

**THE TRADE (ANTI-DUMPING, COUNTERVAILING  
AND SAFEGUARD MEASURES) ACT 2022**

**Act No. 19 of 2022**

*I assent*

**PRITHVIRAJ SING ROOPUN, G.C.S.K.**

*2<sup>nd</sup> December 2022*

*President of the Republic*

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ARRANGEMENT OF SECTIONS

*Section*

**PART I – PRELIMINARY**

1. Short title
2. Interpretation
3. Particular market situation
4. Producer deemed to be related to exporter or importer
5. Meaning of “domestic industry”
6. Application of Act

**PART II – TRADE REMEDIES INVESTIGATING AUTHORITY**

7. Establishment of Authority
8. Functions of Authority
9. Meetings of Authority
10. Staff of Authority

11. Impartiality and disclosure of interest
12. Annual report
13. Directions by Minister
14. Protection from liability

### **PART III – DUMPING**

15. Dumped product
16. Imposition of anti-dumping measures
17. Determination of normal value based on prices in country of export or origin
18. Determination of normal value based on export price to a third country or on constructed value
19. Sale not made in the ordinary course of trade
20. Calculation of costs
21. Non-market economies
22. Determination of export price
23. Comparison between normal value and export price
24. Comparison methods
25. Currency conversion
26. Individual dumping margin

### **PART IV – SUBSIDISATION AND COUNTERVAILING MEASURES**

27. Imposition of countervailing measures

### **PART V – DETERMINATION OF INJURY AND CAUSAL LINK IN DUMPING AND SUBSIDISATION**

28. Determination of injury
29. Examination of volume of dumped or subsidised imports and their effects on prices
30. Cumulation
31. Examination of impact of dumped or subsidised imports on domestic industry
32. Threat of material injury in relation to dumped or subsidised imports
33. Causal link in relation to dumped or subsidised imports

### **PART VI – SAFEGUARD MEASURES**

34. Requirements to impose a safeguard measure
35. Injury and causal link in safeguard investigations

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**PART VII – INITIATION OF ANTI-DUMPING AND  
COUNTERVAILING INVESTIGATIONS**

36. Application for anti-dumping or countervailing investigation
37. Evidence and information required in anti-dumping or countervailing investigation application
38. Publication of anti-dumping or countervailing investigation application
39. Withdrawal of anti-dumping or countervailing investigation application before initiation
40. Initiation of anti-dumping or countervailing investigation
41. Self-initiation of anti-dumping or countervailing investigation
42. No anti-dumping or countervailing investigation for negligible infringement
43. Public notification of initiation of anti-dumping or countervailing investigation
44. Disclosure of anti-dumping or countervailing investigation application

**PART VIII – INITIATION OF SAFEGUARD INVESTIGATIONS**

45. Application for safeguard investigation
46. Evidence and information required in safeguard investigation application
47. Publication of safeguard investigation application
48. Withdrawal of safeguard investigation application before initiation
49. Initiation of safeguard investigation
50. Self-initiation of safeguard investigation
51. No safeguard investigation for negligible infringement
52. Public notification of initiation of safeguard investigation
53. Disclosure of safeguard investigation application

**PART IX – CONDUCT OF INVESTIGATIONS**

54. Duration of investigations
55. Customs clearance
56. Confidentiality
57. Sampling
58. Reliance on information available
59. Register of investigations

**PART X – ANTI-DUMPING AND COUNTERVAILING  
INVESTIGATION PROCEDURES**

60. Time frame for anti-dumping or countervailing investigation
61. Gathering of information during anti-dumping or countervailing investigation
62. Preliminary written arguments in respect of anti-dumping or countervailing investigation
63. Preliminary determination in anti-dumping or countervailing investigation
64. Disclosure after preliminary determination in anti-dumping or countervailing investigation
65. Offer of undertaking
66. Acceptance of undertaking
67. Notification of undertaking
68. Continuation of investigation
69. Violation of undertaking
70. Review of undertaking
71. Verification of information in anti-dumping or countervailing investigation
72. Written arguments in anti-dumping or countervailing investigation
73. Hearings in anti-dumping or countervailing investigation
74. Contributions by industrial users and representative consumer organisations
75. Essential facts
76. Final determination in anti-dumping or countervailing investigation
77. Disclosure

**PART XI – SAFEGUARD INVESTIGATION PROCEDURES**

78. Time frame for safeguard investigation
79. Gathering of information during safeguard investigation
80. Preliminary written arguments in respect of safeguard investigation
81. Preliminary determination in safeguard investigation
82. Consultations after preliminary determination in safeguard investigation
83. Verification of information in safeguard investigation
84. Written arguments in safeguard investigation
85. Hearings in safeguard investigation
86. Final determination in safeguard investigation

**PART XII – CONCLUSION OF INVESTIGATION**

87. Withdrawal of application after initiation
88. Termination for insufficient evidence, *de minimis* or negligible volume
89. Public notice of conclusion of investigation without imposition of measures

**PART XIII – PROVISIONAL MEASURES**

90. Imposition of provisional measures
91. Security for provisional measures
92. Duration of application of provisional measures

**PART XIV – IMPOSITION AND COLLECTION OF ANTI-DUMPING  
AND COUNTERVAILING DUTIES**

93. Lesser duty rule
94. Definitive anti-dumping or countervailing duty
95. Refund of duties paid in excess of dumping margin or rate of subsidisation
96. Suspension of anti-dumping or countervailing measures
97. Application of anti-dumping or countervailing measures
98. Retroactive application of definitive anti-dumping or countervailing duties
99. Security and definitive anti-dumping or countervailing duty

**PART XV – IMPOSITION, COLLECTION AND ADMINISTRATION  
OF SAFEGUARD MEASURES**

100. Public interest
101. Form and administration of safeguard measure
102. Amount of safeguard duty
103. Volume of quota
104. Suspension of safeguard measures
105. Application of safeguard measures
106. Definitive collection of provisional safeguard duties

**PART XVI – DURATION AND REVIEW OF ANTI-DUMPING  
AND COUNTERVAILING MEASURES**

107. Sunset review
108. Review for change of circumstances
109. New shipper review

**PART XVII – DURATION AND REVIEW OF SAFEGUARD MEASURES**

- 110. Duration of safeguard measures
- 111. Mid-term review
- 112. Extension review
- 113. Reapplication of safeguard measure
- 114. Level of concessions and other obligations

**PART XVIII – MISCELLANEOUS**

- 115. Judicial review
- 116. Offences
- 117. Regulations
- 118. Repeal
- 119. Consequential amendments
- 120. Commencement

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**An Act**

**To protect the domestic industry against the negative effects of dumped, subsidised and increased imports**

ENACTED by the Parliament of Mauritius, as follows –

**PART I – PRELIMINARY**

**1. Short title**

This Act may be cited as the Trade (Anti-Dumping, Countervailing and Safeguard Measures) Act 2022.

**2. Interpretation**

In this Act –

“Authority” means the Trade Remedies Investigating Authority established under section 7;

“Chairperson” means the Chairperson of the Authority;

“country” includes a customs territory or a customs union;

“Customs” has the same meaning as in the Customs Act;

“*de minimis*”, in –

- (a) an anti-dumping investigation, means a margin of less than 2 per cent expressed as a percentage of the export price, or less than 3 per cent expressed as a percentage of the total volume of imports;
- (b) a countervailing investigation, means a subsidy of less than one per cent ad valorem or, where the investigation concerns a product from a developing country, 2 per cent ad valorem;

“Director-General” has the same meaning as in the Mauritius Revenue Authority Act;

“domestic industry” means the domestic producers as defined in section 5;

“dumping margin” means the difference between the export price and the normal value;

“export price” means the price at which a like product is introduced into the commerce of Mauritius;

“GATT 1994” means the General Agreement on Tariffs and Trade 1994 of the WTO;

“government”, in relation to any country other than Mauritius, means the government of that country and includes any provincial, state, municipal or other local or regional government in that country or any person, agency or institution acting for, or on behalf of, or under, the authority of any law passed by that government;

“hearing” means a hearing in respect of an investigation;

“importer” has the same meaning as in the Customs Act;

“injury” means –

- (a) in anti-dumping and countervailing investigations, material injury to a Mauritian industry, threat of material injury to a Mauritian industry or material retardation of the establishment of a Mauritian industry;

- (b) in safeguard investigations, serious injury or a threat of serious injury to a Mauritian industry;

“interested party” means –

- (a) the exporter or foreign producer of the investigated product;
- (b) the importer of the investigated product;
- (c) a trade or business association, a majority of the members of which are producers, exporters or importers of the investigated product;
- (d) the government of the exporting country;
- (e) the producer of the domestic like product in Mauritius;
- (f) a trade and business association, a majority of the members of which produce the domestic like product in Mauritius;
- (g) any other natural or legal person that has indicated an interest in participating in an investigation and any other person that the Authority determines to have sufficient interest in the outcome of an investigation,

provided that in safeguard investigations, parties under paragraph (a), (b), (c), (e) or (f) shall only be regarded as interested parties if they have declared their interest to participate in an investigation within a reasonable time, and, with respect to paragraph (d), provided that the government has a substantial interest in the matter;

“investigated product” means the product subject to an anti-dumping, countervailing or safeguard investigation as described in a notice of initiation of an investigation;

“investigation” means –

- (a) an anti-dumping investigation;
- (b) a countervailing investigation; or
- (c) a safeguard investigation;



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“like or directly competitive product”, for the purpose of a safeguard investigation, means a product which is identical, that is alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration; or in the absence thereof, another product that competes directly with the subject product;

“like product”, for the purpose of an anti-dumping or countervailing investigation, means a product which is identical or alike in all respects to the 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;

“margin of dumping” means the difference between the normal value and the export price of a product after all adjustments have been made to both values;

“margin of subsidy” means the totality of all subsidies determined on a per-unit basis and divided by the export price;

“member”, in relation to the Authority, means a person appointed under section 7(2);

“Minister” means the Minister responsible for the subject of international trade;

“negligible” means –

- (a) in the context of an anti-dumping investigation, the volume of dumped imports of an investigated product from a particular country which is found to account for less than 3 per cent of total imports of the investigated and like product in Mauritius, unless imports of the investigated product from all countries under investigation which individually account for less than 3 per cent of the total imports of the investigated and like product in Mauritius collectively account for more than 7 per cent of imports of the investigated and like product in Mauritius;

- (b) in the context of a countervailing investigation, the volume of subsidised imports of an investigated product from a particular developing country which is found to account for less than 4 per cent of total imports of the investigated and like product in Mauritius, unless imports of the investigated product from all developing countries under investigation which individually account for less than 4 per cent of the total imports of the investigated and like product in Mauritius collectively account for more than 7 per cent of imports of the investigated and like product in Mauritius;

“normal value” means the price at which a like product is sold when destined for consumption in an exporting country;

“ordinary course of trade” means those commercial transactions which reflect market conditions in the country of export and which have been customarily conducted within a representative period between independent buyers and sellers;

“producers” includes manufacturers and growers;

“public notice” means a notice published in the Gazette, in a newspaper, in electronic form or through any other technological means or in such other manner as the Authority may determine;

“quota” means a volume-based safeguard measure imposed to regulate the volume of imports of the subject product that may enter into Mauritius in any given period;

“register” means the register of investigations referred to in section 59;

“serious injury”, in relation to a safeguard investigation, means a significant overall impairment of the domestic industry;

“specific subsidy” means a subsidy which is specific to an enterprise, a group of enterprises, an industry, a group of industries, or a geographical area;

“staff” means the staff of the Authority appointed under section 10;

“subsidy” means –

- (a) a financial contribution by a government of a country other than Mauritius that confers a benefit to persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export or import of goods but does not include the amount of any duty or internal tax imposed on goods by the government of the country of origin or country of export from which the goods, because of their exportation, have been exempted or have been or will be relieved by means of a refund or drawback; or
- (b) any form of income or price support within the meaning of Article XVI of the GATT 1994,

provided a benefit is conferred;

“tariff quota” means a safeguard measure providing for a quota within which a determined customs duty shall apply, with a different customs duty applying to goods imported outside of such quota;

“undertaking” means a voluntary undertaking by –

- (a) a producer or an exporter in an anti-dumping investigation to eliminate the margin of dumping or the injury caused by such dumping; or
- (b) a producer, an exporter or the government of the exporting country in a countervailing investigation to eliminate the margin of subsidy or the injury caused by subsidised exports;

“Vice-chairperson” means the Vice-chairperson of the Authority;

“WTO” means the World Trade Organization.

