub-section (2) is higher than a provisional countervailing duty, the difference shall not be collected:

Provided that where a definitive countervailing duty is lower than a provisional countervailing duty, the duty difference shall be refunded by the Commission in an expeditious manner.

(4) Save as provided for in sub-section (3), where the Commission makes a determination of threat of injury or material retardation but, no injury has yet occurred, a definitive countervailing duty shall be imposed by the Commission only from the date of the determination of threat of injury or material retardation and any cash deposit provided during the period of application of provisional countervailing duty shall be refunded by the Commission in an expeditious manner.

(5) Where the Commission makes a negative final determination any cash deposit provided during the period of application of provisional countervailing duties shall be refunded by the Commission in an expeditious manner.

(6) A definitive countervailing duty shall be imposed by the Commission on products, which were imported for consumption not more than ninety days prior to the date of application of provisional countervailing duty if, the Commission determines, for an investigated product in question, that injury which is difficult to repair, is caused by massive imports in a relatively short period of a product benefiting from a countervailable subsidy and the Commission deems it necessary to impose such duty in order to preclude the recurrence of such injury.

## PART XI

### DURATION, REVIEWS AND REFUNDS, AND GENERAL PROVISIONS

**18. Duration of definitive countervailing duty.** - Subject to the provisions of this Act, a definitive countervailing duty imposed pursuant to this Act shall remain in force only as long as, and to the extent that, it is necessary to counteract countervailable subsidies which are causing injury.

**19. Expiry reviews.** - (1) A definitive countervailing duty shall expire after five years from its imposition or five years from the date of the most recent review which has covered both subsidisation and injury, unless it is determined in a review that the expiry would be likely to lead to a continuation or recurrence of subsidisation and injury. Such an expiry review may be initiated, on an initiative of the Commission or, upon a request made by or on behalf of domestic producers, and the measure in question shall remain in force pending the outcome of such review.

(2) An expiry review shall be initiated by the Commission upon request made by or on behalf of domestic producers where such request contains sufficient evidence that the expiry of a measure in question would be likely to result in a continuation or recurrence of subsidisation and injury.

**Explanation.** - Such a likelihood may, for example, be indicated by evidence of continued subsidisation and injury or evidence that the removal of injury is partly or solely due to the existence of measures or evidence that the circumstances of exporters, or market conditions, are such that they would indicate the likelihood of further injurious subsidisation.

(3) In carrying out investigations under this section, the Commission shall provide any exporters, importers, an exporting country and domestic producers with the opportunity to amplify, rebut or comment on the matters set out in a review request, and conclusions shall be reached by the Commission with due account taken of all relevant and duly documented evidence presented in relation to the question as to whether the expiry of measures would be likely, or unlikely, to lead to the continuation or recurrence of subsidisation and injury.

(4) The Commission shall notify an impending expiry by a public notice which shall be published at an appropriate time, as determined by the Commission, in the final year of the period of application of a measure in question and a public notice announcing the actual expiry of a measure under this section shall also be published by the Commission.

**20. Interim reviews.** - (1) The need for continued imposition of measures under this Act may also be reviewed, where warranted on an initiative of the Commission or, provided that a period of at least twenty-four months has elapsed since the imposition of definitive countervailing duty, upon a request by any exporter, importer or by domestic producers or an exporting country which contains sufficient evidence substantiating the need for such an interim review.

(2) An interim review under sub-section (1) shall be initiated by the Commission where a request contains sufficient evidence that the continued imposition of a measure is no longer necessary to offset countervailable subsidy or that injury would be unlikely to continue or recur if a measure were removed or varied, or that an existing measure is not, or is no longer, sufficient to counteract countervailable subsidy which is causing injury:

Provided that the Commission may require an applicant requesting a review under sub-section (1) to fill in an additional questionnaire provided by it requiring such information and for such period as the Commission deems necessary before such review is initiated in which case the review shall be initiated following the receipt by the Commission of such questionnaire duly filled in.

(3) In carrying out investigations pursuant to this section, the Commission may, in addition to other factors considered relevant by it, consider whether the circumstances with regard to subsidisation and injury have changed significantly, or whether existing measures are achieving the intended results in removing an injury previously established under section 9.

**21. Accelerated reviews.** - (1) Any exporter whose exports are subject to a definitive countervailing duty but who was not individually investigated during an original investigation for reasons other than a refusal to co-operate with the Commission, shall be entitled, upon request, to an accelerated review in order that the Commission may promptly establish an individual countervailing duty rate for that exporter provided that such review shall be initiated after domestic producers have been given an opportunity to comment.

(2) The Commission may require an applicant requesting a review under sub-section (1) to fill in an additional questionnaire provided by it before such review is initiated in which case a review under sub-section (1) shall be initiated following the receipt by the Commission of such questionnaire duly filled in.

**22. Refunds.** - (1) Notwithstanding anything contained in section 19, an importer may apply to the Commission for refund of duties collected where it is shown that the amount of countervailable subsidies, on the basis of which duties were paid, has been either eliminated or reduced to a level which is below the level of the duty in force.

