INFORMACIÓN SOBRE LA APLICACIÓN Y ADMINISTRACIÓN DEL ACUERDO

Legislación de la India

A continuación se reproduce el texto de los documentos siguientes, relativos a la modificación de la Ley del Arancel de Aduanas (Customs Tariff Act) de la India:

1. Artículo 9 de la Ley del Arancel de Aduanas de 1975, que prevé la percepción de derechos compensatorios sobre las importaciones de bienes imponibles que estén subvencionados;

2. The Gazette of India: Notificación de 21 de octubre de 1982, en la que se prevé la percepción de derechos compensatorios sobre los bienes libres de derechos, la percepción de derechos antidumping, y la determinación del daño antes de la percepción de derechos compensatorios y derechos antidumping;

3. The Gazette of India: Notificación por la cual se pone en vigor con fecha 2 de septiembre de 1982 la Ley de 1982 relativa a la segunda modificación del Arancel de Aduanas (52 de 1982);

4. The Gazette of India: Notificación de 2 de septiembre de 1985 relativa al Reglamento del Arancel de Aduanas sobre la identificación de los artículos objeto de dumping, la liquidación y recaudación de derechos antidumping o derechos adicionales y la determinación del daño, de 1985;

Extract from the Customs Tariff Act, 1975 (51 of 1975)

9. (1) Where any country or territory pays, or bestows, directly or indirectly, any bounty or grant upon the production therein or the exportation therefrom of any article and the article is chargeable with duty under the provisions of this Act, then, upon the importation of any such article into India, whether the same is imported directly from the country of production or otherwise, and whether it is imported in the same condition as when exported from the country of production or has been changed in condition by manufacture or otherwise, the Central Government may, by notification in the Official Gazette, impose an additional duty equal to the net amount of such bounty or grant.

(2) The net amount of any such bounty or grant as aforesaid shall, from time to time, be ascertained, determined, and declared by the Central Government, after such inquiry as it may consider necessary and the Central Government may, by notification in the Official Gazette make rules for the identification of such articles and for the assessment and collection of any additional duty imposed upon the importation thereof under sub-section (1).

(3) Every notification issued under sub-section (1) shall, as soon as may be after it is issued, be laid before each House of Parliament.
EXTRAORDINARY
PART II—Section 1
PUBLISHED BY AUTHORITY
MINISTRY OF LAW, JUSTICE AND COMPANY AFFAIRS
(Secretary)
New Delhi, the 21st October, 1982/Asvina 29, 1904

The following Act of Parliament received the assent of the Vice-President discharging the functions of the President on the 21st October, 1982, and is hereby published for general information:—

THE CUSTOMS TARIFF (SECOND AMENDMENT) ACT, 1982
No. 52 of 1982

[21st October, 1982]

An Act further to amend the Customs Tariff Act, 1975.

As it enacted by Parliament in the Thirty-third Year of the Republic of India as follows:—

1. (1) This Act may be called the Customs Tariff (Second Amendment) Act, 1982.

(2) It shall come into force on such date as the Central Government may, by notification in the Official Gazette, appoint.

2. In section 9 of the Customs Tariff Act, 1975 (hereinafter referred to as the principal Act),—

(a) for sub-section (1), the following sub-section shall be substituted, namely:—

"(1) Where any country or territory pays, or bestows, directly or indirectly, any bounty or subsidy upon the manufacture or production therein or the exportation therefrom of any article, then, upon the importation of any such article into India, whether the same is imported directly from the country of manufacture, production or otherwise, and whether it is im-

(1)
ported in the same condition as when exported from the country of manufacture or production or has been changed in condition by manufacture, production or otherwise, the Central Government may, by notification in the Official Gazette, impose,—

(i) if the article is not otherwise chargeable with duty under the provisions of this Act, a duty; or

(ii) if the article is otherwise so chargeable, an additional duty,

not exceeding the amount of such bounty or subsidy:

Provided that the Central Government may, pending the determination in accordance with the provisions of this section and the rules made thereunder of the amount of such bounty or grant, impose a duty or additional duty under this sub-section not exceeding the amount of such bounty or subsidy as provisionally estimated by it and if such duty or additional duty exceeds such bounty or subsidy as so determined,—

(a) the Central Government shall, having regard to such determination and as soon as may be after such determination, reduce such duty or additional duty; and

(b) refund shall be made of so much of such duty or additional duty which has been collected as is in excess of the duty or additional duty as so reduced;";

(b) in sub-section (2),—

(i) for the words “net amount of any such bounty or grant”, the words “amount of any such bounty or subsidy” shall be substituted;

(ii) for the words “additional duty”, the words “duty or additional duty, as the case may be,” shall be substituted.