### **3. Particular market situation**

A particular market situation may be deemed to exist in an anti-dumping investigation where, inter alia –

- (a) prices are artificially low;

- (b) there is significant barter trade;
- (c) as a result of government intervention production costs are not representative of actual costs;
- (d) the product sold in the exporting country is a by-product or a waste product in that country, yet constitutes a primary product in Mauritius; or
- (e) there are non-commercial processing arrangements.

#### **4. Producer deemed to be related to exporter or importer**

A producer in a trade remedy investigation shall be deemed to be related to an exporter or an importer, where –

- (a) the producer directly or indirectly controls the importer or exporter, as the case may be;
- (b) the importer or exporter, as the case may be, directly or indirectly controls the producer;
- (c) the producer and the importer or exporter, as the case may be, are directly or indirectly controlled by a third person; or
- (d) the producer and the importer or exporter, as the case may be, 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.

#### **5. Meaning of “domestic industry”**

- (1) In this Act –
  - “domestic industry” means, in relation to –
    - (a) an anti-dumping or countervailing investigation, the domestic producers, as a whole, of like products, or those domestic producers whose collective output of like products constitutes a major proportion of the total domestic production of these like products; and

- (b) a safeguard investigation, the domestic producers as a whole of the like or directly competitive products, or those domestic producers whose collective output of the like or directly competitive products constitutes a major proportion of the total domestic production of these products.

(2) Where producers are related to the exporters or importers or are themselves importers of the allegedly dumped or subsidised product, the term “domestic industry” may be interpreted as referring to the rest of the producers.

(3) For the purposes of this Act, an application shall –

- (a) in relation to an anti-dumping or countervailing investigation, be considered to have been made by, or on behalf of, the domestic industry where –
  - (i) it is supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the domestic like product produced by that portion of the domestic industry expressing either support for, or opposition to, the application; and
  - (ii) the domestic producers expressly supporting the application account for not less than 25 per cent of the total production of the domestic like product produced by the domestic industry;
- (b) in relation to a safeguard investigation, be considered to have been made by, or on behalf of, the domestic industry where –
  - (i) it is supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the domestic like or directly competitive product produced by that portion of the domestic industry expressing either support for, or opposition to, the application; and

- (ii) the domestic producers expressly supporting the application account for not less than 25 per cent of the total production of the domestic like or directly competitive product produced by the domestic industry.

(4) The Authority may, in the case of fragmented industries involving an exceptionally large number of producers, determine support and opposition to the application by using a statistically valid sampling technique.

## **6. Application of Act**

This Act shall apply to an investigation initiated on or after the commencement of this Act.

## **PART II – TRADE REMEDIES INVESTIGATING AUTHORITY**

## **7. Establishment of Authority**

(1) There is established for the purposes of this Act a Trade Remedies Investigating Authority.

- (2) The Authority shall consist of –
  - (a) a Chairperson, who shall be the public officer holding the post of Director, Trade Policy;
  - (b) a Vice-chairperson, who shall be a public officer –
    - (i) designated by the Financial Secretary; and
    - (ii) holding a post at the level of director in the Ministry responsible for the subject of finance;
  - (c) a representative of the Ministry responsible for the subject of commerce;
  - (d) a representative of the Ministry responsible for the subject of industry;
  - (e) a law officer designated by the Attorney-General; and

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- (f) a representative of Customs, to be designated by the Director- General.

(3) Every member of the Authority shall be paid such allowance as the Minister may determine.

## **8. Functions of Authority**

The Authority shall –

- (a) investigate any allegation or suspicion of dumping, subsidised imports, or increased imports –
  - (i) on receiving a complaint or information which gives rise to such allegation or suspicion; or
  - (ii) on its own initiative;
- (b) gather, process and evaluate information relating to an allegation or suspicion of dumping, subsidised imports, or increased imports; and
- (c) take such measures as may be necessary and provided for in this Act to prevent or remedy dumping, subsidised imports or increased imports, including the issue of directives and proposals for remedial action.

## **9. Meetings of Authority**

(1) The Authority shall meet as often as is necessary but not less than once every month and at such time and place as the Chairperson deems necessary.

(2) At any meeting of the Authority, 5 members shall constitute a quorum.

(3) In the absence of the Chairperson at a meeting of the Authority, the Vice-chairperson shall act as Chairperson for that meeting.

(4) Everything authorised or required to be done by the Authority shall be decided by a simple majority of the members present and voting.

(5) In the case of an equality of votes at a meeting of the Authority, the person presiding that meeting may cast a deciding vote in addition to his deliberative vote.

(6) The Authority may, for the purpose of conducting its proceedings, make rules that are not inconsistent with this Act.

## **10. Staff of Authority**

(1) The Secretary to Cabinet and Head of the Civil Service may, on the recommendation of the Chairperson, appoint such person as may be required to extend technical, administrative and secretarial assistance to the Authority to enable it to properly discharge its functions.

(2) A person appointed under subsection (1) shall, during the time of his appointment be –

- (a) under the administrative control of the Chairperson; and
- (b) paid such allowance as the Secretary to Cabinet and Head of the Civil Service may determine.

(3) For every investigation, the Chairperson shall appoint a lead investigating officer, who shall be responsible for all coordination on that investigation.

(4) The Chairperson may, with the approval of the Secretary to Cabinet and Head of the Civil Service, appoint an independent professional or a specialised agency to advise the staff on the conduct of an investigation.

(5) A professional or agency appointed under subsection (4) shall be paid such fees or allowances as the Secretary to Cabinet and Head of the Civil Service may approve.

## **11. Impartiality and disclosure of interest**

(1) The Authority, its members and staff shall be impartial and shall perform their functions without fear, favour or prejudice.



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(2) The Chairperson, Vice-chairperson or a member of the Authority shall not –

- (a) engage in any activity that undermines the integrity of the Authority;
- (b) participate in any investigation, hearing or decision concerning a matter in respect of which that person has a financial interest or any similar personal interest;
- (c) make private use of, or profit from, any confidential information obtained in the course of his official functions in the Authority; or
- (d) divulge any information referred to in paragraph (c) to any third party, except as required as part of his functions in the Authority.

(3) If, at any time, it appears to the Chairperson, Vice-chairperson or a member of the Authority that a matter before him concerns his financial or personal interest, he shall –

- (a) immediately and fully disclose that interest –
  - (i) to the Chairperson, in the case of the Vice-chairperson or a member; or
  - (ii) to the Vice-chairperson, in the case of the Chairperson; and
- (b) withdraw from any further involvement in that matter.

## **12. Annual report**

(1) The Authority shall, not later than 90 days after the end of a financial year, submit an annual report on its activities to the Minister.

(2) The Minister shall, at the earliest available opportunity, lay a copy of the annual report of the Authority before the Assembly.

**13. Directions by Minister**

The Minister may, in relation to the exercise of the powers of the Authority under this Act, give such general directions to the Authority, not inconsistent with this Act, as he considers necessary in the public interest and the Authority shall comply with these directions.

**14. Protection from liability**

(1) No action shall lie against the Authority, Chairperson, Vice-chairperson, a member or the staff in respect of any act done or omitted to be done by the Authority, Chairperson, Vice-chairperson, a member or the staff in the execution in good faith, of its or his functions under the Act.

(2) This section shall be in addition to, and not in derogation from, the Public Officers' Protection Act.

**PART III – DUMPING****15. Dumped product**

A product shall be deemed to be dumped where it is imported into Mauritius at a price that is less than its normal value.

**16. Imposition of anti-dumping measures**

Subject to this Act, an anti-dumping measure may be imposed on products imported into Mauritius where it is determined, pursuant to an investigation, that –

- (a) the investigated product is dumped;
- (b) there is injury to the domestic industry; and
- (c) there is a causal link between the dumped product and injury to the domestic industry.

**17. Determination of normal value based on prices in country of export or origin**

(1) The Authority shall determine the normal value of the investigated product on the basis of the comparable price paid or payable,

in the ordinary course of trade, for the sale of the like product when destined for consumption in the country of export.

(2) Notwithstanding subsection (1), the Authority may determine the normal value on the basis of comparable price paid or payable, in the ordinary course of trade for a sale of the like product when destined for consumption in the country of origin where –

- (a) the investigated product is merely trans-shipped through the country of export;
- (b) the investigated product is not produced in the country of export; or
- (c) there is no comparable price in the country of export.

#### **18. Determination of normal value based on export price to a third country or on constructed value**

(1) Where there is no sale of the like product in the ordinary course of trade in the domestic market of the country of export, or where such sale does not permit a proper comparison due to a particular market situation or the low volume of the sale in the domestic market of the exporting country, the Authority shall determine the normal value of the investigated product on the basis of –

- (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 country of origin plus a reasonable amount for administrative, selling and general costs and for profits.

(2) For the purposes of subsection (1), any sale of the like product destined for consumption in the domestic market of the country of export, or sale to an appropriate third country, shall be considered to be a sufficient quantity for the determination of the normal value where such sale constitutes not less than 5 per cent of the sale of the investigated product to Mauritius.

(3) Notwithstanding subsection (2), the Authority may apply a lower ratio where it is satisfied, based on the evidence submitted by any interested party or otherwise available, that sale at such lower ratio is of sufficient magnitude to provide for a proper comparison.

### **19. Sale not made in the ordinary course of trade**

(1) (a) The Authority may treat any sale of the like product in the domestic market of the exporting country, or a sale to a third country at a price below unit cost of production, including administrative, selling and general costs as not being in the ordinary course of trade by reason of price.

(b) For the purposes of paragraph (a), unit cost of production shall include both fixed and variable costs of production.

(2) For the purpose of subsection (1), the Authority may disregard a sale in determining the normal value where such sale was made –

- (a) within an extended period of time of not less than 180 days;
- (b) in substantial quantities; and
- (c) at a price that does not provide for the recovery of all costs within a reasonable period of time.

(3) For the purpose of this section, sale below cost shall be considered as made in substantial quantities where –

- (a) the weighted average selling price of the transaction under consideration for the determination of the normal value is below the weighted average cost; or
- (b) the volume of sale below cost represents not less than 20 per cent of the volume sold in transactions under consideration for the determination of the normal value.