(2) An importer may submit an application for refund of countervailing duties collected within any twelve months period to the Commission no later than sixty days from the end of such period.

(3) An application for refund shall be considered to be duly supported by evidence only where it contains precise information on the amount of refund of countervailing duties claimed and all customs documentation relating to the calculation and payment of such amount and includes evidence, for a representative period, of the amount of countervailable subsidies for any exporter or producer to which the duty applies:

Provided that, where the importer is not associated with any exporter or producer concerned and such information is not immediately available, or where any exporter or producer is unwilling to release it to an importer, the application for refund shall contain a statement from the exporter or producer that the amount of countervailable subsidies has been reduced or eliminated, as specified in this section, and that the relevant supporting evidence will be provided to the Commission:

Provided further that where such evidence is not forthcoming from any exporter or producer within a reasonable period of time, as determined by the Commission, the application shall be rejected by the Commission.

(4) The Commission shall determine whether and to what extent an application should be granted, or it may decide at any time to initiate an interim review, whereupon any information and findings from such review, carried out in accordance with the provisions applicable for such review, shall be used to determine whether and to what extent a refund is justified.

(5) A refund of countervailing duties under this section shall normally take place within twelve months, and in no circumstances more than eighteen months after the date on which a request for a refund, duly supported by evidence, has been made by an importer of a product subject to countervailing duty.

**23. General provisions on reviews and refund.** - (1) The provisions of sections 11 and 12, excluding those relating to time limits, shall *mutatis mutandis* apply to any review carried out pursuant to sections 19, 20 and 21.

(2) Any review pursuant to sections 19, 20 or 21 shall be carried out by the Commission expeditiously and shall normally be concluded within twelve months of the date of initiation of the review.

(3) Where a review pursuant to section 20 is in progress at the end of the period of application of a measure as defined in section 19, the measure shall also be investigated under the provisions of section 19.

(4) In any review or refund investigation carried out pursuant to sections 19 to 22, the Commission shall, provided that circumstances have not changed, apply the same methodology as in an investigation which led to the duty, with due account being taken of sections 7, 8 and 27.

**24. Anti-circumvention measures.** - (1) Countervailing duties imposed pursuant to this Act may be extended to imports from third countries, of the like product, whether slightly modified or not, or to imports of the slightly modified like product from the country subject to measures, or parts thereof, when circumvention of the measures in force is taking place. Countervailing duties not exceeding the residual countervailing duty imposed in accordance with section 16 may be extended to imports from companies benefiting from individual duties in the countries subject to measures when circumvention of the measures in force is taking place. Circumvention shall be defined as a change in the pattern of trade between third countries and Pakistan or between individual companies in the country subject to measures by Pakistan, which stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty, and where there is evidence of injury or that the remedial effects of the duty are being undermined in terms of the prices or quantities of the like product, and where there is evidence of subsidy previously established for the like product, if necessary in accordance with the provisions of this Act.

(2) The practice, process or work referred to in sub-section (1) includes, *inter alia*, the slight modification of the product concerned to make it fall under customs tariff which are normally not subject to the measures, provided that the modification does not alter its essential characteristics, the consignment of the product subject to measures *via* third countries, the re-organisation by exporters or producers of their patterns and channels of sales in the country subject to measures in order to eventually have their products exported to Pakistan through producers benefiting from an individual duty rate lower than that applicable to the products of the manufacturers, and, in the circumstances indicated in sub-section (3), the assembly of parts by an assembly operation in Pakistan or a third country.

(3) An assembly operation in Pakistan or a third country shall be considered to circumvent the measures in force where the,-

(a) operation started or substantially increased since, or just prior to, the initiation of the investigation and the parts concerned are from the country subject to measures;

(b) parts constitute sixty percent or more of the total value of the parts of the assembled product, except that in no case shall circumvention be considered to be taking place where the value added to the parts brought in, during the assembly or completion operation, is greater than twenty five percent of the manufacturing cost; and

(c) remedial effects of the duty are being undermined in terms of the prices or quantities of the assembled like product and there is evidence of subsidy previously established for the like or similar products.

(4) Investigations shall be initiated pursuant to this section on the initiative of the Commission or at the request of any interested party on the basis of sufficient evidence regarding the factors set out in sub-section (1) and (2). Investigations shall be concluded by the Commission within nine months.

**25. General provisions.** - (1) Countervailing duties, provisional or definitive, as the case may be, imposed under this Ordinance shall -

(a) take the form of *ad valorem* or specific duties:

Provided that provisional countervailing shall take the form of cash deposits equal to the amount of a provisionally calculated amount of subsidization;

(b) be imposed in addition to other import duties levied on an investigated product; and

(c) be collected in the same manner as customs-duties under the Customs Act, 1969 (IV of 1969)

(d) will not be levied on imports that are to be used as inputs in products destined solely for exports and are covered under any scheme exempting customs duty for exports under the Customs Act, 1969.