3. After section 9 of the principal Act, the following sections shall be inserted, namely:—

3A. (1) Where any article is exported from any country or territory (hereafter in this section referred to as the “exporting country or territory) to India at less than its normal value, then, upon the importation of such article into India, the Central Government may, by notification in the Official Gazette, impose,—

(a) if the article is not otherwise chargeable with duty under the provisions of this Act, a duty; or

(b) if the article is otherwise so chargeable, an additional duty,

not exceeding the margin of dumping in relation to such article:

Provided that the Central Government may, pending the determination in accordance with the provisions of this section and the rules made thereunder of the normal value and the margin of dumping in relation to any article, impose on the importation of such article into India a duty or additional duty under this sub-section on the
basis of a provisional estimate of such value and margin; and if such
duty or additional duty exceeds the margin, as so determined,—
(a) the Central Government shall, having regard to such
determination and as soon as may be after such determination,
reduce such duty or additional duty; and
(b) refund shall be made of so much of such duty or addi-
tional duty which has been collected as is in excess of such duty
or additional duty as so reduced.

Explanation.—For the purposes of this section,—
(a) "margin of dumping", in relation to an article, means
the difference between the price at which such article is exported
and its normal value;
(b) "normal value", in relation to an article, means—
(i) the comparable price in the ordinary course of trade
for the said article or like article when meant for consump-
tion in the exporting country or territory as determined
under sub-section (2); or
(ii) where such comparable price cannot be ascertained
because of the particular market situation or for any other
reason, such value shall be either—
(A) the highest comparable price for the said article
or like article from the exporting country or territory
to any third country in the ordinary course of trade as
determined under sub-section (2); or
(B) the cost of production of the said article or like
article in the country of origin along with reasonable
addition for selling and any other cost, and for profits,
as determined under sub-section (2).

(2) Subject to any rules made under sub-section (3), the Central
Government shall, after making due allowance in each case for
differences in conditions and terms of sale, for differences in taxation
and for other differences affecting price comparability, and, after
such inquiry as it may consider necessary, determine, for the pur-
poses of sub-section (1), the export price and the normal value of,
and the margin of dumping in relation to, any article.

(3) The Central Government may, by notification in the Official
Gazette, make rules for the purposes of this section, and without
prejudice to the generality of the foregoing, such rules may provide
for the manner in which articles liable for any duty or additional
duty under sub-section (1) may be identified, and for the manner in
which the export price and the normal value of, and the margin of
dumping in relation to, such articles may be determined and for the
assessment and collection of such duty or additional duty.

(4) Every notification issued under sub-section (1) shall, as soon
as may be after it is issued, be laid before each House of Parliament.
9B. (1) Notwithstanding anything contained in section 9 or section 9A, the Central Government shall not levy any duty or additional duty under either of those sections on the import into India of any article from any country or territory to which this section applies unless that Government, after making investigation in accordance with the rules made under sub-section (3), declares, by notification in the Official Gazette, that the import of such article into India causes or threatens material injury to any industry established in India or materially retards the establishment of any industry in India.

(2) This section applies to every country or territory which is specified by the Central Government by notification in the Official Gazette to be a country or territory which, by reason of its being a party to the General Agreement on Tariff and Trade or by reason of any agreement between it and India for giving the most-favoured nation treatment or for any other reason, levies duty or additional duty of the nature referred to in section 9 or section 9A on articles imported from India only when such import causes or threatens any material injury to any industry established in such country or territory or materially retards the establishment of such industry in such country or territory.

(3) The Central Government may, by notification in the Official Gazette, make rules for the purposes of this section, and without prejudice to the generality of the foregoing, such rules may provide for the manner in which any investigation may be made for the purposes of sub-section (1), the factors to which regard shall be had in any such investigation and for all matters connected with such investigation.

(4) Every notification issued under sub-section (1) or sub-section (2) shall, as soon as may be after it is issued, be laid before each House of Parliament.

Explanation.—For the purposes of this section, "industry", in relation to any article, includes the manufacture or production of like articles, any activity connected therewith and the persons engaged in such production, manufacture or activity.

