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**THE ANTI-DUMPING AND COUNTERVAILING MEASURES
ACT, 2004**

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THE UNITED REPUBLIC OF TANZANIA



No. 1 of 2004

I ASSENT,

BENJAMIN WILLIAM MAKAPA,
*President*14th April, 2004

An Act to make provisions for Anti-Dumping and Countervailing Measures and to provide for its administration and regulation of dumping and subsidies and to provide for related matters.

[.....]

ENACTED by the Parliament of the United Republic of Tanzania.

PART I

PRELIMINARY PROVISIONS

1. This Act may be cited as the Anti-Dumping and Countervailing Measures Act, 2004 and shall come into operation on such date as the Minister may, by Notice published in the *Gazette*, appoint.

Short title
and com-
mence-
ment

2. This Act shall apply to Mainland Tanzania.

Applica-
tion

3. In this Act, unless the context otherwise requires-

Interpre-
tation

“anti-dumping” means any measure the imposition of which leads to the equalization of export price and normal value;

“actionable subsidy” means a category of subsidies which cause injury to the domestic industry;

“Committee” means the Anti-Dumping and Countervailing Measures Advisory Committee established under section 4;

- “countervailing duty” means a special duty levied for the purpose of offsetting subsidy granted directly or indirectly on the investigated product;
- “countervailing measures” means remedies used by the Committee to offset the impact of injurious subsidies;
- “definitive measures” means any measures the imposition of which leads to the conclusion of an investigation by the Committee;
- “domestic industry” means the domestic producers of like products, or those producers whose collective output of the products constitutes a major proportion of the total domestic production of those producers except that where producers are related to the exporters or importers or are themselves importers of the allegedly dumped product, the term “domestic industry” may be interpreted as referring to the rest of the producers;
- “domestic product” means goods or products produced locally which are similar or identical to the investigated product;
- “dumping” in relation to goods means the situation where the export price of goods imported or intended to be imported into Mainland Tanzania is less than the normal value of such goods in the market (country) of origin as determined in accordance with the provisions of this Act, and “dumped product” has a corresponding meaning;
- “export price” means a price paid or payable for an export destined to the Mainland Tanzania;
- “government” means the United Republic of Tanzania in relation to issues pertaining to Mainland Tanzania only;
- “injury” means material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of such industry;
- “initiate” means procedural action by which the Minister formally convenes an investigation provided for under this Act;
- “interested parties” includes-
- (a) an exporter or foreign producer or the importer of a product subject to investigation or a trade or business association with a majority of members who are producers, exporters or importers of such product;
 - (b) the government of the origin of the investigated product;
 - (c) a producer of the like product in the territory or a trade or business association with a majority of the members who produce the like product in the territory; and

(d) any other domestic or foreign party considered to be an interested party by the Committee;

“levy or levied” means the definitive or final legal assessment or collection of a duty or tax;

“investigated product” means goods or products imported into Mainland Tanzania which are the subject of an investigation by the Committee;

“investigated country” means the country of origin of the investigated product;

“like product” means a product which is identical, is like in all respects to the product under consideration, or in the absence of such product, another product which, although not alike in the respects, has characteristics closely resembling those of the product under consideration;

“Minister” means the Minister responsible for trade;

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

“normal value” means the price comparable to the export price, in the ordinary course of trade, for the investigated product when destined for consumption in the investigated country;

“provisional measures” means any measures, either in the form of a provisional duty, a security, a duty guaranteed by a cash deposit or a bond equal to the provisionally estimated margin of dumping;

“subsidy” means a financial contribution or income or price support by Government or Public body that lead to market distortion;

PART II

ESTABLISHMENT OF THE ANTI-DUMPING AND COUNTERVAILING MEASURES ADVISORY COMMITTEE

4. There is hereby established a Committee to be known as the Anti-Dumping and Countervailing Measures Advisory Committee also in its acronym ACMAC.

Establish-
ment of the
Committee

5.-(1) The Committee shall consist of -

- (a) the Chairman;
- (b) one member representing the Ministry responsible for trade;
- (c) one member representing the Ministry of Finance (Treasury);

Composi-
tion of the
Committee

- (d) a legally qualified person representing the Attorney General;
- (e) one member representing the Tanzania Chambers of Commerce Industry and Agriculture;
- (f) one member representing the Confederation of Tanzania Industries;
- (g) one member representing the Tanzania Revenue Authority;
- (h) one member representing the Ministry responsible for Co-operatives and Marketing; and
- (i) one member representing the Ministry responsible for Planning.

(2) The Chairman and members of the Committee shall be appointed by the Minister.

(3) The Minister may, in addition to members under subsection (1), appoint two persons one of whom shall be a woman two persons to be members of the Committee.

(4) The Committee shall elect from amongst its members, a Vice-Chairman who shall serve for the whole period of the tenure of the Committee.

(5) The Director of Trade in the Ministry of Industry and Trade shall be the Secretary of the Committee.

Functions
of the
Committee

6.—(1) The functions of the Committee shall be to-

- (a) advise the Minister generally on the proper implementation of the provisions of this Act;
- (b) advise on urgent measures necessary for the protection of domestic industries from injury caused by dumping or subsidy;
- (c) ascertain whether the investigated product, through the effect of dumping or subsidization, cause or threatens material injury to industry or producer;
- (d) advise the Minister on policy issues related to this Act;
- (e) perform any other duties related to this Act assigned to it by the Minister;

- (f) recommend to the Minister the imposition of anti-dumping or countervailing measures or any other appropriate action; and
- (g) to conduct investigation on such matters as the Minister may determine.