(2) No product shall be subject to both anti-dumping duties and countervailing duties, under their respective laws for the time being in force, under this Act for the purpose of dealing with one and the same situation arising from dumping or from export subsidization:

Provided that sub-section (2) shall not prohibit or prevent, concurrent investigations of the same product under the laws specified therein.

(3) The decisions regarding imposition of provisional or definitive countervailing duties, and notices regarding acceptance of undertakings or terminating an investigation, shall be published by the Commission in a public notice which shall contain, in particular, and with due regard to the protection of confidential information in accordance with section 29, the names of exporters, if possible, or of the countries involved, a description of the product and a summary of the facts and considerations relevant to subsidy and injury determinations and in each case, a copy of the said notice shall be sent to the known interested parties.

(4) The provisions of sub-section (3) shall apply, *mutatis mutandis*, to reviews under this Act.

(5) The Commission shall establish and maintain a non-lapseable personal ledger account in its name for the purpose of this Act and all duties and fees payable under and collected pursuant to this Act shall be held in such account.

(6) The account established under sub-section (5) shall be maintained and operated in such manner as may be prescribed.



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**PART XII****VERIFICATION VISITS, SAMPLING, NON-COOPERATION,  
CONFIDENTIALITY AND DISCLOSURE**

**26. Verification visits.** - (1) The Commission may, where it considers it appropriate, carry out visits to examine the records of importers, exporters, traders, agents, producers, trade associations and organisations, to verify information provided on subsidisation and injury:

Provided that in the absence of a proper and timely reply a verification visit may not be carried out.

(2) The Commission may carry out investigations in third countries as required, provided that -

- (a) it obtains consent of an entity concerned;
- (b) it gives notice to a country in question; and
- (c) the country in question does not object to an investigation.

(3) As soon as consent of an entity concerned has been obtained the Commission shall give notice to an exporting country of the name and address of the entity to be visited and the dates agreed.

(4) An entity concerned shall be advised of the nature of information to be verified during verification visits and of any further information which needs to be provided during such visits:

Provided that this shall not preclude the Commission from requiring further information or verification.

**27. Sampling.** - (1) Where the Commission determines that the number of complainants, exporters or importers, types of product or transactions is large, the Commission may limit an investigation to -

- (a) a reasonable number of parties, products or transactions by using samples which are statistically valid on the basis of information available at the time of selection; or
- (b) to the largest representative volume of any production, sales or exports which can reasonably be investigated within the time available.

(2) The selection of parties, types of products or transactions made under this section shall rest with the Commission:

Provided that preference shall be given by the Commission to choosing a sample in consultation with, and with the consent of, the parties concerned:

Provided further that such parties make themselves known and make sufficient information available to the Commission, within three weeks of initiation of an investigation, to enable a representative sample to be chosen.

(3) In cases where the examination has been limited in accordance with this section, an individual amount of countervailable subsidisation shall, nevertheless, be calculated by the Commission for any exporter or producer not initially selected who submits the necessary information within the time limits provided for in this Act except where the Commission determines that the number of exporters or producers is so large that individual examinations would be unduly burdensome and would prevent completion of an investigation within the applicable time limits.

(4) Where the Commission has decided to undertake a sample as provided for in this section and there is a degree of non-cooperation by some or all of the parties selected which is likely to materially affect the outcome of an investigation, a new sample may be selected by the Commission:

Provided that if a material degree of non-cooperation persists or there is insufficient time to select a new sample, the relevant provisions of section 28 shall apply.

**28. Non-cooperation.** - (1) Where any interested party refuses access to, or otherwise does not provide, necessary information within the time limits provided in this Act, or significantly impedes an investigation, provisional or final determinations, whether affirmative or negative, may be made by the Commission on the basis of the facts available.

(2) Where the Commission establishes that any interested party has supplied false or misleading information, such information shall be disregarded and use may be made by the Commission of the facts available.

(3) Where any information submitted by an interested party is not ideal in all respects it shall nevertheless not be disregarded by the Commission:

Provided that the Commission is satisfied that any deficiencies are not such as to cause undue difficulty in arriving at a reasonably accurate finding and that the information is appropriately submitted in good time and is verifiable, and that the party has acted to the best of its ability.

(4) If evidence or information is not accepted by the Commission, a supplying party shall be informed forthwith of the reasons therefor and shall be granted an opportunity to provide further explanations within such time limit as the Commission may specify.

(5) If determinations, including those regarding the amount of countervailable subsidies, are based on the provisions of sub-section (1) including any information supplied in an application it shall, where practicable and with due regard to the time limits of an investigation, be checked by the Commission by reference to information from other independent sources which may be available including published price lists, official import statistics and customs returns, or information obtained from other interested parties during the investigation.

(6) If an interested party does not co-operate, or co-operates only partially so that relevant information is thereby withheld, the Commission may reach preliminary and final determinations, whether affirmative or negative, on the basis of the best information available.

**29. Confidentiality.** - (1) Subject to sub-section (2), the Commission shall, during and after an investigation, keep confidential any information submitted to it and which is entitled to such treatment. Such information shall not be disclosed without specific permission of the party submitting it.