R. V. S. PERI SASTRI,
Secy. to the Govt. of India.
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

New Delhi, the 20th August, 1985.
29 SRAVANA, 1907 (SAKA)

NOTIFICATION
No. 268/65-CUSTOMS

GSR No. 668(E) In exercise of the powers conferred by sub-section (2) of Section 1 of the Customs Tariff (Second Amendment) Act, 1982 (52 of 1982), the Central Government hereby appoints the 2nd day of September, 1985, as the date on which the said Act shall come into force.

( R.S. SIDHU )
UNDER SECRETARY TO THE GOVERNMENT OF INDIA.

F.NO.528/74/82-CUS.(TU)
GOVERNMENT OF INDIA
MINISTRY OF FINANCE
DEPARTMENT OF REVENUE

New Delhi, the 2nd September, 1985
11, BHADRA, 1907 (Saka)

NOTIFICATION

GSR No. 707 (E) In exercise of the powers and (3)
conferred by sub-section (2) of section 9A and
sub-section (3) of section 9B of the Customs
Tariff Act, 1975 (51 of 1975) the Central Gover-
ment hereby makes the following rules, namely:--

1. (1) These rules may be called the Customs
Tariff (Identification, Assessment and Collection
of Duty or Additional Duty on Dumped Articles and

(2) They shall come into force on the date
of their publication in the Official Gazette.

2. In these rules, unless the context other-
wise requires:

(a) "Act" means the Customs Tariff Act,
1975;

(b) "designated authority" means the
person appointed as designated
authority under rule 3;

(c) "domestic industry" means the domes-
tic producers as a whole engaged in
the manufacture or production of the
same or like articles and any
activity connected therewith or those
whose collective output of the said
articles
... constitutes a major proportion of the total domestic production of that article except when such producers are related to the exporters or importers of the alleged dumped article or are themselves importers thereof in which case such producers shall be deemed not to form part of domestic industry;

Provided that in exceptional circumstances referred to in sub-rule (3) of rule 18 of these rules, the domestic industry in relation to the article in question, shall be deemed to comprise two or more competitive markets and the producers within each of such market a separate industry if,-

(i) the producers within such a market sell all or almost all of their production of the article in question in that market and;

(ii) the demand in the market is not in any substantial degree supplied by producers of the said article located elsewhere in the territory;

(d) "GATT Agreement on Anti-dumping Practices" means the agreement on Implementation of Article VI of the General Agreement on Tariffs and
Trade dated the 12th April, 1979;

(e) "interested party" means a party who is economically affected and is interested in the investigation under these rules;

(f) "signatory" means a country or territory which is a party to or has acceded to the Agreement on Implementation of Article VI of the General Agreement on Tariff and Trade;

(£) words and expressions used in these rules, but not defined, shall have the meaning assigned to them in the Act.

3. (1) The Central Government may, by notification in the Official Gazette, appoint the Secretary to the Government of India in the Ministry of Commerce, or such other person as that Government may think fit, as the designated authority for purposes of these rules.

(2) The Central Government may provide to the designated authority the services of such other persons and such other facilities as it deems fit.

4. (1) It shall be the duty of the designated authority in accordance with these rules -

(a) to investigate as to the existence, degree and effect of any alleged dumping of any article;
(b) to identify the articles liable for any duty or additional duty; and

(c) to submit its findings to the Central Government as to the normal value in relation to such articles.

(2) If the designated authority arrives at a finding after conducting investigation in accordance with these rules, that for purposes of subsection (1) of section 9A of the Act that any article exported from an exporting country or territory to India is at less than its normal value, it may recommend to the Central Government provisionally or otherwise the imposition of a duty, or as the case may be, an additional duty not exceeding the margin of dumping in relation to such article:

Provided that, in the case of countries or territories which have been notified in the Official Gazette under section 9B of the Act, no such duty or additional duty, as the case may be, shall be imposed unless the designated authority has given a further finding in accordance with these rules that import into India of such article causes or threatens to cause material injury to any industry established in India or materially retards the establishment of any industry in India.
5. For purposes of indentifying the articles which will be liable for duty or additional duty, the designated authority shall obtain all relevant information and data and shall be guided in such investigation by the following principles namely:

(a) an article shall be considered as being dumped into India if the export price of the article in the ordinary course of trade is less than the normal value in relation to the said article or like article.

Explanation:

(i) "like article" shall mean an article identical in all respects to the article under investigation and in absence of a like article, another article which, though not alike in all respects, has characteristics closely resembling those of the article under investigation;

(ii) 'export price' shall mean the price of the article exported from the exporting country to India.