(4) Where prices which are below cost at the time of sale are above the weighted average cost for the period of investigation, the Authority shall consider such prices as providing for recovery of costs within a reasonable period of time.

(5) A sale may be treated as not having been made in the ordinary course of trade for reasons other than being made below cost, including on the basis of a sale to related parties, non-commercial volumes, a particular market situation in the exporting country, or other basis as may be prescribed.

## **20. Calculation of costs**

(1) The Authority shall, in the normal course of things, calculate costs on the basis of records kept by the exporter or producer under investigation, provided that such records –

- (a) are in accordance with the generally accepted accounting principles of the exporting country;
- (b) reasonably reflect the costs associated with the production and sale of the like product; and
- (c) are historically based.

(2) The amount for administrative, selling and general costs and for profits shall, in the normal course of things, be based on actual data pertaining to production and sale in the ordinary course of trade of the like product by the exporter or producer under investigation.

(3) Where the amount of costs and profits cannot be calculated in accordance with subsection (2), the amount may be determined on the basis of –

- (a) the actual amount incurred and realised by the exporter or producer in respect of production and sale in the domestic market of the country of origin 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 sale of the like product in the domestic market of the country of origin; or

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

(4) The Authority shall consider all available evidence on the proper allocation of costs, including that which is made available by the exporter or producer in the course of the investigation provided that such allocation has 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 costs.

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

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

## **21. Non-market economies**

Where the exporter of an investigated product is an exporter from a non-market economy country, the Authority may, if it considers the methodology for determining normal value to be inappropriate, determine the normal value on the basis of –

- (a) the comparable price paid or payable, in the ordinary course of trade, for the sale of the like product when destined for consumption in an appropriate market economy country;

- (b) the comparable price paid or payable, in the ordinary course of trade, for exports of the like product from an appropriate market economy country to other countries, including Mauritius;
- (c) the price actually paid or payable in Mauritius for the domestic like product, duly adjusted where necessary to include a profit margin corresponding to the margin to be expected under the existing economic circumstances for the sector concerned; or
- (d) any other reasonable method.

## **22. Determination of export price**

(1) Except as provided for in subsections (2) and (3), the export price shall be the price actually paid or payable for the investigated product when sold for export from the exporting country to Mauritius.

(2) Where there is no export price or where it appears to the Authority that the export price is unreliable due to an association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be determined –

- (a) on the basis of the price at which the imported products are first resold to an independent buyer; or
- (b) where the products are not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as the Authority may consider appropriate.

(3) Where the Authority determines the normal value on the basis of the country of origin pursuant to section 17(2), the export price shall be the price actually paid or payable for the investigated product when sold for export in the country of origin.

**23. Comparison between normal value and export price**

(1) The Authority shall make a fair comparison between the export price and the normal value at the same level of trade, normally at the ex-factory level, and in respect of sales made at, as nearly as possible, the same time, due allowance being made in each case, on its own merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are demonstrated by interested parties to affect price comparability.

(2) Where the export price is determined under section 22(2)(a), the Authority shall make allowances for costs, including duties and taxes, incurred between importation and resale, and a reasonable amount for profits accruing to the importer.

(3) Where price comparability has been affected on an application of subsection (2), the Authority shall determine the normal value at a level of trade equivalent to the level of trade of the determined export price, or shall make such allowance as may be warranted under this section.

(4) The Authority shall indicate to any interested party the type of information which is necessary to ensure a fair comparison and shall not impose an unreasonable burden of proof.

**24. Comparison methods**

(1) The existence of dumping margins shall be determined 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) A normal value determined on a weighted average basis may be compared to prices of individual export transactions where the Authority considers that a pattern of export prices differs significantly among different purchasers, regions or time period.

(3) For the purposes of subsection (2), the Authority shall state the reasons for which such differences cannot be taken into account appropriately by the use of a weighted average-to-weighted average or transaction-to-transaction comparison.



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**25. Currency conversion**

(1) Where the price comparison under sections 23 and 24 requires a conversion of currency, the Authority shall make such conversion based on the rate of exchange prevailing on the date of sale and determined in accordance with section 7 of the Customs Tariff Act.

(2) For the purpose of subsection (1), the date of sale shall be the date of contract, purchase order, order confirmation, or invoice, whichever is later and establishes the material terms of the sale.

(3) Notwithstanding subsections (1) and (2), where a sale of foreign currency on forward markets is used in direct relation to an export sale, the Authority shall use the rate of exchange in the forward sale for all the related transactions.

(4) The Authority shall not take into account fluctuations in exchange rates, and shall allow an exporter not less than 60 days for the export price to be adjusted to reflect sustained movements in exchange rates during the period of investigation.

**26. Individual dumping margin**

(1) The Authority shall, in the normal course of things, determine an individual dumping margin for each known exporter or producer of an investigated product.

(2) Notwithstanding subsection (1), where the number of exporters, producers, importers or type of products involved is so large as to make it impracticable to determine an individual dumping margin for each known exporter or producer of an investigated product, the Authority may limit its examination to –

- (a) a reasonable number of interested parties or types of investigated products by using samples which are statistically valid on the basis of information available at the time of the selection; or

- (b) to the largest percentage of the volume of the exports from the country under reference which can reasonably be investigated.

(3) Any selection of exporters, producers, importers or types of products made under this section shall be made after consultation with the exporters, producers or importers.

(4) Notwithstanding subsections (2) and (3), the Authority shall determine an individual dumping margin for any exporter or producer who voluntarily submits the necessary information in time and in an appropriate format for that information to be considered during the course of the investigation.

(5) For the purpose of subsection (4), where the number of exporters or producers is so large that individual examinations would be unduly burdensome to the Authority and prevent the timely completion of the investigation, the Authority may decline to determine an individual dumping margin on the basis of voluntary submission of information and limit its examination to the exporters and producers in the sample.

#### **PART IV – SUBSIDISATION AND COUNTERVAILING MEASURES**

### **27. Imposition of countervailing measures**

(1) Subject to this Act, a countervailing measure may be imposed on products imported into Mauritius where it is determined, pursuant to an investigation, that –

- (a) the investigated product is subsidised;
- (b) there is injury to the domestic industry; and
- (c) there is a causal link between the subsidised imported product and injury to the domestic industry.

(2) No countervailing duty shall be imposed on any imported product in excess of the total rate of subsidisation of that product from the subsidy programmes found to exist in terms of subsidisation per unit of the product.

(3) A countervailing duty shall apply only to a specific subsidy.

(4) The determination of the existence of a specific subsidy and the amount of that subsidy shall be established in such manner as may be prescribed.

## **PART V – DETERMINATION OF INJURY AND CAUSAL LINK IN DUMPING AND SUBSIDISATION**

### **28. Determination of injury**

A determination of injury for the purposes of sections 16(b) and 27(1)(b) shall be based on positive evidence and involve an objective examination of –

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

### **29. Examination of volume of dumped or subsidised imports and their effects on prices**

(1) With regard to the volume of imports, the Authority shall consider whether there has been a significant increase in dumped or subsidised imports in absolute terms or relative to the production or consumption in Mauritius.

(2) With regard to the effect on the prices of imports, the Authority shall consider whether –

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

(3) Notwithstanding subsections (1) and (2), the Authority may consider such other factors as it deems relevant or necessary in examining the volume of dumped or subsidised imports and their effects on prices.

### **30. Cumulation**

(1) Where imports of a like product from more than one country are the subject of simultaneous anti-dumping or countervailing duties investigations, the Authority may cumulatively assess the effects of such imports on the domestic industry only if it is determined that –

- (a) the amount of dumping or the rate of subsidisation established in relation to the investigated product from each country is more than *de minimis* and the volume of the dumped or subsidised investigated product imported from each country is not negligible; and
- (b) a cumulative assessment of the effects of the imports is appropriate in the light of the conditions of competition between the imports and the conditions of competition between the imports and the domestic like product.

(2) Notwithstanding subsection (1), cumulation may only take place in respect of either anti-dumping or countervailing investigations, and no cross-cumulation may take place between anti-dumping and countervailing investigations.

### **31. Examination of impact of dumped or subsidised imports on domestic industry**

(1) The examination of the impact of dumped or subsidised imports on the domestic industry shall, subject to subsection (2), include an evaluation by the Authority of all relevant economic factors and indices having a bearing on the state of the industry, including –

- (a) actual and potential decline in sale, profit, output, market share, productivity, return on investment, or utilisation of capacity;
- (b) factors affecting domestic prices;

- (c) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments.

(2) In the case of countervailing investigations in respect of agricultural imported products, the Authority shall, in respect of an examination of the impact of subsidised imports on the domestic industry, consider whether there has been an increased burden on government support programmes.

(3) In the case of anti-dumping investigations, the Authority shall consider the magnitude of the dumping margin.

(4) The Authority shall assess the effect of the dumped imports or subsidised imports in relation to the production of the domestic like product when available data allows the separate identification of that production on the basis of, inter alia, the production process and the producers' sales and profits.

(5) Where a separate identification of the production of domestic like product is not possible, the Authority shall assess the effects of the dumped imports or subsidised imports by an examination of the production of the narrowest group or range of products, including the domestic like product, for which the necessary information may be provided.

### **32. Threat of material injury in relation to dumped or subsidised imports**

(1) In making a determination regarding the existence of a threat of material injury in relation to dumped imports, the Authority shall, in addition to the factors set out in sections 29 and 31, consider –

- (a) any significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importations;
- (b) sufficient freely disposable or an imminent, substantial increase in capacity of the exporter indicating the likelihood of substantially increased dumped exports

to the domestic market, taking into account the availability of other export markets to absorb any additional exports;

- (c) whether imports are entering at prices which have a significant depressing or suppressing effect on domestic prices, and are likely to increase demand for further imports; and
- (d) inventories of the investigated products.

(2) In making a determination regarding the existence of a threat of material injury in relation to subsidised imports, the Authority shall, in addition to sections 29 and 31, consider the following –

- (a) the nature of the subsidy in question and the trade effects likely to arise therefrom;
- (b) the significant rate of increase of subsidised imports into the domestic market indicating the likelihood of substantially increased importations;
- (c) sufficient freely disposable or an imminent, substantial increase in capacity of the exporter indicating the likelihood of substantially increased subsidised exports to Mauritius, taking into account the availability of other export markets to absorb any additional exports;
- (d) whether imports are entering at prices which have a significant depressing or suppressing effect on domestic prices, and are likely to increase demand for further imports; and
- (e) inventories of the investigated products.

### **33. Causal link in relation to dumped or subsidised imports**

(1) The Authority shall demonstrate that the dumped or subsidised imports have, through the effects of dumping or subsidisation, caused injury to the domestic industry.

(2) The causal link between the dumped or subsidised imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the Authority.

(3) The Authority shall examine any known factors other than the dumped or subsidised imports which at the same time are injuring the domestic industry, and the injuries caused by those factors shall not be attributed to the dumped or subsidised imports.

- (4) The factors referred to in subsection (3) shall include –
- (a) the volume and prices of imports of the product in question not sold at dumped or subsidised prices;
  - (b) contraction in demand or changes in the patterns of consumption;
  - (c) trade restrictive practices of, and competition between, the foreign and domestic producers;
  - (d) developments in technology; and
  - (e) the export performance and productivity of the domestic industry.