(2) The Committee may establish a subcommittee to assist in the performance of such functions as it may delegate to the subcommittee.

7.—(1) The tenure of office for the Committee shall be three years, except that its members shall be eligible for re-appointment to serve for another term:

Tenure and
conditions
of services

Provided that, no member shall be eligible to serve for more than two consecutive terms.

(2) Members of the Committee shall be paid such remuneration in the course of their meetings and during the period of investigation as the Minister may approve.

8.—(1) The Committee shall meet twice in its ordinary meetings in every calendar year.

Meeting of
the
Committee

(2) Notwithstanding the provisions of sub-section (1), the Committee may hold an extra ordinary meeting at any time, where special circumstances referred to under section 28 occur.

9. The conduct and regulation of the business and affairs of the Committee shall be as provided for in this Act, except that the Committee shall regulate its own procedures.

Committee
may make
its own
procedures

PART III

ANTI-DUMPING AND COUNTERVAILING PROVISIONS

10.—(1) The imposition of anti-dumping or countervailing measures on investigated products imported into Mainland Tanzania shall be made pursuant to investigation initiated and conducted in accordance to this Act.

Principle
of
operation

(2) The anti-dumping measures provided for in subsection (1) shall be imposed after the Committee determines that-

- (a) the investigated product is introduced into Mainland Tanzania market at a price below its normal value;
- (b) the imported products are, through the effects of dumping causing or threatening to cause material injury to Mainland Tanzania industry; and
- (c) there exists a causal link between the injury to the industry and the dumping or subsidization of goods.

(3) The countervailing measures provided for in subsection (1) shall be imposed after the Committee determines that-

- (a) there is a financial assistance of the government or any public body of the exporting country which include-
 - (i) a government practice which involves a direct transfer of funds (such as grants, loans and equity infusion), potential direct transfers of funds or liabilities (loan guarantees);
 - (ii) where government revenue that is otherwise due is not collected;
 - (iii) where a government provides goods or services other than general infrastructure, or purchases goods;
 - (iv) where a government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions illustrated in paragraph (iii) above which would normally be vested in the government and the practice, in no real sense, differs from practices normally followed by governments;
 - (v) where there is any form of income or price support which operates directly or indirectly to distort competition by favouring certain undertakings or the production of certain goods in the exporting country; or
 - (vi) where a benefit is conferred; and
 - (vii) where there is any form of income or price support.

- (b) the support results in the sale of such product for export at a lower price than the comparable price charged for the like product to buyers in the country of origin;
- (c) the support leads to the increase of exports of product into Mainland Tanzania; and
- (d) only specific firms and enterprises or industries are targeted to receive such support.

11.-(1) The normal value of the investigated product shall be established on the basis of the price paid or payable in the ordinary course of trade in the country of export:

Determi-
nation of
normal
value

Provided that, the provisions of subsection (1) shall not apply in cases where the investigated products-

- (a) are not produced in the country of export;
- (b) are merely transhipped through the country of export from the country of origin; or
- (c) have no comparable price for such products in the country of export.

(2) Notwithstanding the provisions of subsection (1), sales made to related customers shall not be considered as made in the ordinary course of trade unless it is demonstrated to the Committee that such sales are made at arms length.

12. Where the Committee upon investigation conducted in accordance with this Act finds that the investigated product is introduced into Mainland Tanzania market at a price below its normal value, the Committee shall conclude that such product is dumped into the country market.

Determi-
nation of
dumping

13.-(1) Where there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country, or where such sales do not permit a proper comparison because of the particular market situation or the low volume of the sales in the domestic market of the exporting country, the margin of dumping shall be determined by-

Where
there are
no sales
or like
products,
etc.

- (a) comparison with a comparable price of the like product when exported to an appropriate third country where such price is representative; or
- (b) comparison with the cost of production in the country of origin plus a reasonable amount for administrative, sale, and any other costs and profits:

Provided that, another ratio may be applied where the evidence submitted by interested parties or otherwise available, demonstrates that domestic sales at such lower ratio are nonetheless of sufficient magnitude to provide a proper comparison.

(2) A price shall be considered as representative under this Act where the sales of the investigated product in a third country constitute less than five percent of the sales of the product in Mainland Tanzania.

Sales not
in ordi-
nary
course of
trade

14.-(1) Sales of the like product in the domestic market of the exporting country; or sales to a third country at prices below per unit fixed and variable costs or production plus sale, general and administration costs may be treated as not being in the ordinary course of trade by reason of price and such sales may be disregarded in determining normal value where the Committee determines that such sales were made:

- (a) within period of one year but not less than six months;
- (b) in substantial quantities; and
- (c) at prices which do not provide for recovery of all costs within a reasonable period of time,
in which case the Committee shall determine in each case what should be considered as a reasonable period of time for the recovery of all costs.

(2) For the purposes of this section, sales below per unit costs shall be considered as made in substantial quantities where the Committee establishes that:

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

15.—(1) Costs of production shall be calculated on the basis of records kept by the exporter or producer under investigation, provided that, such records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the product under consideration.

Calcula-
tion of
cost of
produc-
tion in
exporting
country

(2) The committee 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 allocations have been historically utilized by the exporter or producer, in particular in relation to establishing appropriate amortization and depreciation periods and allowances for capital expenditures and other development costs.