(2) Information which is -

- (a) by nature confidential, because its disclosure shall be of significant competitive advantage to a competitor, or because its disclosure would have a significantly adverse effect upon a person supplying the information, or upon a person from whom the information was acquired, or where the Commission determines such information to be of a confidential nature for any other reason; or
- (b) provided on a confidential basis by parties to an investigation, shall, upon good cause shown, be treated as confidential by the Commission.

(3) The following types of information shall be deemed to be by nature confidential, unless the Commission determines that disclosure in a particular case would neither be of significant competitive advantage to a competitor nor have a significantly adverse effect upon a person supplying an information or upon a person from whom such information was acquired, namely: -

- (a) business or trade secrets concerning the nature of a product, production processes, operations, production equipment, or machinery;
- (b) information concerning financial condition of a company, which is not publicly available; and

- (c) information concerning costs, identification of customers, sales, inventories, shipments, or amount or source of any income, profit, loss or expenditure related to the manufacture and sale of a product.

(4) Any party seeking any information to be kept confidential shall request for the same at the time the information is submitted, along with the reasons warranting confidentiality. The Commission shall consider such requests expeditiously and inform the party submitting the information if it determines that the request for keeping the information confidential is not warranted.

(5) Any party submitting any information with the request to keep it confidential shall furnish a non-confidential summary thereof. Such summary may take the form of ranges or indexation of figures provided in a confidential version, or marked deletions in text or in such other form as the Commission may require:

Provided that such non-confidential summary shall permit a reasonable understanding of the substance of any information submitted in confidence:

Provided further that the deletion in text shall, unless otherwise allowed by the Commission, only relate to names of any buyer or supplier.

(6) In exceptional circumstances, parties may indicate that information for which confidentiality is sought is not susceptible of summary, in which case a statement of the reasons why summarisation is not possible shall be provided:

Provided that where the Commission concludes that a non-confidential summary provided fails to satisfy the requirements of sub-section (5), it may determine that the request for keeping an information confidential is not warranted.

(7) If the Commission finds that a request for keeping an information confidential is not warranted, and if the supplier of the information is unwilling to make the information public or to authorise the disclosure in generalised or summary form, the Commission shall disregard such information, and return the information concerned to the party submitting it.

(8) Save for sub-section (10), notwithstanding anything contained in this Act or in any other law for the time being in force, any confidential information received or obtained, directly or indirectly, by the Commission pursuant to or in connection with an investigation shall not be subject to disclosure by the Commission to any Ministry, Division, department, agency or instrumentality of the Federal Government or a Provincial Government without the prior permission of the party submitting such confidential information.

(9) Information received pursuant to this Act shall be used only for the purpose for which it was requested.

(10) The provisions of sub-section (8) shall not preclude the supply of information called for by the Appellate Tribunal pursuant to section 33:

Provided that the obligation to protect confidential information as provided for in this Chapter shall, *mutatis mutandis*, extend to the Appellate Tribunal, subject to the proviso to sub-section (8).

**30. Disclosure.** - (1) Any applicant, importer and exporter and their representative association and an exporting country may request disclosure by the Commission of the details underlying the essential facts and considerations on the basis of which provisional countervailing duties have been imposed:

Provided that requests for such disclosure shall be made in writing immediately following imposition of provisional countervailing duties and in any event no later than fifteen days thereof and a disclosure by the Commission shall be made in writing as soon as possible thereafter.

(2) The parties specified in sub-section (1) may request for a final disclosure by the Commission of the essential facts and considerations on the basis of which it is intended to recommend imposition of definitive countervailing duties, or termination of an investigation or proceedings without imposition of duties, particular attention being paid to disclosure of any facts or considerations which are different from those used for any provisional countervailing duties.

(3) Requests for final disclosure shall be addressed to the Commission in writing and be received, in cases where provisional countervailing duty has been applied, not later than one month after imposition of that duty.

(4) Where a provisional countervailing duty has not been imposed, parties shall be provided with an opportunity to request final disclosure within such time limits as may be determined by the Commission.

(5) Final disclosure shall be given in writing and shall be made, with due regard to the protection of confidential information pursuant to section 29, as soon as possible, and normally, not later than one month prior to a definitive determination.

(6) Where the Commission is not in a position to disclose certain facts or considerations at that time, these shall be disclosed as soon as possible thereafter. Disclosure shall not prejudice any subsequent decision which may be taken by the Commission but where such decision is based on any different facts and considerations these shall be disclosed as soon as possible.

(7) Representations which are made after a final disclosure is given, shall be taken into consideration only if received within such period as may be determined by the Commission in each case, which shall be at least ten days, due consideration being given to the urgency of the matter.

**31. Relationships between countervailing duty measures and multilateral remedies. -** Where an investigated product is made subject to any countermeasures imposed following recourse to the dispute settlement procedures provided for in the Agreement on Subsidies and such measures are appropriate to remove the injury caused by any countervailable subsidies, any countervailing duty imposed with regard to such product under this Act shall immediately be terminated by the Commission.