## **PART VI – SAFEGUARD MEASURES**

### **34. Requirements to impose a safeguard measure**

- (1) A safeguard measure shall be imposed where –
- (a) there has been a significant increase in imports;
  - (b) the increase in imports was caused by –
    - (i) developments that were unforeseen at the time Mauritius concluded its WTO concessions; and
    - (ii) the effect of the obligations incurred by Mauritius under GATT 1994, including tariff concessions;
  - (c) the domestic industry producing the like or directly competitive product is experiencing serious injury or a threat of serious injury; and
  - (d) the injury is caused by the increased imports.

(2) No safeguard measure may be imposed on a developing country as long as its share of imports of the investigated product into Mauritius does not exceed 3 per cent, provided that developing countries with less than 3 per cent import share collectively account for not more than 9 per cent of total imports of the investigated product.

(3) Where a developing country excluded from the application of a safeguard measure on the basis of subsection (2) increases its exports subsequent to the imposition of a safeguard measure, imports from such country shall immediately become subject to a safeguard measure if its imports increase to more than 3 per cent of the import share during the original investigation period.

### **35. Injury and causal link in safeguard investigations**

(1) In determining serious injury or a threat of serious injury, the Authority shall evaluate all relevant factors of an objective and quantifiable nature having a bearing on the situation of that industry, in particular, the rate and amount of the increase in imports of the product concerned in absolute and relative terms, the share of the domestic market taken by increased imports, changes in the level of sales, production, productivity, capacity utilisation, profits and losses, and employment.

(2) In addition to the factors set out in subsection (1), the Authority shall consider whether –

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

(3) The Authority shall demonstrate that the increased imports have caused, or threaten to cause, serious injury to the domestic industry.



(4) The causal link between the increased imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the Authority.

(5) The Authority shall examine any known factors, other than the increased imports, which at the same time are injuring the domestic industry, and the injury caused by these factors shall not be attributed to the increased imports.

(6) The factors referred to in subsection (5) shall include –

- (a) contraction in demand or changes in the patterns of consumption;
- (b) trade restrictive practices of and competition between the foreign and domestic producers;
- (c) development in technology;
- (d) the export performance and productivity of the domestic industry; and
- (e) any other factor that contributed to the industry's injury.

## **PART VII – INITIATION OF ANTI-DUMPING AND COUNTERVAILING INVESTIGATIONS**

### **36. Application for anti-dumping or countervailing investigation**

(1) A written application for an anti-dumping or a countervailing investigation may be made to the Authority by, or on behalf of, a domestic industry.

(2) An application under subsection (1) shall include evidence of –

- (a) dumping or subsidy;
- (b) injury; and
- (c) causal link.

**37. Evidence and information required in anti-dumping or countervailing investigation application**

An application under section 36 shall contain –

- (a) the name, address and telephone number of the applicant;
- (b) the identity of the domestic industry by or on behalf of which the application is being made, including the names, addresses and telephone numbers of all other known producers in the domestic industry;
- (c) information relating to the degree of the support of the domestic industry for the application, including –
  - (i) the total volume and value of domestic production of the domestic like product; and
  - (ii) the volume and value of the domestic like product produced by the applicant and by each domestic producer identified;
- (d) a complete description of the allegedly dumped or subsidised product, including the raw materials, production processes, technical characteristics and uses of the product and its current tariff classification number;
- (e) the country in which the allegedly dumped or subsidised product is manufactured or produced and, where it is imported from a country other than the country of manufacture or production, the intermediate country from which the product is imported;
- (f) the name and address of each person the applicant believes sells the allegedly dumped or subsidised product to Mauritius during the most recent twelve-month period;
- (g) in relation to an allegedly dumped product –
  - (i) information on prices at which the product in question is sold when destined for consumption in the domestic market of the country of export or origin;

- 
- (ii) where appropriate, information on the prices at which the product is sold from the country of export or origin to a third country or on the constructed value of the allegedly dumped product and information on export prices;
  - (iii) information on the export price to Mauritius;
  - (iv) where appropriate, information on the prices at which the allegedly dumped product is first resold to an independent buyer in Mauritius, and on any allowable adjustment to determine the ex-factory export price;
  - (v) information on the evolution of the volume of the allegedly dumped imports, the effect of those imports on prices of the domestic like product in the domestic market and the consequent impact of the imports on the domestic industry, as demonstrated by relevant factors and indices having a bearing on the state of the domestic industry; and
  - (vi) information on the existence of a causal link as provided under section 33;
- (h) in relation to an allegedly subsidised product –
- (i) evidence with regard to the existence, amount and nature of each alleged subsidy;
  - (ii) information on the evolution of the volume of the allegedly subsidised imports, the effect of those imports on prices of the domestic like product in the domestic market and the consequent impact of the imports on the domestic industry, as demonstrated by relevant factors and indices having a bearing on the state of the domestic industry; and
  - (iii) information on the existence of a causal link as provided under section 33.

**38. Publication of anti-dumping or countervailing investigation application**

(1) The Authority shall avoid, unless a decision has been made to initiate an anti-dumping or a countervailing investigation, any publicity on the application for the initiation of the investigation.

(2) Notwithstanding subsection (1), the Authority shall promptly notify the authorities of an exporting country of the receipt of an application under section 36.

(3) In countervailing investigations, the Authority shall, before initiating an investigation, invite the authorities of an exporting country for consultations with the aim of –

- (a) clarifying the situation relating to the matters referred to in section 37(h)(i); and
- (b) arriving at a mutually agreed solution.

**39. Withdrawal of anti-dumping or countervailing investigation application before initiation**

A domestic industry may, after making an application under section 36, at any time prior to the initiation of an anti-dumping or a countervailing investigation, withdraw the application.

**40. Initiation of anti-dumping or countervailing investigation**

(1) The Authority shall examine the accuracy and adequacy of the evidence provided in an application to determine whether there is sufficient evidence to justify the initiation of an anti-dumping or a countervailing investigation.

(2) The Authority may seek additional information from an applicant before deciding whether to initiate an anti-dumping or countervailing investigation.

(3) Where the Authority determines that –

- (a) an anti-dumping or countervailing investigation application is made by, or on behalf of, the domestic industry; and

- (b) there is sufficient evidence of –
  - (i) dumping or subsidy;
  - (ii) injury; and
  - (iii) causal link,

the Authority may initiate the investigation.

(4) Where the Authority does not consider it appropriate to initiate an anti-dumping or a countervailing investigation, it shall notify, in writing, the applicant of the reasons for not initiating the investigation.

(5) The Authority shall, within 60 days of the date of receipt of a properly documented written application, decide whether or not to initiate an investigation.

#### **41. Self-initiation of anti-dumping or countervailing investigation**

(1) Notwithstanding section 36, the Authority may, on its own initiative, initiate an investigation without having received a written application by, or on behalf of, the domestic industry.

(2) Where the Authority initiates an investigation under subsection (1), it shall proceed with the investigation where there is sufficient evidence of –

- (a) dumping or subsidy;
- (b) injury; and
- (c) causal link.

#### **42. No anti-dumping or countervailing investigation for negligible infringement**

The Authority shall not initiate an investigation where, from information reasonably available, it determines that –

- (a) there is insufficient evidence of –
  - (i) dumping or subsidisation;
  - (ii) injury; or
  - (iii) causal link;

- (b) the volume of imports of the allegedly dumped product or the actual or potential volume of subsidised product from a country into Mauritius is negligible; or
- (c) the dumping margin or the rate of subsidisation is *de minimis*.

#### **43. Public notification of initiation of anti-dumping or countervailing investigation**

(1) Where the Authority decides to initiate an anti-dumping or a countervailing investigation, it shall –

- (a) notify the initiation of the investigation to the exporters, importers and representative associations of importers or exporters known to the Authority to be concerned, as well as representatives of the exporting country, the applicant, other domestic producers and other interested parties known to the Authority to have an interest therein; and
- (b) give public notice of its decision in the Gazette.

(2) The public notice of the initiation of an investigation under subsection (1) shall contain –

- (a) the name of the country of export and the country of origin of the investigated product;
- (b) a complete description of the investigated product, including the technical characteristics and uses of the product and its current tariff classification number;
- (c) a description of the alleged dumping or subsidy practice to be investigated;
- (d) a summary of the factors on which the allegations of injury and causal link are based;
- (e) the address where information and comments may be submitted;
- (f) the date of initiation of the investigation; and
- (g) the proposed schedule for the investigation.

(3) The initiation of an investigation under subsection (1) shall be effective on the date of the publication of the notice in the Gazette.

#### **44. Disclosure of anti-dumping or countervailing investigation application**

(1) Subject to section 38, the Authority shall, as soon as an anti-dumping or a countervailing investigation is initiated, provide the full non-confidential text of the written application under section 36 to –

- (a) the known exporters, foreign producers and to the authorities of the exporting country; and
- (b) any other interested party, upon request.

(2) Notwithstanding subsection (1), where the number of exporters or foreign producers involved is particularly high, the Authority may provide a copy of the non-confidential text of the written application to the relevant trade association of the exporting country.

### **PART VIII – INITIATION OF SAFEGUARD INVESTIGATIONS**

#### **45. Application for safeguard investigation**

(1) A safeguard investigation may only be initiated by the Authority upon receipt of a written application by, or on behalf of, a domestic industry.

- (2) An application under subsection (1) shall include evidence of –
- (a) unforeseen developments;
  - (b) GATT 1994 obligations;
  - (c) increased imports;
  - (d) injury; and
  - (e) causal link.

**46. Evidence and information required in safeguard investigation application**

An application under section 45 shall contain the following –

- (a) the name, address and telephone number of the applicant;
- (b) the identity of the domestic industry by or on behalf of which the application is being made, including the names, addresses and telephone numbers of all other known producers in the domestic industry;
- (c) information relating to the degree of the support of the domestic industry for the application, including –
  - (i) the total volume and value of domestic production of the domestic like or directly competitive product; and
  - (ii) the volume and value of the domestic like or directly competitive product produced by the applicant and by each domestic producer identified;
- (d) a complete description of the investigated product, including the raw materials, production processes, technical characteristics and uses of the product and its current tariff classification number;
- (e) the name and address of each person the applicant believes sold the investigated product in Mauritius during the most recent twelve- month period;
- (f) information on the unforeseen developments that led to the increase in imports, and the concession Mauritius undertook under GATT 1994 in respect of the investigated product;
- (g) information on serious injury, or threat of serious injury, as contemplated in section 35; and
- (h) information on the existence of a causal link as provided under section 35;



**47. Publication of safeguard investigation application**

The Authority shall avoid, unless a decision has been made to initiate a safeguard investigation, any publicity on the application for the initiation of the investigation.

**48. Withdrawal of safeguard investigation application before initiation**

A domestic industry may, after making an application under section 45, at any time prior to the initiation of an investigation, withdraw the application.

**49. Initiation of safeguard investigation**

(1) The Authority shall examine the accuracy and adequacy of the evidence provided in a safeguard application to determine whether there is sufficient evidence to justify the initiation of the investigation.

(2) The Authority may seek additional information from the applicant before deciding whether to initiate a safeguard investigation.