6. In a case where an article is imported into India not from the country of origin but from an intermediate country, the price at which the article is sold from the intermediate country shall be compared with the comparable price in the intermediate country:
Provided that a comparison may also be made with the price in the country of origin if, -

(a) the article is only trans-shipped through the intermediate country,

(b) the article is not produced in the intermediate country or,

(c) there is no comparable price in the intermediate country.

7. (1) The designated authority shall normally initiate an investigation only upon receipt of a written request by or on behalf of the affected domestic industry.

(2) The designated authority shall, before deciding to initiate an investigation, satisfy itself that it has sufficient prima facie evidence of -

(a) dumping,

(b) injury, where applicable, to the extent referred to in Article VI of the General Agreement on Tariffs and Trade as interpreted by the GATT Agreement on Anti-dumping Practices, and

(c) where applicable, a causal link between such dumped imports and the alleged injury.

(3) Notwithstanding anything contained in sub-rule(1), the designated authority may initiate an investigation suo moto, if it is satisfied from information received from the Collector of Customs appointed under the Customs Act, 1962 (52 of 1962) or any other source that sufficient prima facie evidence exists as to the existence of the circumstances referred to in sub-rule(2).
8. The designated authority shall, after deciding to initiate an investigation, communicate to the governments of the exporting countries concerned, names of the articles which are proposed to be subjected to such investigation.

9. The designated authority shall allow the duly authorised representative of an interested party or the governments of the exporting countries concerned -
   (a) upon their request, a reasonable opportunity to inspect any relevant information that is in its possession which is not confidential; and
   (b) an opportunity to represent their views in writing, and on sufficient cause shown, orally.

10. (1) Any information provided to the designated authority on a confidential basis by any party in the course of an investigation, shall, upon the designated authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed to any other party without specific authorisation of the party providing such information.

   (2) The designated authority may require the parties providing information on confidential basis to furnish non-confidential summaries thereof and if, in the opinion of a party providing such information, such information is not susceptible of summary, such party may submit to the designated authority a statement of reasons why summarisation is not possible.
(3) Notwithstanding anything contained in sub-rule (2), if the designated authority is satisfied that the request for confidentiality is not warranted, or if the party requesting confidentiality is not willing to submit the reasons therefor, it shall be open to the designated authority to disregard such information.

Investigation in the territories of other signatories.

11. (1) The designated authority may carry out investigations in the territories of other signatories if the circumstances of a case so warrant, provided that the designated authority communicates to the governments of such signatories in advance and such signatories do not object to the investigations.

(2) The designated authority may also carry out investigations at the premises of any commercial organisation and may examine its records if such organisation agrees and if the signatory in whose territory the said commercial organisation is situated, is notified and has not raised any objection for the conduct of such investigation.

12. The designated authority shall proceed expeditiously with the conduct of the investigation and shall, in appropriate cases, record a preliminary finding.

13. The Central Government may impose at any time, a provisional duty or an additional duty, as the case may be, on an article if, the designated authority makes, on the basis of best information available to it, a preliminary finding that there is dumping in respect of articles
which are the subject matter of the investigation.

Provided that in the case of an investigation to which section 9B of the Act applies, no provisional duty or additional duty as the case may be, shall be imposed unless the designated authority arrives at a further finding on the basis of best information available to it, that there is sufficient evidence of the import of such article causing or threatening to cause materially injury to any industry established in India or materially retarding the establishment of any industry in India within the meaning of Article VI of the General Agreement on Tariffs and Trade as interpreted by the GATT Agreement on Anti-dumping Practices and that the provisional duty or additional duty, as the case may be, is necessary to prevent injury being caused during the period of investigation:

Provided further that no such provisional duty or additional duty, as the case may be, shall exceed the provisionally estimated margin of dumping which shall be the difference between the export price and the normal value.

4. In a case in which an interested party or a signatory refuses access to, or otherwise does not provide necessary information to the designated authority within a reasonable period, or impedes its investigation, the designated authority may record its findings on the basis of the information available to it and make such recommendations to the Central Government as it deems fit under the circumstances.
15. (1) The designated authority may, at its discretion, suspend or terminate an investigation at any time -

(a) if it receives a request in writing for doing so on behalf of the domestic industry affected at whose instance the investigation was initiated, or,

(b) when, in the course of an investigation, the designated authority is satisfied that there is not sufficient evidence of dumping or, where applicable, injury to justify continuation of the investigation.