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

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

16.—(1) The amounts of administrative, selling and general costs and of profits under this Act shall be based on actual data pertaining to production and sales in the ordinary course of trade of the like product by the exporter or producer under investigation.

Ascertain-
ing
amounts
of admin-
istrative,
selling
and
general
costs

(2) Where such amounts cannot be determined on this basis, the amounts may be determined on the basis of:

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

Calcula-
tion of
export
price

17. Where there is no export price or where it appears to the Committee that the export price is unreliable because of association or a third party, the export price may be construed on the basis of the price at which the imported products are first resold to an independent buyer, or if the products are not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as the Committee may determine.

Compa-
rison of
export
price and
normal
value
adjust-
ment

18.-(1) A fair comparison shall be made 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.

(2) In making the comparison, due allowance shall be made in each case, on its merits, for differences which affect price comparability, including -

- (a) differences in conditions and terms of sale;
- (b) taxation;
- (c) levels of trade;
- (d) quantities;
- (e) physical characteristics; and
- (f) any other differences which are also demonstrated to affect price comparability.

(3) Where the export price is construed on the basis of the price at which the imported products are first resold to an independent buyer, allowances for costs, including duties and taxes incurred between importation and resale, and for profits arising from importation and distribution shall also be made.

(4) Where price comparability has been affected, the Committee shall establish the normal value at a level of trade of the constructed export price, or shall make due allowance as warranted under this section.

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

19.—(1) Where the price comparison requires a conversion of currencies, such conversion shall be made using the rate of exchange on the date of sale as available from the exporter or from commercial banks in the country of export.

Currency
conver-
sion

(2) The date of sale shall be the date on which the material terms of the sale, the nature of products, quantities and price are established, either in a contract, a purchaser order, and order confirmation of an invoice.

20.—(1) Subject to the provisions of this Act, the existence of margins of dumping during the investigation phase shall be established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all comparable export on a transaction-to-transaction basis.

Margin of
dumping
during the
investi-
gating
phase

(2) A normal value established on a weighted average basis may be compared to prices of individual export transaction if the Committee finds a pattern of export prices which differ significantly among different purchasers, regions or time periods, and if a reasonable explanation is provided as to why such differences cannot be taken into account appropriately by the use of a weighted average-to-transaction comparison.

21.—(1) Where products are not imported directly from the country of origin but are exported to Mainland Tanzania from an intermediate country, the price at which the products are sold from the country of export to Mainland Tanzania shall normally be compared with the comparable price in the country of export.

Determi-
nation of
price of
products
from
interme-
diate
country

(2) A comparison may be made with the price in the country of origin, if the products are merely transshipped through the country of export, or such products are not produced in the country of export, or there is no comparable price for them in the country of export.

22. In an investigation under this Act into allegations of subsidization, the Committee shall advise the Minister to impose countervailing measures where -

Determi-
nation of
injurious
subsidies

- (a) the allegations relate to investigated products which benefit from a subsidy;

- (b) the alleged subsidy is specific to an enterprise or an industry or a group of enterprises or industries, located within a designated geographical area of the granting government, and countervailable within the meaning of this Act; and
- (c) the investigated products are, through, the effect of subsidization, likely to cause material injury to the local industry.

PART IV

DETERMINATION OF INJURY

Examina-
tion of
volume of
dumped
or subsi-
dized
imports
and their
effect on
produ-
ction and
price

23. A determination of injury shall be based on positive evidence and shall involve an objective examination of-

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

Examina-
tion of
volume of
dumped
or subsi-
dized
imports

24. In determining the volume of dumped or subsidized imports, the Committee shall consider whether there has been a significant increase in dumped or subsidized imports, either in absolute or relative terms to production or consumption.

Simulta-
neous
investiga-
tion

25.—(1) The Committee may cumulatively assess the effects of such imports only if they determine that:

- (a) the margin of dumping or subsidization established in relation to the imports from each country is less than two per cent of the export price and the volume of imports from each country is not negligible; and
- (b) a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between the imported products and the conditions of competition between the imported products and the like domestic product.

(2) The volume of dumped or subsidized imports shall normally be regarded as negligible if such imports from a particular country is found to account for less than three per cent of imports of the like product in the country, unless countries which individually account for less than three per cent of the imports of the like product in the country collectively account for more than seven per cent of imports of the like product in the country.

26. The Committee shall base its demonstration of causal relationship between the dumped or subsidized investigated products and the injury to the country industry on an examination of all relevant evidence before the Committee, including-

Causal
link

- (a) the volume and prices of imported products identical to the investigated products which are not under investigation within the meaning of this Act;
- (b) the change in demand or patterns of consumption of the investigated product;
- (c) the existence of trade restrictive practices and competition between the foreign and the producers of the investigated product; and
- (d) the development in technology and the export performance and productivity of the industry.

PART V INITIATION OF INVESTIGATION

27.—(1) An investigation to determine the existence, degree and effect of dumping or subsidization shall be commenced by an application in writing to the Minister.

Applica-
tion for
the initia-
tion of
investiga-
tion

(2) An investigation to determine the existence, degree and effect of any alleged dumping or subsidization may be initiated by-

- (a) a domestic industry; or
- (b) any person on behalf of a domestic industry; or
- (c) a member of the Committee.

(3) Upon receipt of application by or on behalf of an industry, the Minister assisted by the department responsible for trade shall examine the accuracy and adequacy of the evidence provided in the application to determine whether there is sufficient evidence to justify initiation of investigation.