(3) Where the Authority determines that –

- (a) a safeguard investigation application is made by, or on behalf of, the domestic industry; and
- (b) there is sufficient evidence of unforeseen developments, concessions under GATT 1994, injury and causal link,

the Authority may initiate the investigation.

(4) Where the Authority does not consider it appropriate to initiate a safeguard investigation, the Authority shall notify, in writing, the applicant of the reasons for not initiating the investigation.

(5) The Authority shall, within 30 days of the date of receipt of a properly documented written application, decide whether or not to initiate a safeguard investigation.

**50. Self-initiation of safeguard investigation**

(1) Notwithstanding section 45, the Authority may, on its own initiative, initiate a safeguard investigation without having received a written application by, or on behalf of, the domestic industry.

(2) Where the Authority initiates an investigation under subsection (1), it shall only proceed with the investigation where there is sufficient evidence of increased imports as a result of unforeseen developments and concessions, injury and causal link.

**51. No safeguard investigation for negligible infringement**

The Authority shall not initiate a safeguard investigation where, from information reasonably available, it determines that there is insufficient evidence of unforeseen developments, concessions, increased imports, injury, or causal link.

**52. Public notification of initiation of safeguard investigation**

(1) Where the Authority decides to initiate a safeguard investigation, the Authority shall -

- (a) notify the initiation of the investigation to the importers and representative associations of importers known to the Authority to be concerned, as well as representatives of the exporting countries that have a substantial interest in the product, the applicant, other domestic producers and other interested party known to the Authority to have an interest therein; and
- (b) give public notice of its decision in the Gazette.

(2) The notification and public notice of the initiation of an investigation under subsection (1) shall contain -

- (a) a complete description of the investigated product, including the technical characteristics and uses of the product and its current tariff classification number;
- (b) a description of the alleged unforeseen developments and of the concessions;

- (c) a summary of the factors on which the allegations of increased imports, injury and causal link are based;
- (d) the address where information and comments may be submitted;
- (e) the date of initiation of the investigation; and
- (f) the proposed schedule for the investigation.

(3) The initiation of an investigation under subsection (1) shall be effective on the date of the publication of the notice in the Gazette.

(4) As soon as an investigation under subsection (1) has been initiated through the publication of a notice in the Gazette, the Authority shall inform the WTO Committee on Safeguards of the initiation of the investigation.

### **53. Disclosure of safeguard investigation application**

The Authority shall, as soon as a safeguard investigation is initiated, upon request, provide the full text of the written application under section 45 to any interested party.

## **PART IX – CONDUCT OF INVESTIGATIONS**

### **54. Duration of investigations**

(1) The final determination in an anti-dumping or countervailing investigation shall be published in the Gazette within one year of the initiation of the investigation.

(2) The final determination in a safeguard investigation shall be published in the Gazette within 270 days of the initiation of the investigation.

- (3) Where special circumstances so require –
- (a) the Authority; or

- (b) where the Authority has already addressed a copy of its final determination to the Minister under section 76(4) or 86(7), the Minister,

may extend the period in subsection (1) to not more than 18 months and the period in subsection (2) to not more than 12 months.

(4) Where no final determination is published in the Gazette within the time specified in this section, an investigation shall lapse.

### **55. Customs clearance**

An anti-dumping, countervailing or safeguard investigation or review shall not be a hindrance to customs clearance procedures.

### **56. Confidentiality**

(1) The Authority shall, on good cause shown, keep confidential, information which –

- (a) by nature, is confidential;
- (b) if disclosed, would be of significant competitive advantage to a competitor;
- (c) if disclosed, could have a significant adverse effect on a person supplying the information or on a person from whom the person supplying the information acquired that information;
- (d) was provided on a confidential basis by parties to an investigation.

(2) For the purpose of paragraph (1)(a), the following information shall, by nature, be confidential –

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

- 
- (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.

(3) Any person that requests confidentiality over information shall make such request at the time the information is submitted and give the reasons for which confidential treatment is warranted.

(4) The Authority shall consider a request made under subsection (3) expeditiously and, where it determines that the request for confidential treatment is not warranted, inform the person accordingly.

(5) Notwithstanding subsection (3) but subject to subsection (6), every person shall, together with any information that person furnishes to the Authority, provide a non-confidential summary of the information in respect of which he seeks confidential treatment.

(6) The non-confidential summary referred to in subsection (5) shall be in sufficient detail to provide other interested parties with a reasonable understanding of the nature of the information submitted in confidence.

(7) Where a person who submits information for which confidential treatment is sought is of the opinion that the information cannot be condensed into a non-confidential summary, that person shall provide reasons for his opinion.

(8) Where the Authority rejects the reasons provided under subsection (7), it shall inform the person submitting the information accordingly.

(9) Where the Authority determines that confidential treatment is not warranted under subsection (4) or rejects the reasons provided under subsection (7), it shall give the person providing the information 7 days to provide additional justification for claiming confidentiality.

(10) Where, pursuant to subsection (9), the person does not provide additional justification or the Authority rejects the justification provided, it shall return the information to the person and disregard such information in the investigation.

**57. Sampling**

In cases where the number of exporters, producers, importers or types of products involved is so large as to make a determination impracticable, the Authority may limit its examination to –

- (a) a reasonable number of interested parties or products by using samples which are statistically valid on the basis of information available to it at the time of the selection; or
- (b) the largest percentage of the volume of the exports which can reasonably be investigated from the country in question.

**58. Reliance on information available**

(1) Where, at any time during an investigation, any interested party –

- (a) refuses access to, or otherwise does not provide, necessary information within such time as determined by the Authority; or
- (b) otherwise significantly impedes the investigation,

the Authority may make preliminary and final determinations on the basis of information available.

(2) In making determinations under subsection (1), the Authority shall take due account of any difficulty encountered by any interested party in supplying the information requested.

**59. Register of investigations**

(1) The Authority shall establish and maintain a register relating to each investigation or review made under this Act.

- (2) The Authority shall record in the register –
- (a) all public notices relating to the investigation or review;
  - (b) all relevant materials, including questionnaires, responses to questionnaires, and written communications submitted;

- (c) all other information developed or obtained by the Authority, including any verification report prepared pursuant to section 71 or 83; and
- (d) such other documents which the Authority deems appropriate for public disclosure.

(3) The register shall be available for consultation to the general public at the offices of the Authority at all times during the course of the investigation or review.

## **PART X – ANTI-DUMPING AND COUNTERVAILING INVESTIGATION PROCEDURES**

### **60. Time frame for anti-dumping or countervailing investigation**

The Authority shall, before initiating an anti-dumping or a countervailing investigation, draw up a time frame for the investigation which shall, except in circumstances beyond its control, be followed so as not to cause injustice to any party.

### **61. Gathering of information during anti-dumping or countervailing investigation**

(1) The Authority shall send questionnaires to any person that it believes may have information relevant to an anti-dumping or a countervailing investigation, including known domestic producers, importers, exporters and foreign producers.

(2) (a) The Authority shall, subject to subsection (3), give exporters and foreign producers not less than 30 days from the date of receipt of a questionnaire under subsection (1) to reply to the questionnaire.

(b) A questionnaire under subsection (1) shall be deemed to have been received by a party 7 days after it has been sent to that party or transmitted to an appropriate diplomatic representative where the party is in an exporting country.

(3) Any person who receives a questionnaire under subsection (1) may request for an extension of time and the Authority may grant such extension on good cause shown, taking into account the time limits for investigation.

(4) The Authority may disregard any reply to a questionnaire sent under this section where the questionnaire is not submitted within the time provided or in the form requested.

(5) The Authority may, in the course of an anti-dumping or a countervailing investigation, request further information from any interested party.

(6) A request made under subsection (5) shall state the date by which a reply shall be made.

(7) Any interested party may, on its own initiative, submit in writing any information it considers relevant to an anti-dumping or a countervailing investigation.

(8) The Authority shall consider any information submitted under subsection (7) unless such consideration would be unduly burdensome to the Authority and disrupt the timely progress of an anti-dumping or a countervailing investigation.

(9) The Authority shall base its assessment of dumping or subsidies, injury and causal link on data relating to the period under investigation.

(10) For the purpose of this section –

- (a) the period of investigation, in the case of dumping, shall normally cover a period of one year preceding the date of initiation of the investigation for which data are available;
- (b) the period of investigation, in the case of a subsidy, shall normally cover a period of one year preceding the date of initiation of the investigation;
- (c) the period, in the case of injury, shall normally cover 3 years.



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**62. Preliminary written arguments in respect of anti-dumping or countervailing investigation**

Any interested party may, not later than 15 days before the scheduled date of the preliminary determination, submit written arguments to the Authority concerning any matter relevant to an anti-dumping or a countervailing investigation.

**63. Preliminary determination in anti-dumping or countervailing investigation**

- (1) The Authority shall make a preliminary determination of –
  - (a) dumping or subsidy;
  - (b) injury; and
  - (c) causal link,

not earlier than 60 days, and not later than 250 days after the initiation of an anti-dumping or a countervailing investigation.

(2) A preliminary determination under subsection (1) shall be based on all information available to the Authority at the time of the determination.

(3) The Authority shall address a copy of the preliminary determination under subsection (1) to the Minister and, at the same time, give public notice of the determination.

(4) A preliminary determination under subsection (1) shall contain the findings of fact and law of the Authority, due regard being given to the requirement for the protection of confidential information, and shall include –

- (a) the names of the known exporters and producers of the investigated product;
- (b) a description of the investigated product that is sufficient for customs purposes, including the current domestic tariff classification;

- (c) the amount of the dumping margin or subsidy, if any, found to exist, the basis of the determination and the methodology used in determining normal value, export price, and any adjustments made;
- (d) the factors that have led to the determination of injury and causal link, including information on factors, other than dumped or subsidised imports taken into account; and
- (e) the amount of any provisional measures to be applied and the reasons why such provisional measures are necessary to prevent injury being caused during the investigation.

(5) A copy of a preliminary determination under this section shall be forwarded to the country exporting the investigated product and to all other interested parties.

#### **64. Disclosure after preliminary determination in anti-dumping or countervailing investigation**

The Authority shall, on request made by an exporter or a foreign producer of the investigated product, and within 15 days of the publication of the preliminary determination, hold separate disclosure meetings with the exporter or producer to explain the dumping or subsidy calculations and methodology preliminarily applied for that exporter or producer.

#### **65. Offer of undertaking**

(1) (a) The Authority may suspend an investigation without the imposition of provisional measures, or anti-dumping or countervailing duties, upon acceptance of the offer of an undertaking from an exporter to revise its prices or to cease exports at dumped or subsidised prices or take other measures concerning the injurious effects of the dumping or subsidisation.

(b) In case of subsidy, the undertaking may also be given by the government of the exporting country.

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- (2) Price increases under an undertaking shall –
- (a) not be higher than necessary to eliminate the dumping or subsidisation; and
  - (b) be less than the dumping or subsidy margin where the Authority determines that such lesser price increase would be adequate to remove the injury to the domestic industry.