## PART XIII

### APPEAL TO THE APPELLATE TRIBUNAL

**32. Appeal to the Appellate Tribunal. -** (1) Without prejudice to the provisions of Anti-Dumping Law for the time being in force, the Appellate Tribunal shall also exercise jurisdiction under sub-section (2) under this Act.

- (2) Any interested party may prefer an appeal to the Appellate Tribunal against,-
- (a) the initiation of an investigation or a preliminary determination, where it is alleged that it does not satisfy the requirements of section 11 and section 13 respectively;
  - (b) an affirmative or negative final determination by the Commission;
  - (c) any final determination pursuant to a review;
  - (d) an order of the Commission for termination of investigation under section 15; or
  - (e) a determination of the Commission under section 22.

(3) An appeal under clause (a) of sub-section (2) shall be filed within thirty days of the publication of notice of initiation or notice preliminary determination, as the case may be.

(4) The Appellate Tribunal shall handle such an appeal as a priority and shall issue its decision on the appeal within thirty days of the filing of an appeal with the Appellate Tribunal.

(5) The filing of an appeal under clause (a) of sub-section (2) shall have no effect on the Commission's conduct of investigation.

(6) An appeal under clauses (b) to (e) of sub-section (2) shall be filed within forty-five days from the date of publication in newspapers of a public notice or as the case may be, date of the decision of the Commission of any affirmative or negative final decision or determination or termination of investigation by the Commission, and shall be in such form and contain such information as may be prescribed.

(7) Such an appeal shall be disposed of and the decision of the Appellate Tribunal pronounced, as expeditiously as possible, but no later than forty-five days from the date of receipt of an appeal compliant with the requirements contained in this Act, except in extraordinary circumstances and on grounds to be recorded. The Appellate Tribunal shall hear the appeal from day-to-day.

(8) In examining an appeal under sub-section (2), the Appellate Tribunal may make such further inquiry as it may consider necessary, and after giving the Commission and an appellant an opportunity of being heard, pass such order as it thinks fit, confirming, altering or annulling a determination of the Commission appealed against:

Provided that in case the Appellate Tribunal decision requires action by the Commission, it shall remand the case to the Commission for decision.

(9) After examining the appeal, the Appellate Tribunal shall assess the facts related to the impugned determination of the Commission. The Appellate Tribunal shall determine whether the establishment of the facts of the Commission was proper and whether the Commission's evaluation of those facts was unbiased and objective. The Appellate Tribunal shall base its determination on the official record maintained by the Commission or any other documents relied upon by the Commission in reaching the impugned determination.

(10) Where the Appellate Tribunal determines that the Commission's establishment of the facts was proper and its evaluation was unbiased and objective, it shall confirm the impugned determination of the Commission provided that the Appellate Tribunal is satisfied that in reaching its determination, the Commission complied with the relevant provisions of this Act.

(11) The decision of the Appellate Tribunal shall be in writing, detailing the issues raised in the appeal and the arguments adopted by the appellant and the Commission. The Appellate Tribunal shall also provide reasons for reaching its decision with reference to the provisions of this Act and the facts of the case.

(12) The Appellate Tribunal shall provide copies of its decision to all the appellants and respondents including the Commission no later than five days from the date of rendering its decision.

(13) The Appellate Tribunal may, if it deems necessary, require an appellant to provide security in such form as may be prescribed, at the time of filing of an appeal.

(14) The decision of the Appellate Tribunal shall be appealable in the High Court. The High Court shall decide the appeal within ninety days:

Provided that the High Court shall not make an interim order against the conduct of investigation by the Commission unless the Commission has been given notice of the application and has had an opportunity of being heard and the High Court, for reasons to be recorded in writing, is satisfied that the interim order would not have the effect of prejudicing or interfering with the carrying out of a public work or of otherwise being harmful to the public interest [or State property] or of impeding the assessment or collection of public revenues:

Provided that The Appellate Tribunal may, if it thinks fit, accept an application from any party to an appeal in which the Appellate Tribunal has rendered its decision, for a clarification of any of the issues raised by the Appellate Tribunal in its decision:

Provided also that such application shall specify the precise issue in respect of which a clarification is sought and give reasons as to why a clarification is necessary.

(15) The Appellate Tribunal shall only accept an application under the first proviso of sub-section (14) if it is satisfied that a material issue discussed in its decision requires further clarification or elaboration. The party likely to be adversely affected by such clarification shall also be issued a notice by the Appellate Tribunal:

Provided that no such application shall be accepted by the Appellate Tribunal later than thirty days of its decision.

(16) The Appellate Tribunal shall perform its functions under this Act in accordance with such procedures as may be prescribed.

(17) A determination of the Commission shall be given full force and effect during the pendency of any appeal of such determination.

(18) A person duly authorized by any interested party is entitled to appear, plead and act on behalf of that interested party before the Appellate Tribunal.

**33. Power of the Appellate Tribunal to call for and examine record.** - The Appellate Tribunal may call for and examine any records of an investigation conducted by the Commission and any other information or documents relied upon by the Commission in reaching a determination appealed against for the purpose of satisfying itself as to the legality or propriety of an impugned determination of the Commission.