(4) Where the Minister is satisfied that, sufficient evidence exist in favour of an investigation, he shall convene the Committee for that purpose.

Initiation
of investi-
gation by
the
Commi-
tee

28.—(1) The Committee may in special circumstances initiate an investigation without having received a written application by or on behalf of a domestic industry for the initiation of such investigations.

(2) Initiation of investigations shall only proceed if the Committee is satisfied that it has sufficient information of dumping or subsidization and a causal link as provided for in section 26 to justify the initiation of an investigation.

Decision
to initiate
an investi-
gation

29.—(1) The decision on whether or not to initiate an investigation and the evidence of both dumping or subsidization and injury shall be considered simultaneously.

(2) Investigations shall be started on a date not later than the earliest date on which provisional measures may be applied.

Rejection
and termi-
nation of
investiga-
tion

30.—(1) An application for initiation of investigations shall be terminated promptly as soon as the Committee is satisfied that there is not sufficient evidence of either dumping, subsidization or injury to justify proceeding with the case.

(2) Where the Committee determines that -

(a) the margin of dumping or subsidization is insignificant; or

(b) the volume of dumped or subsidized imports, actual or potential; or the injury is negligible,
it shall immediately terminate investigation.

(3) For the purpose of subsection (2) -

- (a) the margin of dumping or subsidization shall be considered to be insignificant if this margin is less than two per cent, expressed as a percentage of the export price;
- (b) the volume of dumped or subsidized imports shall normally be regarded as negligible if the volume of the dumped or subsidized imports from a particular country is found to account for less than three per cent of imports of the like produce in the country unless countries which individually account for less than three per cent of the imports of the like product in the country collectively account for more than seven per cent of imports of the like product in the territory.

31. Investigations shall, except as otherwise provided, be concluded within one year, and in no case more than eighteen months, after their initiation.

Period of investigation

32.—(1) The Committee shall, in ascertaining the volume of dumped or subsidized imports, consider whether there has been an increase of the imports, either in absolute terms or relative to production or consumption of such imports.

Ascertaining the volume of dumped or subsidized imports

(2) In determining the effect of dumped or subsidized imports on prices in the market, the Committee shall ascertain:

- (a) whether there has been a price undercutting of the dumped or subsidized imports as compared to the price of the domestic investigated product;
- (b) whether the effect of such imports depresses prices to a significant degree or prevents to a significant degree, price increase which otherwise would have occurred, or adversely impacts on products of the investigated product;
- (c) whether there is an actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilization of capacity;
- (d) the factors affecting prices of the investigated product;
- (e) the magnitude of the margin of dumping or subsidization; and

- (f) the actual and potential negative effects on cash flow, inventories, employment, wages growth and ability to raise capital on investment.

(3) The producers who are related to the exporters or importers of the product or are themselves importers of the product, shall not be allowed to stop the initiation of an investigation.

Threat of
material
injury

33.—(1) In determining the existence of a threat of material injury the Committee shall consider:

- (a) whether there exists a rate of increase of dumped or subsidized imports into the local market which indicates the likelihood of a substantial increase in importation;
- (b) whether there is a large volume of goods disposable at low prices, or an imminent, substantial increase in the capacity of the exporter, indicating the likelihood of increased dumped or subsidized exports in the territory;
- (c) whether imports are entering the territory market at prices that are likely to have a depressing effect on the territory prices and to increase demand for further imports; and
- (d) inventories of the investigated product.

(2) Where the conclusion from a consideration of the factors provided, for under subsection (1) is in the positive, the Committee shall make a finding that the dumped or subsidized imports present a threat of material injury to the territory market and recommend the imposition of protective measures.

PART VI PROVISIONS RELATING TO EVIDENCE

Notifica-
tion of
interested
parties

34. The Committee shall provide the interested parties to the investigation with notice of the information it requires.

Right to
present
evidence

35.—(1) Interested parties shall have a right to present evidence in writing in respect of the investigation in question.

(2) Where information to be used in an anti-dumping or subsidization investigation is directly requested from the exporters of foreign producers, such exporters or foreign producers shall be given at least thirty days to reply, and such period may be extended for reasonable cause.

(3) For the purposes of subsection (2), the time limit for the exporters or foreign producers shall be counted from the date of receipt of the questionnaire, which for this purpose shall be deemed to have been received one week from the date on which it was sent to them or transmitted to the appropriate diplomatic representative of the exporting country.

36.—(1) As soon as an investigation is initiated, the Committee shall provide the full text of the written application received-

Provision
of infor-
mation
about
investi-
gation

- (a) to the known exporters;
- (b) to the Ministry responsible for foreign affairs, of the exporting country; and
- (c) to other interested parties involved, upon request.

(2) Where a number of exporters involved is particularly high, the full text of the written application shall be provided only to the ministry responsible for foreign affairs of the exporting country or the relevant associations.

(3) Notwithstanding the provision of subsection (2), information, presented in writing by the interested parties may be made available promptly to other interested parties participating in the investigation.

37.—(1) Any information which is by its nature confidential or which is provided on a confidential basis by parties to an investigation shall, upon good cause shown, be treated as such by Committee.

Confide-
ntiality

(2) Where information is provided on a confidential basis by a party to an investigation, unless sufficient cause is shown, such information shall not be disclosed without specific permission of the party submitting it.

(3) Where information is provided under subsection (2), the interested parties providing the confidential information shall furnish on confidential summaries thereof.