**66. Acceptance of undertaking**

- (1) The Authority shall not accept an undertaking –
- (a) unless it has made a preliminary affirmative determination of dumping or subsidisation, injury and causal link; and
  - (b) where the undertaking has been made not less than 60 days before the proposed date of final determination.
- (2) The Authority may not accept an undertaking where it is of the opinion that –
- (a) the number of exporters is too large;
  - (b) it is impractical to manage the implementation of the undertaking; or
  - (c) the acceptance of the undertaking is unreasonable.
- (3) Where the Authority does not accept an undertaking, it shall give to the exporter or, where appropriate, the government of the exporting country that offered the undertaking, the reasons for its decision and shall provide the exporter or government an opportunity to make written comments on the decision.
- (4) The Authority may require from any exporter or government from which an undertaking has been accepted periodical information relevant to the fulfilment of the undertaking and to permit verification of pertinent data.

**67. Notification of undertaking**

(1) Where the Authority accepts an undertaking, it shall give public notice of its decision which shall include the non-confidential part of the undertaking and the findings and conclusions of the Authority.

(2) A copy of the public notice in subsection (1) shall be forwarded to the government of the country the products of which are the subject of the undertaking and to any other interested party.

**68. Continuation of investigation**

(1) Notwithstanding the acceptance of an undertaking, the Authority may –

- (a) upon the request of an exporter; or
- (b) where it thinks fit,

complete an anti-dumping or a countervailing investigation.

(2) Subject to subsection (3), where the Authority makes a negative determination of dumping, subsidisation or injury following the completion of an anti-dumping or a countervailing investigation under subsection (1), an undertaking shall lapse.

(3) Where a negative determination made under this section is due, in large part, to an undertaking, the Authority may require that the undertaking be maintained for such reasonable time as it may determine.

(4) Where the Authority makes an affirmative determination of dumping or subsidisation and injury, an undertaking shall continue to be effective.

**69. Violation of undertaking**

(1) Where an undertaking is violated, the Authority may, using the best information available, recommend the application of a provisional measure to the Minister.

(2) Definitive duties may be levied in accordance with this Act on goods entered for consumption not more than 90 days before

the application of provisional measures, except that any such retroactive assessment shall not apply to imports entered before the violation of the undertaking.

#### **70. Review of undertaking**

(1) The Authority may require any party from whom an undertaking has been accepted to provide information relevant to the fulfilment of the undertaking.

(2) The Authority may, on its own initiative, and shall, when requested to do so by an interested party submitting positive evidence justifying the need for a review, initiate a review of any undertaking given and accepted under this Part and shall complete that review within 12 months of its initiation.

(3) An undertaking given and accepted under this Part shall automatically lapse after 5 years from the date that is the later of –

- (a) the date of acceptance of the undertaking; or
- (b) where a review carried out under subsection (2) has been completed, the date of the initiation of that review, unless, at that date, the undertaking was already the subject of a review under subsection (2).

#### **71. Verification of information in anti-dumping or countervailing investigation**

(1) (a) Where, in an anti-dumping or a countervailing investigation, the Authority intends to base itself on information supplied by an interested party to make its findings, it shall verify the accuracy of that information.

(b) Paragraph (a) shall not apply in the case of negligible infringement under section 42.

(2) For the purpose of subsection (1), the Authority may, after receiving an application under section 36 but before the initiation of an anti-dumping or countervailing investigation, conduct such on-site inspection as it deems necessary at the premises of a domestic producer or an interested party.

(3) Where the Authority conducts an on-site inspection under subsection (2), it shall, as soon as practicable after the inspection, issue a full verification report and a non-confidential version thereof to the domestic producer or interested party, as the case may be.

(4) Within 7 days of the date of a full verification report under subsection (3), a domestic producer or an interested party, shall provide the Authority with comments on the accuracy of the full verification report and the contents of the non-confidential version thereof.

(5) After the time specified in subsection (4) has lapsed, the Authority shall place a copy of the non-confidential version of the verification report on the register.

## **72. Written arguments in anti-dumping or countervailing investigation**

(1) In an anti-dumping or a countervailing investigation in which no hearing is requested, any interested party may, not later than 45 days before the date proposed for the final determination of the Authority, submit written arguments on any matter it considers relevant to the investigation.

(2) In an anti-dumping or a countervailing investigation in which a hearing is held, any interested party may, not later than 10 days before the hearing, submit written arguments concerning any matter it considers relevant to the investigation.

(3) Any interested party that participated in a hearing relating to an anti-dumping or a countervailing investigation may, within 10 days of the hearing, submit further written arguments in response to arguments and information presented at that hearing.

## **73. Hearings in anti-dumping or countervailing investigation**

(1) The Authority shall, upon request made by an interested party not later than 30 days after publication of the preliminary determination, fix a hearing at which all interested parties may submit information and arguments.

(2) Where no preliminary determination is made, an interested party may request a hearing not later than 90 days prior to the date proposed for the final determination of the Authority.

(3) A hearing shall be held not later than 60 days prior to the date proposed for the final determination of the Authority.

(4) An interested party that intends to appear at a hearing shall notify the Authority, not less than 7 days before the date of the hearing, of the names of its representatives and witnesses who will attend the hearing.

#### **74. Contributions by industrial users and representative consumer organisations**

The Authority shall allow industrial users of an investigated product in Mauritius or representatives consumer organisations to provide information and submit in writing or orally on matters relevant to an anti-dumping or countervailing investigation.

#### **75. Essential facts**

(1) After a hearing and verification of information collected in an anti-dumping or a countervailing investigation and, in any event, not less than 30 days before the proposed date for the final determination, the Authority shall inform all interested parties, in writing, subject to the confidentiality requirements of section 56, of the essential facts under consideration which will form the basis for the final determination.

(2) Interested parties shall, within 7 days of being informed of the essential facts under subsection (1), submit any comment on these facts to the Authority.

#### **76. Final determination in anti-dumping or countervailing investigation**

(1) The Authority shall, in respect of an anti-dumping investigation, make a final determination of dumping, injury and causal link within 180 days of the preliminary determination.

(2) The Authority shall, in a countervailing investigation, make a final determination of subsidy, injury and causal link within 120 days of the preliminary determination.

(3) Subject to section 42, a final determination under this section shall be based on all information obtained by the Authority in the course of an anti-dumping or a countervailing investigation.

(4) The Authority shall address a copy of its final determination to the Minister and, at the same time, give public notice of the determination.

(5) The final determination under subsection (4) shall provide all relevant information which has led to the determination and include –

- (a) the names of the known exporters and producers of the investigated product;
- (b) a description of the investigated product that is sufficient for customs purposes, including the tariff classification;
- (c) the amount of the dumping margin or subsidy, if any, found to exist, the basis of the determination, the methodology used in determining normal value, export price, and any adjustments made, or the methodology used in determining the subsidy margin;
- (d) the factors that have led to the determination of injury and causal link, including information on factors other than dumped or subsidised imports that have been taken into account;
- (e) any other reasons leading to the final determination;
- (f) the reasons for the acceptance or rejection of relevant arguments or claims made by exporters and importers;



- (g) the amount of any anti-dumping or countervailing duty to be imposed, including any consideration relevant to the examination of the domestic interest, and whether a duty less than the dumping margin would be adequate to remove the injury to the domestic industry; and
- (h) the final anti-dumping duty or countervailing duty to be collected with regard to the imports to which provisional measures are applied.

(6) A copy of a final determination under this section shall be forwarded to the government of the country the products of which are subject to such determination and to all interested parties.

#### **77. Disclosure**

On completion of a final determination under this Part, the Authority shall, on request made by an exporter or a producer within 15 days of the publication of the final determination, hold individual disclosure meetings with the exporter or producer to explain the dumping or subsidy calculation methodology finally applied for that exporter or producer.

### **PART XI – SAFEGUARD INVESTIGATION PROCEDURES**

#### **78. Time frame for safeguard investigation**

(1) The Authority shall, before initiation of a safeguard investigation, draw up a time frame for the investigation which shall, except owing to circumstances beyond its control, be followed so as not to cause injustice to any party.

(2) Any interested party that intends to participate in a safeguard investigation shall make itself known to the Authority within 20 days from the date of initiation of the investigation.

#### **79. Gathering of information during safeguard investigation**

(1) The Authority shall send questionnaires to any person that it believes may have information relevant to a safeguard investigation, including known domestic producers and importers.

(2) Any information received after the deadline specified in section 80 shall only be taken into consideration by the Authority in making its final determination under section 86 where the party providing the information has identified itself under section 78(2).

(3) The Authority may, in the course of a safeguard investigation, request further information from any participating interested party.

(4) A request made under subsection (3) shall state the date by which a reply shall be made.

(5) Any participating interested party may, on its own initiative, submit, in writing, any information it considers relevant to a safeguard investigation.

(6) The Authority shall base its assessment of increased imports, injury and causal link on data relating to the period under investigation.

(7) The period in a safeguard investigation to determine whether there was a significant increase in imports shall be –

- (a) not less than 3 and not more than 5 years; and
- (b) not more than 3 years in the case of injury.

## **80. Preliminary written arguments in respect of safeguard investigation**

Any interested party may submit written arguments to the Authority to be taken into consideration in the preliminary determination not later than 30 days after initiation.

## **81. Preliminary determination in safeguard investigation**

(1) The Authority shall, in a safeguard investigation, make a preliminary determination of unforeseen developments, GATT 1994 obligations, increased imports, injury and causal link not later than 120 days after the initiation of the investigation.

(2) A preliminary determination under subsection (1) shall be based on all information available to the Authority at the time of the investigation.

(3) The Authority shall address to the Minister a copy of the preliminary determination under subsection (1) and, at the same time, give public notice thereof.

(4) A preliminary determination under subsection (1) shall contain the findings of fact and law of the Authority, due regard being given to the requirement for protection of confidential information and shall include –

- (a) a description of the investigated product that is sufficient for customs purposes, including the current domestic tariff classification;
- (b) the unforeseen developments and GATT 1994 concessions that led to the increase in imports, as well as information on the increase in imports;
- (c) the factors that have led to the determination of increased imports, injury and causal link, including information on factors, other than the increased imports taken into account; and
- (d) the amount of any provisional measures to be applied and the reasons why such provisional measures are necessary to prevent injury during the investigation.

(5) A notice, including a copy of a preliminary determination made under this section shall be submitted to the WTO Committee on Safeguards before any provisional safeguard measure is imposed.

(6) A copy of a preliminary determination made under this section shall be provided to all participating interested parties.

## **82. Consultations after preliminary determination in safeguard investigation**

(1) The Authority shall allow consultations on a provisional measure under section 81 by countries having a significant interest in the investigated product.

(2) Countries shall enter into consultations under subsection (1) not later than 30 days after the notice under section 81(5) has been submitted to the WTO Committee on Safeguards.

### **83. Verification of information in safeguard investigation**

(1) Where, in a safeguard investigation, the Authority intends to base itself on information supplied by an interested party to make its findings, it shall verify the accuracy of that information.

(2) For the purpose of subsection (1), the Authority may, after receiving an application under section 45 but before the initiation of a safeguard investigation, conduct such verification visit as it deems necessary at the premises of a domestic producer or of a participating interested party in Mauritius that has cooperated during the investigation.

### **84. Written arguments in safeguard investigation**

(1) In a safeguard investigation in which no hearing is requested, any interested party may, not later than 60 days before the date proposed for the final determination of the Authority, submit written arguments on any matter it considers relevant to the investigation.

(2) In a safeguard investigation in which a hearing is held, any interested party may, not later than 10 days before the hearing, submit written arguments concerning any matter it considers relevant to the investigation.