## PART XVI

### MISCELLANEOUS

**34. Power to make rules.** - (1) The Federal Government may, in consultation with the Commission, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for the manner in which any investigation may be conducted, the manner in which an investigated product may be identified, the factors to which regard shall be had in any such investigation, the manner of assessment, levy and collection of any countervailing duty, whether preliminary or definitive, and for all matters connected with an investigation.

**35. Protection to persons prejudiced in employment because of assisting the Commission.** - (1) An employer shall not -

- (a) dismiss an employee, or prejudice an employee in his employment, because the employee has assisted the Commission in connection with an inquiry or investigation under this Act; or
- (b) dismiss or threaten to dismiss an employee, or prejudice or threaten to prejudice an employee in his employment, because the employee proposes to assist the Commission in connection with an inquiry or investigation under this Act.

(2) For the purposes of sub-section (1), a person shall be taken to assist the Commission in connection with an inquiry if the person -

- (a) gives information, whether orally or in writing, or gives documents, to the Commission in connection with an inquiry or investigation under this Act; or
- (b) gives evidence, or produces documents, at an inquiry, investigation or hearing held under this Act.

**36. Public file to be maintained for interested party and access thereto.** - (1) The Commission shall establish and maintain a file relating to each investigation or review pursuant to this Act and subject to the requirement to protect confidential information under section 29. The Commission shall place in such file -

- (a) all public notices relating to an investigation or review;
- (b) all materials, including questionnaires, responses to questionnaires, and written communications submitted to the Commission;
- (c) all other information developed or obtained by the Commission; and
- (d) any other documents the Commission deems appropriate for disclosure to an interested party.

(2) The file to be maintained under sub-section (1) shall be available to any interested party for review and copying at the offices of the Commission, during such time as the Commission may specify, throughout the course of an investigation or review and any appeal under section 32.

**37. Official file to be maintained by the Commission.** - (1) The Commission shall establish and maintain an official file relating to each investigation or review pursuant to this Act and shall place in such file -

- (a) all materials, papers and documents, confidential or otherwise, including questionnaires, responses to questionnaires, and written communications submitted to or by the Commission in connection with an investigation or review;
- (b) all documents relating to or setting out any calculations made by the Commission in connection with an investigation or review;
- (c) all internal correspondence or memoranda of the Commission relating to or in connection with an investigation or review that are relevant to the calculation of dumping margin or determination of injury including, any correspondence with or between any other Ministry, Division, department, agency or instrumentality of the Federal Government or any Provisional Government;
- (d) any other information developed, obtained or relied on by the Commission in connection with an investigation or review; and
- (e) any other document or information that the Commission deems appropriate for placing in the official file.

(2) The file to be maintained under sub-section (1) shall only be for the internal use of the Commission and for the Appellate Tribunal in connection with an appeal under section 32.

**38. Appointment of advisers and consultants.** - (1) Subject to sub-section (2), the Commission may, employ and pay consultants, agents, technical, professional and other advisers, including bankers, economists, actuaries, accountants, lawyers and other persons to do any act required to be done in the exercise of its powers, the performance of its functions or for the better implementation of the purposes of this Act.

(2) The decision to employ and the terms and conditions of employment of external advisers and consultants pursuant to sub-section (1) shall be made by the Commission in accordance with such policy guidelines as may be established by the Federal Government, in consultation with the Commission, from time to time.

**39. Removal of difficulties.** - The Federal Government may for the purpose of removing any difficulties in relation to any matters under this Act, make such orders as may appear to it to be necessary for the purpose of removing the difficulty:

Provided that no such power shall be exercised after the expiry of two years from the commencement of this Act.

**40. Act to override other laws.** - The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force:

Provided that this provision shall not apply on the National Tariff Commission Law for the time being in force.

**THE FIRST SCHEDULE**  
**[See section 5(6) (A)]**

**ILLUSTRATIVE LIST OF EXPORT SUBSIDIES**

1. In this Schedule, unless there is anything repugnant in the subject or context,-

- (a) "commercially available" means that the choice between domestic and imported products is unrestricted and depends only on commercial considerations;
- (b) "direct taxes" means taxes on wages, profits, interests, rents, royalties, and all other forms of income, and taxes on the ownership of real property;
- (c) "cumulative indirect taxes" means indirect taxes which are multi-staged taxes levied where there is no mechanism for subsequent crediting of the tax if goods or services subject to tax at one stage of production are used in a succeeding state of production;
- (d) "import charges" means tariffs, duties, and other fiscal charges that are levied on imports;
- (e) "indirect taxes" means sales, excise, turnover, value added, franchise, stamp, transfer, inventory and equipment taxes, border taxes and all taxes other than direct taxes and import charges;
- (f) "prior-stage indirect taxes" means those indirect taxes levied on goods or services used directly or indirectly in making a product;
- (g) "remission" of taxes includes the refund or rebate of taxes; and
- (h) "remission or drawback" includes the full or partial exemption or deferral of import charges:

Provided that deferral may not amount to an export subsidy where, for example, appropriate interest charges are collected.