(4) Summaries shall be in sufficient detail to permit, understanding of the substance of the information submitted in confidence however, such parties may indicate that such information is not susceptible to summary and in that case a statement of the reasons why summarization is not possible shall be provided.

(5) Where the Committee finds that a request for confidentiality is not warranted and if the supplier of the information is either unwilling to make the information public or to authorize disclosure in generalized on summary form, the authorities may disregard such information unless it can be demonstrated to their satisfaction that the information is correct.

Verifica-
tion of
informa-
tion

38. The Committee may carry out such investigations as may be necessary to verify information provided to it or to obtain further details of the same:

Provided that, such investigations shall be carried out with the prior consent of the producers of the investigated products and the governments of the respective countries.

Investiga-
tion in the
exporting
country

39.—(1) The Committee may, carry out investigations in the exporting country provided that the consent of the representatives of the government of the country in question is notified.

(2) Subject to the requirement for protection of information, the Committee shall make the results of any such investigations available, or shall provide disclosure thereof, to the firms to which they pertain and may make such results available to the applicants.

(3) The Minister may by regulations prescribe procedures for investigation to be carried out by the Committee in the exporting country.

Failure to
provide
informa-
tion
within
reaso-
nable time

40. Where any interested party refuses access to, or otherwise does not provide necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available.

41. The Committee shall, before a final determination is made, inform all interested parties of the essential facts under consideration which form the basis for the decision whether to apply definitive measures; such disclosure shall take place in sufficient time for the parties to defend their interests.

Information about essential facts under consideration

42.-(1) The Committee shall, determine an individual margin of dumping or subsidization for each known exporter or producer concerned of the product under investigation.

Individual margin to be determined for each known exporter or producer

(2) In cases where the number of exporters, producers, or types of products involved is so large as to make such a determination impracticable, the Committee may limit their examination either by 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 to the largest percentage of the volume of the exports know the country in question which can reasonably be investigated.

(3) Any selection of exporters, producers, importers or types of products made under subsection (2) shall preferably be chosen in consultation with the exporters, producers or importers concerned.

(4) Where the Committee limits their examination as provided for under subsection (2), it shall nevertheless determine an individual margin of dumping or subsidization for any exporter or producer not initially selected who submits the necessary information in time for that information to be considered dumping or subsidization in the course of the investigation, except where the number of exporters or producers is so large that individual examinations would be unduly burden to the Committee and would prevent the timely completion of the investigation.

43. In cases where the product is commonly sold at the retail level, industrial users of the product under investigation and representative consumer organizations shall have the right to provide information which is relevant to the investigation regarding dumping, subsidization, injury and causality.

Users and representative to provide information

Difficulty
in supplying
information

44. The Committee shall give due regard of any difficulties experienced by interested parties, in particular small companies, in supplying information requested, and shall provide any assistance practicable.

Procedures
not intended
to prevent
expeditious
proceedings

45. The procedures set out in this Part shall not be construed as intended to prevent the Committee from proceeding expeditiously with regard to initiating an investigation, reaching preliminary or final determinations, whether affirmative or negative, or from applying provisional or final measures, in accordance with relevant provisions of this Act.

PART VII PROVISIONAL MEASURES

Provisional
measures
may be
applied

46. Provisional measures may be applied only if:

- (a) an investigation has been initiated in accordance with the provisions of Part V of this Act, a public notice has been given to that effect and interested parties have been given adequate opportunities to submit information and make comments;
- (b) a preliminary affirmative determination has been made of dumping or subsidization and consequent injury to a domestic industry; and
- (c) the Committee considers such measures necessary to prevent injury being caused during the investigation.

Forms of
provisional
measures

47. Provisional measures may take the form of-

- (a) a provisional duty or, preferably, a security, (cash deposit or bond equal to the amount of the anti-dumping or countervailing duty provisionally estimated), which must not be greater than the provisionally estimated margin of dumping or subsidization; or
- (b) withholding of appraisement, provided that the normal duty and the estimated amount of the anti-dumping or countervailing duty is indicated and as long as the withholding of appraisement is subject to the same conditions as other provisional measures.

48.—(1) Provisional measures shall not be applied sooner than sixty days from the date of initiation of the investigation.

Applica-
tion for
provisi-
onal
measures

(2) The application of provisional measures shall be limited to as short a period as possible, not exceeding four months or, on decision of the Committee upon request by exports representing a significant percentage of the trade involved, to a period not exceeding six months.

(3) Where the Committee in the course of an investigation, determines whether a duty lower than the margin of dumping or subsidization would be sufficient to remove injury, these periods may be increased to six and nine months, respectively.

(4) The provisions of Part IX relating to imposition and collection of anti-dumping or countervailing duties shall be followed in the application of provisional measures.

PART VIII PRICE UNDERTAKINGS

49.—(1) Proceedings may be suspended or terminated without the imposition of provisional measures or anti-dumping or countervailing duties upon receipt of satisfactory voluntary undertakings from any exporter to revise its prices or to cease exports to the area in question at dumped or subsidized prices to the extent that the Committee is satisfied that the injurious effect of the dumping or subsidization is eliminated.

Suspensi-
on or
termina-
tion of
provisi-
onal
measures
or anti-
dumping
or coun-
tervailing
duties

(2) Price increases under such undertakings shall not be higher than necessary to eliminate the margin of dumping or subsidization. It is desirable that the price increases be less than the margin of dumping or subsidization if such increases would be adequate to remove the injury to the domestic industry.