(2) Notwithstanding anything contained in sub-rule (1) the designated authority may suspend or terminate an investigation if the exporters of the article in question,-

(a) give to the designated authority an undertaking in writing to revise prices so that no exports are made to India of the said article at dumped prices, or,

(b) in the case of countries to which section 9B of the Act applies, undertake to revise the prices so that injurious effect of dumping is eliminated;

Provided that increase in prices as a result of such undertakings is not higher than what is necessary to eliminate the margin of dumping.
(3) No undertaking as regards price increase under clause (b) of the sub-rule (2) shall be accepted from any exporter before the initiation by the designated authority of an investigation in accordance with the provisions of these rules and no such undertaking offered by any exporter shall be accepted by the designated authority if it considers acceptance thereof as impracticable or as unacceptable for any other reason.

(4) Where the designated authority has accepted any undertaking under clause (b) of sub-rule (2), it may request any exporter from whom such undertaking has been accepted, to provide from time to time information relevant to the fulfilment of the undertaking and to permit verification of relevant data:

Provided that in the case of any violation of any of the undertakings, the designated authority may impose provisional duty or additional duty, as the case may be, on the basis of best information available to it.

(5) The designated authority shall suo moto or on the basis of any request received from exporters or importers of the article in question or any other interested person review from time to time the need for the continuance of any undertakings given earlier.

Final finding. 16. The designated authority shall, within one year from the date of initiation of an investigation, or within such extended time as the Central Government may grant in exceptional cases,
determine as to whether or not the article under investigation is being dumped in India and if so, give a finding as to—

(a) export price, normal value and the margin of dumping of the said article and,

(b) in the case of countries to which section 9B of the Act applies, whether import of the said article into India cause or threaten to cause material injury to any industry established in India or materially retards the establishment of any industry in India.

Determination of dumping.

17. (1) An article shall be considered as being dumped if it is exported from a country or territory to India at less than its normal value.

(2) While determining the normal value in relation to an article, the designated authority shall make reasonable allowance on merits for the differences in terms and conditions of sale, taxation and other factors affecting price comparability.

Determination of injury.

18. (1) In the case of countries or territories notified under sub-section (2) of section 9B of the Act, a duty or additional duty, as the case may be, shall not be imposed under section 9A of the Act, unless the designated authority arrives at a further finding that the import of such article into India causes or threatens to cause material injury to any established industry in India or materially retards the establishment of any industry in India.
(2) When a finding of injury is arrived at under sub-rule(3), such finding shall involve an examination of the facts which the designated authority considers relevant under the circumstances including the volume of dumped imports and their effect on prices in the domestic market for like products and the consequent impact of such imports on domestic producers of such products.

(3) The designated authority, in exceptional cases, may give a finding as to the existence of injury even where a substantial portion of the domestic industry is not injured if:

(i) there is a concentration of dumped imports into an isolated market and,

(ii) the dumped articles are causing injury to the producers of all or almost all of the production within such market.

Results of final finding.

19. (1) The designated authority shall, on completion of its investigation submit to the Central Government its final findings.

(2) If the final finding arrived at by the designated authority is negative, that is contrary to the prima facie evidence on whose basis investigation was initiated, the designated authority shall terminate investigation forthwith and the Central Government shall refund any provisional duty or additional duty collected, to the party concerned.
(3) If the final finding of the designated authority is in the affirmative, that is, confirming the prima facie evidence on whose basis investigation was initiated, the Central Government shall determine the normal value of the article in question.

20. The designated authority shall cause to be published in the Official Gazette, all orders relating to the:

(a) initiation,
(b) suspension or termination of investigation,
(c) preliminary findings in cases where provisional duty or additional duty is proposed to be imposed, and
(d) final findings.

21. (1) The Central Government may, within six months of the publication of the final findings by the designated authority under rule 21, impose by notification in the Official Gazette upon importation into India of the article severed by the final finding, a duty, or additional duty, which shall not exceed the difference between the price at which such article is exported to India and the normal value as determined by the Central Government under clause (3) of rule 19.

(2) Any duty of additional duty so imposed or a provisional duty or additional duty imposed under rule 13, and sub-rule (1), shall be on a non-discriminatory basis and applicable to all imports of such article, from whatever source found dumped and where applicable,
causing injury except in the case of imports from those sources from which undertakings in terms of sub-rule (2) of rule 15 have been accepted.

22. (1) If the duty or additional duty imposed by the Central Government on the basis of the final findings of the investigation conducted by the designated authority is higher than the provisional duty already imposed and collected, the differential shall not be collected from the importer.

(2) If the duty or additional duty fixed after the conclusion of the investigation is lower than the provisional duty or additional duty already imposed and collected, the differential shall be refunded to the importer.