2. The following is an illustrative list of export subsidies, namely: -

- (a) any provision by a government of direct subsidies to a firm or an industry contingent upon export performance;
- (b) currency retention schemes or any similar practices which involve a bonus on exports;
- (c) internal transport and freight charges on export shipments, provided or mandated by a government, on terms more favourable than for domestic shipments;
- (d) any provision by a government or its agencies either directly or indirectly through government-mandated schemes, of imported or domestic products or services for use in the production of exported goods, on terms or conditions more favourable than for provision of like or directly competitive products or services for use in the production of goods for domestic consumption, if, in the case of products, such terms or conditions are more favourable than those commercially available on world markets to their exporters;
- (e) any full or partial exemption, remission, or deferral specifically related to exports, of direct taxes or social welfare charges paid or payable by industrial or commercial enterprises;
- (f) any allowance of special deductions directly related to exports or export performance, over and above those granted in respect of production for domestic consumption, in calculation of the base on which direct taxes are charged;



- (g) any exemption or remission, in respect of the production and distribution of exported products, of indirect taxes in excess of those levied in respect of production and distribution of like products when sold for domestic consumption;
- (h) any exemption, remission or deferral of prior-stage cumulative indirect taxes on goods or services used in the production of exported products in excess of any exemption, remission or deferral of like prior-stage cumulative indirect taxes on goods or services used in the production of like products when sold for domestic consumption; provided, however, that prior-stage cumulative indirect taxes may be exempted, remitted or deferred on exported products even when not exempted, remitted or deferred on like products when sold for domestic consumption, if any prior-stage cumulative indirect taxes are levied on inputs that are consumed in the production of an exported product making normal allowance for waste. This clause shall be interpreted in accordance with the guidelines on consumption of inputs in a production process contained in the Second Schedule. For the avoidance of doubt, the provisions of this clause shall not apply to value-added tax systems and border-tax adjustment in lieu thereof and the provisions of clause (g) shall exclusively cover issues relating to excessive remission of value-added taxes;
- (i) any remission or drawback of import charges in excess of those levied on imported inputs that are consumed in the production of an exported product, making normal allowance for waste; provided, however, that in particular cases a firm may use a quantity of home market inputs equal to, and having the same quality and characteristics as, the imported inputs as a substitute for them in order to benefit from this provision if the import and the corresponding export operations both occur within a reasonable time period, not to exceed two years. This clause shall be interpreted in accordance with the guidelines on consumption of inputs in the production process contained in the Second Schedule and the guidelines in the determination of substitution drawback systems as export subsidies contained in the Third Schedule;
- (j) any provision by a government or, special institutions controlled by a government, of export credit guarantee or insurance programmes, of insurance or guarantee programmes against increases in the cost of exported products or of exchange risk programmes, at premium rates which are inadequate to cover long- term operating costs and losses of the programmes;
- (k) any grant by a government or special institutions controlled by or acting under the authority of a government, or both, of export credits at rates below those which they actually have to pay for the funds so employed or, would have to pay if they borrowed on international capital markets in order to obtain funds of the same maturity and other credit terms and denominated in the same currency as an export credit or, the payment by them of all or part of the costs incurred by exporters or financial institutions in obtaining credits, insofar as they are used to secure a material advantage in the field of export credit terms. Provided, however, that if a country which is a member of the WTO is a party to an international undertaking on official export credits to which at least twelve original such members are parties as of the first day of January, 1979, or, a successor undertaking which has been adopted by those original members, or if in practice a country which is member of the WTO applies the interest rates provisions of the relevant undertaking, an export credit practice which is in conformity with those provisions shall not be considered an export subsidy; and
- (l) any other charge on a public account constituting an export subsidy in the sense of Article XVI of the General Agreement on Tariffs and Trade, 1994.

**THE SECOND SCHEDULE**  
**(See the First Schedule)**

**GUIDELINES ON CONSUMPTION OF INPUTS  
IN THE PRODUCTION PROCESS**

1. For the purposes of this Schedule "inputs consumed in the production process" means inputs physically incorporated, energy, fuels and oil used in a production process and catalysts which are consumed in the course of their use to obtain an exported product.

2. Indirect tax rebate schemes can allow for exemption, remission or deferral of prior-stage cumulative indirect taxes levied on inputs that are consumed in the production of an exported product making normal allowance for waste. Similarly, drawback schemes can allow for the remission or drawback of import charges levied on inputs that are consumed in the production of an exported product making normal allowance for waste.

3. The illustrative list of export subsidies in the First Schedule makes reference to the term "inputs that are consumed in the production of the exported product" in clauses (h) and (i) of para 2 thereof. Pursuant to clause (h) of para 2 of the First Schedule, indirect tax rebate schemes can constitute an export subsidy to the extent that they result in exemption, remission or deferral of prior-stage cumulative indirect taxes in excess of the amount of such taxes actually levied on inputs that are consumed in the production of an exported product. Pursuant to clause (i) of para 2 of the First Schedule, drawback schemes can constitute an export subsidy to the extent that they result in a remission or drawback of import charges in excess of those actually levied on inputs that are consumed in the production of an exported product. Both the said clauses stipulate that normal allowance for waste must be made in findings regarding consumption of inputs in the production of an exported product. Clause (i) of para 2 of the First Schedule also provides for substitution, where appropriate.