(3) Any interested party that participated in a hearing relating to a safeguard investigation may, within 7 days of the hearing, submit further written arguments in response to arguments and information presented at that hearing.

### **85. Hearings in safeguard investigation**

(1) The Authority shall, in respect of a safeguard investigation, hold a public hearing not later than 60 days before the proposed date for the final determination.

(2) Any participating interested party may make presentations on any issue it deems relevant at the public hearing under subsection (1).

(3) Subject to approval by the Authority, any party other than a participating interested party may make presentations related to public interest in the investigation at the public hearing under subsection (1).

(4) Any party that intends to appear at the public hearing under subsection (1) shall, not less than 7 days before the date of the hearing, notify the Authority of the names of its representatives and witnesses who will attend the hearing.

### **86. Final determination in safeguard investigation**

(1) The Authority shall, in respect of a safeguard investigation, make a final determination of increased imports, injury and causal link within 150 days of the preliminary determination.

(2) The final determination under subsection (1) shall be based on all information obtained by the Authority in the course of the safeguard investigation.

(3) Where the final determination under subsection (1) is a decision not to impose a definitive safeguard measure, the Authority shall publish that decision in the Gazette.

(4) Where the Authority proposes to impose a definitive safeguard measure, it shall notify the WTO Committee on Safeguards of –

- (a) the final injury determination; and
- (b) any proposed safeguard measure.

(5) The Authority shall provide for consultations with governments of countries that have a significant interest in the investigated product to discuss the form, level, duration and liberalisation of the proposed safeguard measure.

(6) The consultations under subsection (5) shall be finalised within not more than 30 days from the date the proposed measure was notified to the WTO Committee on Safeguards.

(7) Following consultations under subsection (5), the Authority shall make its final determination in the form of a recommendation to the Minister.

(8) The Authority shall give notice of its final determination under subsection (7) in the Gazette.

(9) The notice in subsection (8) shall provide a summary of the information which has led to the determination and include –

- (a) an overview of the factors that have led to the determination of unforeseen developments, increased imports, injury and causal link; and
- (b) the proposed safeguard measure, including its form, level, duration and liberalisation schedule.

(10) The Authority shall prepare a report setting out in detail all relevant issues of fact and law considered in the final determination made under subsection (7).

(11) A copy of the notice under subsection (8) and the report under subsection (10) shall be forwarded to the WTO Committee on Safeguards and all participating interested parties.

## PART XII – CONCLUSION OF INVESTIGATION

### **87. Withdrawal of application after initiation**

(1) An application made under section 36 or 45 may be withdrawn at any time after an investigation has been initiated.

(2) Where an application has been withdrawn under subsection (1), the Authority shall terminate the investigation unless it determines that it is in the public interest to continue that investigation.

### **88. Termination for insufficient evidence, *de minimis* or negligible volume**

(1) An investigation shall be terminated at any time where the Authority is satisfied that there is insufficient evidence of –

- (a) dumping, subsidy or increased imports;

- (b) injury; or
- (c) causal link.

(2) The Authority may terminate an investigation where it determines that the dumping margin or the amount of subsidy is *de minimis*, or that the volume of dumped or subsidised imports, actual or potential, is negligible.

(3) The Authority may terminate an investigation where it determines that the injury to the domestic industry is negligible.

### **89. Public notice of conclusion of investigation without imposition of measures**

(1) The Authority shall issue a public notice and a report of the conclusion of an investigation.

(2) For the purpose of subsection (1), a public notice shall, in the case of an anti-dumping or a countervailing investigation, give an overview of the findings on pertinent issues, including –

- (a) the margin of dumping or the margin of subsidy found;
- (b) injury;
- (c) causal link; and
- (d) any definitive measure to be imposed.

(3) For the purpose of subsection (1), a public notice shall, in the case of a safeguard investigation, give an overview of the findings on pertinent issues, including –

- (a) the unforeseen developments found;
- (b) the GATT 1994 obligations incurred by Mauritius;
- (c) increased imports;
- (d) injury;
- (e) causal link; and
- (f) any definitive measure to be imposed, including the form, duration, level and liberalisation thereof.

(4) A report under subsection (1) shall give details of the findings and conclusions reached on all issues of fact and law which the Authority considered material, including the matters of fact and law which led to arguments being accepted or rejected.

### **PART XIII – PROVISIONAL MEASURES**

#### **90. Imposition of provisional measures**

(1) Upon receipt of a preliminary determination from the Authority under section 63(3) or 81(3), the Minister may, where he considers that the imposition of a provisional measure is necessary to prevent injury from being caused during the course of an investigation, make a preliminary determination of –

- (a) dumping, subsidy or increased imports;
- (b) injury; and
- (c) causal link.

(2) Where the Minister makes a preliminary determination under subsection (1), the Minister responsible for the subject of finance may impose a provisional measure pursuant to section 4(g) of the Customs Tariff Act.

#### **91. Security for provisional measures**

(1) For the purpose of section 90(2), an importer may furnish a security to the Director-General in accordance with section 39 of the Customs Act.

(2) The security under subsection (1) shall not be greater than the estimated dumping or subsidy margin set out in the preliminary determination made by the Minister under section 90(1), or, in the case of a safeguard investigation, the estimated amount required to prevent further injury to the domestic industry during the course of the investigation.

#### **92. Duration of application of provisional measures**

(1) A provisional anti-dumping measure shall apply for a period of not more than 180 days.



(2) At the request of exporters representing more than 50 per cent of the trade involved, a provisional anti-dumping measure may be extended by the Minister to a period not exceeding 270 days.

(3) A provisional countervailing measure shall apply for a period of not more than 120 days.

(4) A provisional safeguard measure shall apply for a period of not more than 200 days, and shall be counted as part of the overall duration of a safeguard measure.

#### **PART XIV – IMPOSITION AND COLLECTION OF ANTI-DUMPING AND COUNTERVAILING DUTIES**

##### **93. Lesser duty rule**

(1) The Authority shall examine whether a duty less than the full dumping or subsidy margin shall be adequate to remove the injury to the domestic industry.

(2) Where the Authority determines that a lesser duty shall be adequate to remove the injury, the Minister may, in turn, determine that the amount of the final anti-dumping duty or countervailing duty imposed shall not exceed that lesser duty.

(3) Where the Minister makes a determination under subsection (2), the Minister responsible for the subject of finance shall, pursuant to section 4(g) of the Customs Tariff Act, impose a lesser duty.

##### **94. Definitive anti-dumping or countervailing duty**

(1) Upon receipt of a determination from the Authority under section 76(4), the Minister may, in turn, make a determination of whether or not to impose a definitive anti-dumping or countervailing measure.

(2) Any amount of the anti-dumping or countervailing duty determined under subsection (1) shall not exceed the dumping margin or the amount of subsidy determined by the Authority.

(3) An anti-dumping or countervailing duty shall take the form of an ad valorem or specific duty imposed by the Minister responsible for the subject of finance pursuant to section 4(g) of the Customs Tariff Act.

(4) (a) In respect of the import from all sources of any product destined for use on the local market, an anti-dumping or countervailing duty shall be collected on a non-discriminatory basis where the product is found to be dumped or subsidised and causing injury.

(b) Paragraph (a) shall not apply to imports from companies or countries from which a price undertaking is accepted.

(5) Subject to subsection (6), the Authority shall establish an individual anti-dumping duty or countervailing duty for each known exporter or producer of dumped or subsidised imports.

(6) Where the Authority limits its examination in accordance with section 57, any anti-dumping duty or countervailing duty applied to imports from exporters or producers not included in an examination shall not exceed the weighted average dumping margin or subsidy established with respect to the selected exporters or producers, provided that the Authority shall disregard any zero margin, *de minimis* margins and margins established under section 42.

(7) Except where the Authority initiates an investigation under section 41, it shall apply individual duty to imports from any exporter or producer that is not included in an examination but that has provided the necessary information during the course of an investigation.

(8) The Authority may apply a residual anti-dumping or countervailing duty rate for imports from exporters and producers not known to the Authority at the time the final determination was made.

(9) The residual anti-dumping duty rate in subsection (8) shall not exceed a rate higher than the difference between the highest normal value and the lowest export price established for exporters and producers examined during the investigation.

(10) The residual countervailing duty rate in subsection (8) shall not exceed the sum of the highest subsidy amounts found in respect of each subsidy programme.

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**95. Refund of duties paid in excess of dumping margin or rate of subsidisation**

(1) Where the Authority determines that the dumping margin or the actual rate of subsidisation on the basis of which duties were paid has been eliminated or reduced to a level which is below the level of the duty in force, it shall make a recommendation to the Minister that an importer subject to an anti-dumping or countervailing duty be granted a refund of duty.

(2) Where the Minister approves a recommendation made under subsection (1), the importer shall submit an application for the refund to Customs in accordance with section 23 of the Customs Act.

(3) Except where there are related pending judicial review proceedings, a refund of duties paid in excess of the actual dumping margin or subsidy shall take place within 12 months, and in no case more than 18 months, after the date on which an application for a refund was made.

**96. Suspension of anti-dumping or countervailing measures**

Where, on the recommendation of the Authority, the Minister so approves, any measure imposed under this Part may be suspended for a specified period where –

- (a) there is a temporary change in market conditions; and
- (b) it is determined that the continued application of the measure is not in the public interest.

**97. Application of anti-dumping or countervailing measures**

Except as provided in sections 69 and 98, provisional measures and anti-dumping duty or countervailing duties shall apply to products that enter into Mauritius for consumption on or after the date of publication of an affirmative preliminary or final determination in an investigation or review conducted under this Act.

**98. Retroactive application of definitive anti-dumping or countervailing duties**

(1) A definitive anti-dumping duty shall be collected on products which entered into Mauritius for consumption not more than 90 days before the date of application of provisional measures where, following a determination of the Authority, the Minister is of the opinion that –

- (a) there is a history of dumping which caused injury;
- (b) the importer ought to have been aware that the exporter practised dumping and that such dumping would cause injury; or
- (c) the injury is caused by massive dumped imports of a product in a relatively short time.

(2) A definitive countervailing duty shall be collected on products which entered into Mauritius for consumption not more than 90 days before the date of application of provisional measures where, following a determination of the Authority, the Minister is of the opinion that injury which is difficult to repair is caused by massive imports in a relatively short period of a product benefiting from subsidies.

(3) Where a final determination of injury is made, or in the case of a final determination of a threat of injury, where the effect of dumped or subsidised imports would, in the absence of provisional measures, have led to a determination of injury, anti-dumping or countervailing duties may be levied retroactively for the period for which provisional measures, if any, have been applied.

(4) Subject to subsection (3), where the Authority makes a determination of threat of injury or material retardation, a definitive anti-dumping or countervailing duty may, subject to the concurrence of the Minister, be imposed from the date of the determination of threat of injury or material retardation.

**99. Security and definitive anti-dumping or countervailing duty**

(1) Where a definitive anti-dumping duty or countervailing duty becomes payable under this Act, no security provided under section 91 shall be released unless the duty has been paid.

(2) Where the Authority makes a negative final determination, any security provided during the period of application of the provisional measures shall, subject to the concurrence of the Minister, be released.