50. Price undertakings shall not be sought or accepted from exporters unless the Committee has made a preliminary affirmative determination of dumping or subsidization and injury caused by such dumping or subsidization.

Prelimi-
nary affir-
mative
determi-
nation to
price
under-
taking

Committee not bound to accept undertaking

51.—(1) The undertakings offered need not be accepted if the Committee consider their acceptance is impractical, because the number of actual or potential exporters is too great, or for other reasons, including reasons of general policy.

(2) Where an offer for undertaking is rejected by the Committee and where practicable, the Committee shall provide to the exporter the reasons which have led them to consider acceptance of an undertaking as inappropriate, and shall, to the extent possible, give the exporter an opportunity to make comments thereon.

Investigation to cease where an undertaking is accepted

52.—(1) Where an undertaking is accepted, the investigation of dumping or subsidization and injury shall cease.

(2) Where an undertaking is accepted, the investigation of dumping or subsidization may nevertheless be completed if the exporter so desires or the Committee so decide and in such a case, if a negative determination of dumping or subsidization is made, the undertaking shall automatically lapse, except in cases where such a determination is due in large part to the existence of a price undertaking; in such cases, the Committee may require that an undertaking be maintained for a reasonable period consistent with the provisions of this Act.

(3) Where an affirmative determination of dumping or subsidization and injury is made, the undertaking shall continue consistent with its terms and the provisions of this Act.

Exporter not bound to accept price undertaking

53.—(1) Price undertakings may be suggested by the Committee but no exporter shall be forced to enter into such undertakings.

(2) The fact that exporters do not offer such undertakings, or do not accept an invitation to do so, shall in no way prejudice the consideration of the case, but the Committee may determine that a threat of injury is more likely to be realized if the dumped or subsidized imports continue.

Periodic information in respect of undertaking

54.—(1) The Committee may require any exporter from whom an undertaking has been accepted to provide periodical information relevant to the fulfillment of such an undertaking and to permit verification of pertinent data.

(2) In case of violation of an undertaking, the Committee may take expeditious actions which may constitute immediate application of provisional measures using the best information available.

(3) Definitive duties may be levied in accordance with this Act on products entered for consumption not more than ninety days before the application of such provisional measures, except that any such retroactive assessment shall not apply to imports entered before the violation of the undertaking.

PART IX

IMPOSITION AND COLLECTION OF ANTI-DUMPING AND COUNTERVAILING DUTIES

55.—(1) The decision whether or not to impose an anti-dumping or countervailing duty in cases where all requirements for the imposition have been fulfilled, and the decision whether the amount of the anti-dumping or countervailing duty to be imposed shall be the full margin of dumping or subsidization or less, shall be made by the Minister on advise of the Committee.

Imposition of anti-dumping or countervailing duties on a product

(2) Where a decision to impose anti-dumping or countervailing duty is made, the duty imposed shall be less than the margin if such lesser duty would be adequate to remove the injury to the domestic.

56.—(1) Where anti-dumping or countervailing duty is imposed in respect of any product, such duty shall be collected in the appropriate amounts in each case, on a non-discriminatory basis on imports of such product from all sources found to be dumped or subsidized and causing injury.

Collection of anti-dumping or countervailing duties imposed on a product

(2) The provisions of subsection (1) shall not apply to imports of a product from a source from which price undertakings have been accepted under the terms set out in Part VIII of this Act.

(3) The Committee shall name the supplier or suppliers of the product in respect of which an anti-dumping or countervailing duty is imposed, except that where-

- (a) several suppliers from the same country are involved and it is impracticable to name all these suppliers, the Committee may name the supplying country concerned;
- (b) several suppliers from more than one country are involved, the Committee may name either all the suppliers involved, or, if this is impracticable, all the supplying countries involved.

Amount
of anti-
dumping
or counter
vailing
duty to be
levied

57.—(1) The amount of anti-dumping or countervailing duty shall not exceed the margin of dumping or subsidization as established under Part III of this Act.

(2) Where the amount of the anti-dumping or countervailing duty is assessed on a retrospective basis, unless an appeal has been made, determination of the final liability for payment of anti-dumping or countervailing duties shall take place as soon as possible, within twelve months, and not more than eighteen months, after the date on which a request for a final assessment of the amount of the anti-dumping or countervailing duty has been made.

(3) Where the amount of the anti-dumping or countervailing duty is assessed on a retrospective basis, provision shall be made for a prompt refund, upon request, to the importer, of any duty paid in less than margin of dumping or subsidization:

Provided that, such refund shall be made promptly and normally in not more than ninety days following the determination of final liability made pursuant to this section, in any case, where a refund is not made within such days, the Committee shall provide an explanation, if so requested.

(4) Where the amount of the anti-dumping or countervailing duty is assessed on a prospective basis, provision shall be made for a prompt refund, upon request to the government of any duty paid in excess of the margin of dumping or subsidization.

(5) A refund under subsection (4) shall be made within twelve months, and in any case not exceeding eighteen months after the date on which a request for a refund, duly supported by evidence, has been made by an importer of the product subject to the anti-dumping or countervailing duty and such refund shall be made within ninety days from the day the decision was made.