23. The designated authority shall, from time to time, review the need for continued imposition of the duty or additional duty, as the case may be, and shall, if it is satisfied, on the basis of information received by it that there is no justification for the continued imposition of such duty or additional duty, recommend to the Central Government for its withdrawal.

(F.No.528/74/82-Cus.(I))
NOTIFICATION
No. 2S6/85-CUST0MS.

In exercise of the powers conferred by sub-section (2) of section 9 and sub-section (3) of section 92 of the Customs Tariff Act, 1975 (51 of 1975) the Central Government hereby makes the following rules namely:

1. (1) These rules may be called the Customs Tariff (Identification, Assessment and Collection of Duty or Additional Duty on Bounty-fed Articles and for Determination of Injury) Rules, 1985.

(2) They shall come into force on the date of their publication in the Official Gazette.

2. In these rules, unless the context otherwise requires:

(a) "Act" means the Customs Tariff Act, 1975;

(b) "designated authority" means the person appointed as designated authority under rule 3;
(3) "domestic industry" means the domestic
producers as a whole engaged in the
manufacture or production of the same
or like article and any activity
connected therewith or those whose
collective output of the said article
constitutes a major proportion of the
total domestic production of that
article except when such producers
are related to the exporters or importer
of the allegedly bounty-fed or subsidised
article or are themselves importers
thereof in which case such producers
shall be deemed not to form part of
domestic industry; Provided that in
circumstances referred to in sub-rule
(3) to rule 17 of these rules, the
territory of a signatory may, in relation
to the article in question, be divided
into two or more competitive markets and
the producers within each of such market
shall be regarded as a separate industry
if:

(i) the producers within such market sell
all or almost all of their production
of the article in question in that
market; and
(ii) the demand in the market is not in any substantial degree supplied by producers of the article in question located elsewhere in the territory;

(d) "GATT Agreement on Subsidies and Countervailing Measures" means the Agreement on Interpretation and Application of Articles VI, XVI and XXIII of the General Agreement on Tariffs and Trade dated 12th April, 1979;

(e) "interested party" means a party who is economically affected and is interested in the investigation under these rules;

(f) "interested signatory" means a signatory who is economically affected and is interested in the investigation under these rules;

(g) "signatory" means a country or territory which is a party to or has acceded to the Agreement on Interpretation and Application of Articles VI, XVI, and XXIII of the General Agreement on Tariffs and Trade;

(h) words and expressions used in these rules, but not defined, shall have the meanings assigned to them in the Act.
3. (1) The Central Government may, by notification in the Official Gazette, appoint the Secretary to the Government of India in the Department of Commerce, in the Ministry of Commerce or such other person as that Government may think fit, as the designated authority for purposes of these rules.

   (2) The Central Government may provide to the designated authority the services of such other persons and such other facilities as it deems fit.

4. (1) It shall be the duty of the designated authority in accordance with these rules:

   a) to investigate as to the existence, degree and effect of the alleged bounty or subsidy of any article;
   b) to identify the articles liable for any duty or additional duty; and
   c) to submit its findings to the Central Government as to the nature and amount of subsidy or bounty in relation to such articles.

   (2) If the designated authority arrives at a finding after conducting investigation in accordance with the provisions of these rules that any country or territory has paid or bestowed directly or indirectly, any bounty or subsidy on any article to which sub-section (1)
of section 9 of the Act applies, it may recommend to the Central Government, provisionally or otherwise, the imposition of a duty, or, as the case may be, an additional duty to the extent and in the manner provided in the said sub-section:

Provided that, in the case of countries or territories which have been notified in the Official Gazette under section 93 of the Act, no such duty or additional duty, as the case may be, shall be imposed unless the designated authority has given a further finding in accordance with these rules, that import into India of such articles causes or threatens to cause material injury to any industry established in India or materially retards the establishment of any industry in India.

Decision as to Country of origin.

5. In cases where articles are not imported directly from the country of origin but are imported from an intermediate country, the provisions of these rules shall be fully applicable and any such transaction shall, for the purpose of the GATT Agreement on Subsidies and Countervailing Measures be regarded as having taken place between the country of origin and the country of importation.
6. (1) The designated authority shall normally initiate an investigation only upon receipt of a written request by or on behalf of the affected domestic industry;

(2) Before initiating an investigation, the designated authority shall satisfy itself that it has sufficient prima facie evidence of—

(a) the existence of bounty or subsidy and the quantum thereof;

(b) injury, where applicable, to the extent referred to in Article VI of the General Agreement on Tariff and Trade as Interpreted in the GATT Agreement on Subsidies and Countervailing Measures; and

(c) where applicable, a causal link between such imports and the alleged injury.