**PART XV – IMPOSITION, COLLECTION AND ADMINISTRATION OF SAFEGUARD MEASURES****100. Public interest**

The Authority or the Minister shall examine whether the imposition of a safeguard measure shall be in the interest of Mauritius, due regard being given to the interest of the domestic industry, the situation of domestic competition for the product under investigation, the needs of industrial users and the interest of consumers.

**101. Form and administration of safeguard measure**

(1) A safeguard measure may take the form of a duty, a quota or a tariff quota.

(2) A duty or tariff quota on a product shall be administered by Customs on a non-discriminatory basis on imports of that product from all sources other than those developing countries exempted under subsection (4).

(3) A quota on a product shall be administered by the Minister responsible for the subject of commerce on a non-discriminatory basis on imports of that product from all sources other than those developing countries exempted from its application under subsection (4).

(4) No safeguard measure shall be applied against a product originating in a developing country as long as its share of imports of the product concerned in Mauritius does not exceed 3 per cent of the import volume during the original investigation period, provided that developing countries with less than 3 per cent import share collectively account for not more than 9 per cent of total imports of the product concerned.

**102. Amount of safeguard duty**

(1) The amount of the safeguard duty shall be not more than is necessary to prevent or remedy serious injury and to facilitate adjustment of the domestic industry.

(2) A safeguard duty may take the form of an ad valorem or specific duty or a combination thereof.

(3) A safeguard duty shall be imposed in addition to any customs duty levied on an imported product.

**103. Volume of quota**

(1) Where a safeguard measure is in the form of a quota, that measure shall not reduce the quantity of imports below the level in a recent period which shall be the average of imports in the last 3 representative years for which statistics are available, unless clear justification is given that a different level is necessary to prevent or remedy serious injury.

(2) In cases in which a quota is allocated among supplying countries, the Authority may, subject to the concurrence of the Minister, seek agreement with respect to the allocation of shares in the quota with all countries having a substantial interest in supplying the product concerned.

(3) In cases in which the method set out in subsection (2) is not reasonably practicable, the Authority shall, subject to the concurrence of the Minister, allot to countries having a substantial interest in supplying the product, shares of the total quantity or value of imports of the product based on the proportions supplied by these countries in a previous representative period, due account being taken of any special factors which may have affected or may be affecting the trade in the product.

(4) For the purpose of subsection (3), the previous representative period shall normally be the first 2 of the 3 representative years referred to in subsection (1).

(5) The Authority may, subject to the concurrence of the Minister, depart from subsection (3) provided that consultations under paragraph 3 of Article 12 of the WTO Agreement on Safeguards are conducted under the auspices of the WTO Committee on Safeguards provided for in paragraph 1 of Article 13 of that Agreement, and that clear demonstration is provided to the WTO Committee on Safeguards that –

- (a) imports from certain countries have increased in disproportionate percentage in relation to the total increase of imports of the product concerned in the representative period;
- (b) the reasons for the departure from the provisions of subsection (3) are justified; and
- (c) the conditions of such departure are equitable to all suppliers of the product concerned.

(6) The duration of any measure imposed under subsection (5) shall not be extended beyond a period of 4 years.

(7) No measure contemplated in subsection (5) may be imposed in the case of threat of serious injury.

#### **104. Suspension of safeguard measures**

Where, on the recommendation of the Authority, the Minister so approves, any measure imposed under this Part may be suspended for a specified period where –

- (a) there is a temporary change in market conditions; and
- (b) it is determined that the continued application of the measure is not in the public interest.

#### **105. Application of safeguard measures**

Provisional and definitive safeguard measures shall apply only to products which have entered into Mauritius for consumption on or after the date of publication of an affirmative preliminary or final determination in an investigation or review conducted under this Act.

**106. Definitive collection of provisional safeguard duties**

Where a definitive safeguard measure is imposed, regardless of the form or level thereof, any provisional safeguard duty shall be collected definitively.

**PART XVI – DURATION AND REVIEW OF ANTI-DUMPING  
COUNTERVAILING MEASURES****107. Sunset review**

(1) Subject to subsection (2), an anti-dumping or a countervailing duty shall remain in force as long as and to the extent necessary to counteract the dumping or subsidisation which is causing injury.

(2) (a) Any definitive anti-dumping or countervailing duty shall be terminated not later than 5 years from the date of –

- (i) the imposition of the anti-dumping or countervailing duty; or
- (ii) the most recent review under subsection (3) or section 108.

(b) The Authority shall, not less than 90 days before the date of expiry of an anti-dumping or countervailing duty, give public notice of the impending expiry of the duty.

(3) (a) A sunset review may be initiated before the date of expiry of an anti-dumping or countervailing duty on the initiative of the Authority with the concurrence of the Minister or on a duly substantiated request made by or on behalf of the domestic industry.

(b) An anti-dumping or countervailing duty may remain in force pending the outcome of a review under paragraph (a).

(4) A review under subsection (3) shall be completed within 12 months of the date of its initiation, failing which both the review and the anti-dumping or countervailing measure shall be terminated.



**108. Review for change of circumstances**

(1) The Authority may, subject to the concurrence of the Minister, conduct a review and make a determination under this section.

(2) In conducting a review under this section, the Authority shall –

- (a) consider the need for the continued imposition of an anti-dumping or countervailing duty, on its own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive duty, upon a written request submitted by any interested party; and
- (b) upon request from any interested party, examine whether –
  - (i) the continued imposition of the anti-dumping or countervailing duty is necessary to offset dumping or subsidisation;
  - (ii) the injury would be likely to continue or recur if the anti-dumping or countervailing duty were removed or varied; or
  - (iii) the level and scope of the anti-dumping or countervailing duty is sufficient to provide the domestic industry with protection against dumped or subsidised imports.

(3) Where as a result of a review under this section, the Authority determines that the anti-dumping or countervailing measure is no longer warranted, it shall forthwith be terminated.

(4) A review under this section shall be completed within 12 months of the date of initiation of the review, failing which the review shall be terminated and the measure shall –

- (a) lapse, in the case of reviews under subsections (2)(b)(i) and (ii);
- (b) remain unchanged, in the case of reviews under subsection 2(b)(iii).

**109. New shipper review**

(1) Where a product is subject to anti-dumping or countervailing duties, the Authority shall promptly carry out a review for the purpose of determining individual margins of dumping or subsidy for any exporters or producers in the exporting country that have not exported the product to Mauritius during the period of investigation, provided that these exporters or producers can show that they are not related to any of the exporters or producers in the exporting country that are subject to the anti-dumping or countervailing duties on the product.

(2) A review under this section shall be concluded within the least possible time and in any event, not later than 270 days from initiation.

(3) During a review under this section, no anti-dumping or countervailing duty shall be levied on imports from exporters or producers to which subsection (1) applies.

(4) The Authority shall give public notice of a new shipper review under this section.

**PART XVII – DURATION AND REVIEW  
OF SAFEGUARD MEASURES****110. Duration of safeguard measures**

(1) A safeguard measure shall not be imposed for an initial period exceeding 4 years, which shall include the duration of any provisional safeguard duty that was imposed.

(2) Subject to section 112, the Minister may extend the period under subsection (1).

(3) The total period of application of a safeguard measure including the period of application of a provisional measure, the period of initial application and any extension shall not exceed 10 years.

(4) In order to facilitate adjustment in a situation where the expected duration of a safeguard measure exceeds one year, the measure shall be progressively liberalised at regular intervals during the period of application.

(5) A measure extended under subsection (2) shall not be more restrictive than it was at the end of the initial period, and, where appropriate, shall continue to be liberalised in accordance with subsection (4).

### **111. Mid-term review**

If the duration of the safeguard measure, or any extension thereof under section 110(2), exceeds 3 years, the Authority shall review the measure not later than at its mid-term and, where appropriate, the Authority shall recommend to the Minister the withdrawal of the measure or an increase in the pace of its liberalisation.

### **112. Extension review**

The period specified in section 110(1) may be extended, provided that –

- (a) the Authority has determined in a review finalised before the lapse of a safeguard measure that the measure continues to be necessary to prevent or remedy serious injury;
- (b) there is evidence that the industry is adjusting;
- (c) section 114 is complied with;
- (d) appropriate consultations are held; and
- (e) appropriate WTO notification procedures are followed.

### **113. Reapplication of safeguard measure**

(1) No safeguard measure shall be applied again to the import of a product which has been subject to such a measure, taken after the date of entry into force of the WTO Agreement, for a period of time equal to half of that during which such measure had been previously applied, provided that the period of non-application is at least 2 years.

(2) Notwithstanding subsection (1), a safeguard measure with a duration of 180 days or less may be applied again to the import of a product if –

- (a) at least one year has elapsed since the date of introduction of a safeguard measure on the import of that product; and

- (b) such a safeguard measure has not been applied on the same product more than twice in the 5-year period immediately preceding the date of introduction of the measure.

#### **114. Level of concessions and other obligations**

(1) Where Mauritius proposes to apply a safeguard measure or seek an extension of a safeguard measure, it shall endeavour to maintain a substantially equivalent level of concessions and other obligations to that existing under GATT 1994 between it and the exporting countries that would be affected by such a measure.

(2) Mauritius may, in order to achieve the objective under subsection (1), agree with affected exporting countries on any adequate means of trade compensation for the adverse effects of the measure on their trade.

### **PART XVIII – MISCELLANEOUS**

#### **115. Judicial review**

(1) Any party that is dissatisfied with a final decision of the Minister or Authority may apply to the Supreme Court for a judicial review of the decision.

(2) An application for judicial review under this section shall not operate as a stay of a final decision of the Minister or Authority.

#### **116. Offences**

(1) Any person who, for the purposes of this Act, furnishes to the Authority any information which is false or misleading in a material particular, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 2 years.

(2) Any person who commits an offence under this Act or any regulations made under this Act shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 2 years.

**117. Regulations**

- (1) The Minister may, after consultation with the Authority, make such regulations as he thinks fit for the purposes of this Act.
- (2) Any regulations made under subsection (1) may provide for –
- (a) prescribing anything which is required to be prescribed;
  - (b) the operationalisation of the Act; and
  - (c) the taking of fees and the levying of charges.

**118. Repeal**

The Trade (Anti-Dumping and Countervailing Measures) Act is repealed.

**119. Consequential amendments**

- (1) The Customs Act is amended, in section 23(1), by inserting after paragraph (b), the following new paragraph –
- (ba) it has been determined under section 95(1) of the Trade (Anti-Dumping, Countervailing and Safeguard Measures) Act 2022 that the dumping margin or the actual rate of subsidisation on the basis of which duties were paid has been eliminated or reduced to a level which is below the level of the duty in force;
- (2) The Customs Tariff Act is amended, in section 4, by adding the following new paragraph, the full stop at the end of paragraph (f) being deleted and being replaced by a semicolon –
- (g) impose on any goods, any anti-dumping, countervailing or safeguard measure in addition to the duties specified in the First Schedule, where the Minister responsible for the subject of international trade has determined that such anti-dumping, countervailing or safeguard measure ought to be imposed on these goods under the Trade (Anti-Dumping, Countervailing and Safeguard Measures) Act 2022.

**120. Commencement**

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.

Passed by the National Assembly on the twenty ninth. day of November two thousand and twenty two.

**Bibi Safeena Lotun (Mrs)**  
*Clerk of the National Assembly*

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