58. Where the Committee has limited its examination in accordance with Part VI of this Act, any anti-dumping or subsidization duty applied to imports from exporters or producers not included in the examination shall not exceed:

- (a) the weighted average margin of dumping established with respect to the selected exporters or producers, or
- (b) where the liability for payment of anti-dumping or countervailing duties is calculated on the basis of a prospective normal value, the difference between the weighted average normal value of the selected exporters or producers and the export prices of exporters or producers not individually examined, provided that, the Committee shall disregard for the purpose of this paragraph any zero and insignificant margins and margins established under the circumstances referred to in section 30; or
- (c) the Committee shall apply individual duties or normal values to imports from any exporter or producer not included in the examination who has provided the necessary information during the course of the investigation, as provided for under this Act.

Anti-dumping or countervailing duty where number of exporters, importers, producers, etc. is large

59.-(1) Where a product is subject to anti-dumping duties, the Committee shall promptly carry out a review for the purpose of determining individual margins of dumping or subsidization for any exporters or producers in the exporting country in question who have not exported the product to Mainland Tanzania during the period of investigation:

Anti-dumping or countervailing duties on products within Mainland Tanzania

Provided that, exporters or producers shall be required to prove that they are not related to any of the exporters or producers in the exporting country who are subject to the anti-dumping or countervailing duties on the product.

(2) Such a review shall be initiated and carried out on an accelerated basis, compared to normal duty assessment and review proceedings.

(3) Subject to the provisions of subsection (1), no anti-dumping or countervailing duties shall be levied on imports from such exporters or producers while the review is being carried out, or where the

Committee, withhold appraisement and, or request guarantees to ensure that, should such a review result in a determination of dumping or subsidization in respect of such producers or exporters, anti-dumping or countervailing duties can be levied retroactively to the date of the initiation of the review.

PART X RETROACTIVITY PROVISIONS

When provisional measures and anti-dumping or countervailing duties to apply

60.—(1) Provisional measures and anti-dumping or countervailing duties shall only be applied to products which enter the local market for consumption after the time when the decision made by the Committee following the procedure laid down in Parts V and VI and any other relevant provision of this Act.

(2) Where a final determination of injury, but not of a threat thereof or of a material retardation of the establishment of an industry, is made or, in the case of a final determination of a threat of injury, where the effect of the dumped or subsidized imports would, in the absence of the 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.

(3) Where the definitive anti-dumping or countervailing duty is higher than the provisional duty paid or payable, or the amount estimated for the purpose of the security, the difference shall not be collected, however, if the definitive duty is lower than the provisional duty paid or payable, or the amount estimated for the purpose of the security, the difference shall be reimbursed or the duty recalculated, as the case may be.

(4) Except as provided for under subsection (2), where a determination of threat of injury or material retardation is made and no injury has yet occurred, a definitive anti-dumping or countervailing duty may be imposed only from the date of the determination of threat of injury, or the material deposit made during the period of the application of provisional measures shall be refunded and any bonds shall be released in an expeditious manner.

(5) Where a final determination is negative, any cash deposit made during the period of the application of provisional measures shall be refunded and any bonds shall be released in an expeditious manner.

61.—(1) A definitive anti-dumping or countervailing duty may be levied on products which were entered for consumption not more than ninety days prior to the date of application of provisional measures, when the Committee is satisfied in respect of the dumped or subsidized product that:

Definitive
anti-du-
mping or
counter-
vailing
duty to be
levied

- (a) there is a history of dumping or subsidization which caused injury or that the importer was, or should have been aware that the exporter practices dumping or subsidization and that such dumping or subsidization would cause injury; and
- (b) the injury is caused by massive dumped or subsidized imports of a product in a relatively short time which in light of the timing and the volume of the dumped or subsidized imports and other circumstances such as a rapid build-up of inventories of the imported product is likely to seriously undermine the remedial effect of the definitive anti-dumping or countervailing duty to be applied, provided that the importers concerned have been given an opportunity to comment.

62.—(1) The Committee may, after initiating an investigation, take such measures as the withholding of appraisement or assessment as may be necessary to collect anti-dumping or countervailing duties retroactively, as provided for in section 55 once they have sufficient evidence that the conditions set forth in that section are satisfied.

Other
measures
to be
taken by
the
Commis-
sion

(2) No duties shall be levied retroactively pursuant to section 55 on products entered for consumption prior to the date of initiation of the investigation.

PARTY XI

DURATION AND REVIEW OF ANTI-DUMPING OR COUNTERVAILING DUTIES AND PRICE UNDERTAKINGS

63. Any anti-dumping or countervailing duty shall remain in force only as long as the anti-dumping or subsidization practice continues and to the extent necessary to counteract dumping or subsidization which is causing injury.

Duration
of anti-
dumping
or coun-
tervailing
duty

Review of
anti-
dumping
or coun-
tervailing
duty

64.—(1) The Committee shall review the need for the continued imposition of the duty, where warranted, on their own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive anti-dumping or countervailing duty, upon request by any interested party which submits positive information substantiating the need for a review.

(2) Any interested party shall have the right to request the Committee whether the continued imposition of the duty is necessary to offset dumping or subsidization, whether the injury would be likely to continue or recur if the duty were removed or varied, or both

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

Termina-
tion of
anti-
dumping
or coun-
tervailing
duty

65.—(1) Notwithstanding the provisions of section 61, any definitive anti-dumping or countervailing duty shall be terminated on a date not later than five years from its imposition.

(2) Anti-dumping or countervailing duty shall also be terminated from the date of the most recent review conducted under section 64 if that review has covered both dumping or subsidization and injury, or under this section, unless the committee determine, in a review initiated before that date on their own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of continuation or recurrence of dumping or subsidization and injury.

(3) The duty may remain in force pending the outcome of a review initiated under the provision of subsection (2).