(3) Notwithstanding anything contained in sub-rule (1), the designated authority may initiate an investigation suo moto, if it is satisfied from information received from the Collector of Customs appointed under the Customs Act, 1962 (52 of 1962) or any other source, that sufficient prima facie evidence exists as to the existence of bounty or subsidy and, where applicable, injury.
7. The designated authority shall, after deciding to initiate an investigation, communicate to the governments of the exporting countries concerned names of the articles which are proposed to be subjected to such investigation.

8. The designated authority shall allow the duly authorised representatives of interested parties and interested signatories—

(a) upon their request, a reasonable opportunity to inspect any relevant information that is used by it in the investigation that is not confidential; and

(b) an opportunity to represent their views in writing, and on sufficient cause shown, orally.

9. (1) Any information provided to the designated authority on confidential basis by any party in the course of an investigation shall, upon the designated authority being satisfied as to its confidentiality, be treated as such by it and no such information shall be disclosed by the designated authority to any other party without the specific authorisation of the party providing such information.

(2) The designated authority may require the parties submitting information on confidential basis to furnish non-confidential summaries.
thereof and if, in the opinion of a party, such information is not susceptible of summary, such party shall provide to the designated authority a statement of reasons why summarisation is not possible.

(3) Notwithstanding anything contained in sub-rule (2), if the designated authority is satisfied that the request for confidentiality is not willing to disclose the reasons therefore it shall be open to the designated authority to disregard such information.

10. (1) The designated authority may carry out investigation in the territories of other signatories if the circumstances of a case warrant provided that the designated authority notifies such signatories in advance and such signatories do not object to the investigation.

(2) The designated authority may also carry out investigations at the premises of any commercial organisation and may examine its records if such organisation agrees and if the signatory in whose territory the said commercial organisation is situated, is notified and has not raised any objection for the conduct of such investigation.

Finding on the basis of best information.
authority may record its findings on the basis of the information available to it and make such recommendations to the Central Government as it deems fit under the circumstances.

12. The designated authority shall proceed expeditiously with the conduct of the investigation and shall, in appropriate cases, record a preliminary finding.

13. The Central Government may impose at any time, provisional duty or additional duty, as the case may be, on an article if the designated authority makes, on the basis of best information available to it, a preliminary finding that a bounty or subsidy is being provided in respect of the articles which are the subject matter of the investigation:

Provided that in the case of an investigation to which section 92 of the Act applies, no provisional duty or additional duty as the case may be, shall be imposed unless the designated authority arrives at a further finding on the basis of best information available to it that there is sufficient evidence of the import of such article causing or threatening to cause material injury to any industry established in India or materially retarding the establishment of any industry in India within the meaning of Article VI of the General Agreement on Tariffs and Trade as interpreted by the GATT Agreement.
on Subsidies and Countervailing Measures and that the provisional duty is necessary to prevent injury being caused during the period of investigation;

Provided further that no such provisional duty shall exceed the provisionally estimated amount of bounty or subsidy.

14. (1) The designated authority may, at its discretion, suspend or terminate an investigation—

(a) on receipt of a request in writing for doing so on behalf of the domestic industry affected at whose instance the investigation was initiated; or

(b) when, in the course of an investigation, the designated authority is satisfied that there is not sufficient evidence of bounties or subsidies, or where applicable, injury, to justify continuation of the investigation.

(2) Notwithstanding anything contained in sub-rule (1), the designated authority may suspend or terminate an investigation if —

(a) the government of the exporting signatory —

(i) gives an undertaking in writing to the effect that it would withdraw the bounty or subsidy; or
(ii) in the case of countries to which section 93 of the Act applies undertakes to limit the quantum of bounty or subsidy within reasonable limits, or to take other suitable measures to neutralise the effect of such bounty or subsidy provided that the designated authority is satisfied that the injurious effect of the subsidy is eliminated; or

(b) the exporters concerned agree to revise their prices in case of countries to which section 93 of the Act applies; and the designated authority is satisfied that the injurious effect of the subsidy is eliminated;

Provided that increase in prices as a result of clause (b) shall not be higher than what is necessary to eliminate the amount of bounty or subsidy.