4. In examining whether inputs are consumed in the production of an exported product, as part of a countervailing duty investigation pursuant to this Act, the Commission should normally proceed on the following basis, namely: -

- (a) where it is alleged that an indirect tax rebate scheme, or a drawback scheme, conveys a subsidy by reason of over-rebate or excess drawback of indirect taxes or import charges on inputs consumed in the production of an investigated product, the Commission shall normally first determine whether the government of an exporting country has in place and applies a system or procedure to confirm which inputs are consumed in the production of an exported product and in what amounts. Where such a system or procedure is determined to be applied, the Commission shall normally then examine the system or procedure to see whether it is reasonable and effective for the purpose intended, and based on generally accepted commercial practices in the country of export. The Commission may deem it necessary to carry out, in accordance with section 26, certain practical tests in order to verify information or to satisfy itself that the system or procedure is being effectively applied;
- (b) where there is no such system or procedure, or where it is not reasonable, or where it is instituted and considered reasonable but is found not to be applied or not to be applied effectively, a further examination by an exporting country based on the actual inputs involved will normally need to be carried out in the context of determining whether an excess payment occurred. If the Commission deems it necessary, a further examination may be carried out in accordance with clause (a) of this para;
- (c) the Commission must normally treat inputs as physically incorporated if such inputs are used in the production process and are physically present in a product exported, and an input need not be present in a final product in the same form in which it entered the production process;
- (d) in determining the amount of a particular input that is consumed in the production of an exported product, a "normal allowance for waste" must normally be taken into account by the Commission, and such waste must normally be treated as consumed in the production of an exported product. The term "waste" refers to that portion of a

given input which does not serve an independent function in the production process, is not consumed in the production of an exported product, for reasons such as inefficiencies, and is not recovered, used or sold by the same manufacturer; and

- (e) the Commission's determination of whether the claimed allowance for waste is "normal" shall normally take into account the production process, the average experience of an industry in the country of export, and other technical factors, as appropriate. The Commission shall bear in mind that an important question is whether the authorities in an exporting country have reasonably calculated the amount of waste, when such an amount is intended to be included in a tax or duty rebate or remission.

**THE THIRD SCHEDULE**  
**[See the First Schedule and Second Schedule]**

**GUIDELINES IN THE DETERMINATION OF SUBSTITUTION  
DRAWBACK SYSTEMS AS EXPORT SUBSIDIES**

1. Drawback systems can allow for refund or drawback of import charges on inputs which are consumed in a production process of another product and where export of this latter product contains domestic inputs having the same quality and characteristics as those submitted for imported inputs. Pursuant to clause (i) of para 2 of the First Schedule, substitution drawback systems can constitute an export subsidy to the extent that they result in an excess drawback of import charges levied initially on imported inputs for which drawback is being claimed.

2. In examining any substitution drawback system as part of an investigation the Commission shall normally proceed on the following basis, namely: -

- (a) clause (i) of para 2 of the First Schedule stipulates that home market inputs may be substituted for imported inputs in the production of a product for export provided such inputs are equal in quantity to, and have same quality and characteristics as, imported inputs being substituted. The existence of a verification system or procedure is important because it enables the government of an exporting country to ensure and demonstrate that the quantity of inputs for which drawback is claimed does not exceed the quantity of similar products exported, in whatever form, and that there is no drawback of import charges in excess of those originally levied on imported inputs in question;
- (b) where it is alleged that a substitution drawback system conveys a subsidy, the Commission shall normally first proceed to determine whether the government of an exporting country has in place and applies a verification system or procedure. Where such a system or procedure is determined to be applied, the Commission shall normally then examine the verification procedures to see whether they are reasonable and effective for the purpose intended, and based on generally accepted commercial practices in the country of export. To the extent that any procedures are determined to meet this test and are effectively applied, no subsidy will be presumed to exist. It may be deemed necessary by the Commission to carry out, in accordance with section 26, certain practical tests in order to verify information or to satisfy itself that verification procedures are being effectively applied;
- (c) where there are no verification procedures, or where they are not reasonable, or where such procedures are instituted and considered reasonable but are found not be actually applied or not be applied effectively, there may be a subsidy. In such cases, further examination by an exporting country based on actual transactions involved would need to be carried out to determine whether an excess payment occurred. If the Commission deems it necessary, a further examination may be carried out in accordance with clause (b); and
- (d) the existence of a substitution drawback provision under which exporters are allowed to select particular import shipments on which drawback is claimed shall not of itself be considered by the Commission to convey a subsidy.

3. An excess drawback of import charges within the meaning of clause (i) of para 2 of the First Schedule, would be deemed to exist where a government paid interest on any monies refunded under its drawback schemes, to the extent of an interest actually paid or payable.

MOHAMMAD RIAZ  
*Secretary*

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