Provisions
of Part VI
on proce-
dure and
evidence
to apply

66. The provisions of Part VI regarding evidence and procedure shall apply to any review carried out under this Act and any such review shall be carried out expeditiously and shall normally be concluded within twelve months of the date of initiation of the review.

Provisions
to apply
to price
under-
taking

67. The provisions of this Part shall apply *mutatis mutandis* to price undertakings accepted under Part VIII.

PART XII

PUBLIC NOTICE AND EXPLANATION OF DETERMINATIONS

68.-(1) Where the Committee is satisfied that there is sufficient evidence to justify the initiation of an anti-dumping or subsidization investigation pursuant to Part V, the investigated country or countries the products of which are subject to such investigation and other interested parties known to have an interest therein shall be notified and a public notice shall be given.

Notifica-
tion of
interested
parties
and public
notice

(2) A public notice of the initiation of an investigation shall contain, or otherwise make available through a separate report, adequate information on the following:

- (a) the name of the exporting country or countries and the product involved;
- (b) the date of initiation of the investigation;
- (c) the basis on which dumping or subsidization is alleged in the application;
- (d) a summary of the factors on which the allegation of injury is based;
- (e) the address to which representations by interested parties should be directed; and
- (f) the time-limits allowed to interested parties for making their views known.

(3) Where the Committee provides information and explanations under the provisions of this section in a separate report, it shall ensure that such report is readily available to the public.

69.-(1) Public notice shall be given on any preliminary or final determination, whether affirmative or negative, of any decision to accept an undertaking pursuant to Part VIII, of other termination of such an undertaking, and of the termination of a definitive anti-dumping or countervailing duty.

Public
notice on
prelimi-
nary
determi-
nation and
other
decisions

(2) Each such notice shall set forth or make available through a separate report, in sufficient detail the findings and conclusions reached on all, issues of fact and law considered material by the committee.

Public
notice on
imposi-
tion of
provisi-
onal
measures

70.—(1) A public notice of the imposition of provisional measures shall set forth, or make available through a separate report, sufficiently detailed explanations for the preliminary determinations on dumping or subsidization and injury and shall refer to the matters of fact and law which have led to arguments being accepted or rejected.

(2) Such a notice or report shall take into consideration the requirement for the protection of confidential information, and shall contain in particular:

- (a) the names of the suppliers, or when this is impracticable, the supplying countries involved;
- (b) a description of the product which is sufficient for customs purposes;
- (c) the margins of dumping or subsidization established and a full explanation of the reasons for the methodology used in the establishment and comparison of the export price and the normal value as provided for under Part III;
- (d) considerations relevant to the injury determination as set out in this Act; and
- (e) the main reasons leading to the determination.

Public
notice on
conclu-
sion or
suspen-
sion of
an investi-
gation

71.—(1) A public notice of conclusion or suspension of an investigation in the case of an affirmative providing for the imposition of a definitive duty or the acceptance of a price undertaking taking into consideration the protection of confidential information shall contain:

- (a) all relevant information on the matter of fact and law, and
- (b) reasons which have led to the imposition of final measures or the acceptance of a price undertaking.

(2) In particular, such a notice or report shall contain the information described in the section on provisional measures, as well as the reasons for the acceptance or rejection of relevant arguments or claims made by the exporters and importers in the course of investigation.

Public
notice on
suspension of an
investigation

72. A public notice of the termination or suspension of an investigation following the acceptance of an undertaking pursuant to Part VIII shall include, or otherwise make available through a separate report, the non-confidential part of this undertaking.

73. The provisions of this Part shall apply *mutatis mutandis* to the initiation and completion of reviews and application of duties retroactively pursuant to Part IX and Part X, respectively.

This Part
to apply
to Parts
IX and X

PART XIII MISCELLANEOUS PROVISIONS

74.—(1) An application for anti-dumping or subsidization action on behalf of a third country shall be made by a relevant authority of the third country requesting action.

Applica-
tion on
behalf of
a third
country

(2) Such an application shall be supported by price information that shows that the imports are being dumped and by detailed information that shows that the alleged dumping is causing injury to the domestic industry concerned in the third country; the government of the third country shall afford all assistance to the Committee to obtain any further information, which the latter may require.

(3) In considering such an application, the Committee shall consider the effects of the alleged dumping or subsidization on the industry concerned as a whole in the third country; that is to say, the injury shall not be assessed in relation only to the effect of the alleged dumping or subsidization on the industry's exports to the importing country or even on the industry's total exports.

(4) The decision whether or not to proceed with a case shall rest with the Committee.

75.—(1) No person shall-

- (a) willfully give false or misleading information to the Committee in contravention of this Act;
- (b) disclose any confidential information provided during the course of investigation without permission from the Committee; and
- (c) without lawful excuse refuse to give information requested by the Committee.

Offence
relating to
informa-
tion

(2) Any person who contravenes the provisions of subsection (1), commits an offence and shall upon conviction be liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding six months or to both, such fine and imprisonment:

Appeals

76. Any person who is aggrieved by a decision of the Committee made under this Act, may appeal to the High Court.

Regulations

77. The Minister may make regulations-

- (a) prescribing dispute settlement procedures under this Act;
- (b) prescribing the manner and procedure for determining actionable and non actionable subsidiary;
- (c) prescribing any other matter which needs to be prescribed under this Act.

Passed in the National Assembly on the 9th February, 2004

KIPENKA M. MUSSA,
Clerk of the National Assembly