(3) No undertaking as regards price increase under clause (b) sub-rule (2) shall be accepted from foreign exporters unless the designated authority has, after initiating an investigation in accordance with the provisions
of these rules, obtained the consent of the
government of the exporting signatory for such
revision:

Provided that no such undertaking offered
by the foreign exporters shall be accepted by the
designated authority if it considers their
acceptance thereof as impracticable or as
unacceptable for any other reason.

(4) Where the designated authority has
accepted any undertaking under clause (b) of
sub-rule (2), it may request any signatory or
exporter from whom such undertaking has been
accepted, to provide from time to time, informa-
tion relevant to the fulfilment of the undertak-
ing and to permit verification of relevant data:

Provided that in the case of any
violation of any of the undertakings, the desig-
nated authority may impose provisional duty or
additional duty, as the case may be, on the basis
of best information available to it.

(5) The designated authority shall,
sum moto or on the basis of any request received
from the exporters or importers of the article
in question or any other interested person,
review at any time the need for the continuance
of any undertaking given earlier.
Final finding. 15. The designated authority shall, within one year from the date of initiation of an investigation or within such extended time as the Central Government may grant in exceptional cases, give a final finding as to whether or not -

(a) bounty or subsidy is being granted in respect of the article under investigation and the quantum of such bounty or subsidy, and,

(b) in the case of countries to which section 93 of the Act applies, whether imports of such articles into India causes or threatens to cause material injury to any industry established in India or materially retards the establishment of any industry in India.

Determination of 16. Any exemption of an exported article from duties or taxes borne by a like product when destined for domestic consumption, or the remission of such duties or taxes in amounts not in excess of those which have accrued, shall not be deemed to be a subsidy for purposes of these rules and the term 'subsidy' shall include, but is not limited to any subsidy described as such in the Annexure to the GATT Agreement on Subsidies and Countervailing Measures.
17. (1) In the case of countries or territories notified under sub-section (2) of section 9B of the Act, a duty or additional duty, as the case may be, shall not be imposed under section 9 of the Act, unless the designated authority gives a further finding that the import of such article into India causes or threatens to cause material injury to any established industry in India or materially retards the establishment of any industry in India.

(2) When a finding of injury is made under sub-rule (3), such finding shall involve an examination of the facts which the designated authority considers relevant under the circumstances including the volume of bounty-fed or subsidised imports and their effect on prices in the domestic market for like products and the consequent impact of such imports on domestic producers of such products.

(3) The designated authority may, in exceptional cases, give a finding as to the existence of injury even where a substantial portion of the domestic industry is not injured if:

(i) there is a concentration of bounty-fed or subsidised imports into an isolated market and,

(ii) the bounty-fed or subsidised imports are causing injury to the producers of all almost all of the production within such market.
18. (1) The designated authority shall, on completion of its investigation submit to the Central Government its final findings;

(2) If the final finding arrived at by the designated authority is negative, that is, contrary to the prima facie evidence on whose basis investigation was initiated, the designated authority shall terminate investigation forthwith and the Central Government shall refund any provisional duty or additional duty collected, to the party concerned.

(3) If the final finding of the designated authority is in the affirmative, that is, confirming the prima facie evidence on whose basis investigation was initiated, the Central Government shall determine the amount of duty or additional duty, as the case may be, not exceeding the amount of estimated bounty or subsidy.

19. (1) The Central Government may, within six months of the publication of the final findings, by the designated authority under rule 20, impose, by notification in the Official Gazette, upon importation into India of the article covered under the final finding, a duty or additional duty, as the case may be, equal to the amount of duty or additional duty as determined by the Central Government under clause (3) of rule 18.
Public notice.

20. The designated authority shall cause to be published in the Official Gazette, all orders relevant to -

   (a) initiation,
   (b) suspension or termination of investigations,
   (c) preliminary findings in cases where provisional duty or additional duty is proposed to be imposed, and
   (d) final findings.

21. (1) If the duty or additional duty imposed by the Central Government on the basis of the final findings of the investigation conducted by the designated authority is higher than the provisional duty already imposed and collected, the differential shall not be collected from the importer.
(2) If the duty or additional duty fixed after the conclusion of the investigation is lower than the provisional duty or additional duty already imposed and collected, the differential shall be refunded to the importer.

Review.

22. The designated authority shall, from time to time, review the need for continued imposition of the duty or additional duty, as the case may be, and shall, if it is satisfied on the basis of information received by it that there is no justification for the continued imposition of such duty or additional duty, recommend to the Central Government for its withdrawal.

( R.S. SIDHU )
UNDER SECRETARY TO THE GOVERNMENT OF INDIA.

F.No.528/74/82-Cus (TU)