

***MODEL
ANTI-DUMPING
LEGISLATION***

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PART I: DEFINITIONS AND PRINCIPLES

Article 1 *Definitions*

For the purposes of this [law]:

(a) the term "[Country] industry"¹ shall mean the domestic producers as a whole of the domestic like product or those of them whose collective output of that product constitutes a major proportion of the total domestic production of that product, except that when producers are related to the exporters or importers or are themselves importers of the allegedly dumped investigated product, the term "[Country] industry" may be interpreted as referring to the rest of the producers. For the purposes of this definition, producers shall be deemed to be related to exporters or importers only if:

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

provided that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers. For the purposes of this definition, one shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter;

(b) the term "domestic like product" shall mean the domestically produced product which is a "like product" to the investigated product;

(c) the term "dumping margin" shall mean the difference between the export price and the normal value as it results from the comparison of the two in accordance with the provisions of this [law];

(d) the term "injury" shall, unless otherwise specified, mean material injury to a [Country] industry, threat of material injury to a [Country] industry or material retardation² of the establishment of a [Country] industry;

(e) the term "interested parties" shall mean:

- (i) the exporter(s) or foreign producer(s) of the investigated product;
- (ii) the importer(s) of the investigated product;
- (iii) trade or business association(s) a majority of the members of which are producers, exporters or importers of the investigated product;
- (iv) the government(s) of the exporting country(ies);
- (v) the producer(s) of the domestic like product in [Country];
- (vi) trade and business association(s) a majority of the members of which produce the domestic like product in [Country];

(f) the term "investigated product" shall mean the product subject to an anti-dumping investigation as described in the notice of initiation of the investigation;

(g) the term "[Investigating Authorities]" shall mean the national administration in charge of administering the anti-dumping legislation of [Country] in general;

(h) the term "like product" shall mean a product which is identical, i.e. 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.

Article 2
Principles

The [Investigating Authorities] may impose anti-dumping measures on products imported into [Country] only when [they] determine, pursuant to an investigation initiated and conducted in accordance with the provisions of this [law], that:

- (a) the investigated product is dumped within the meaning of [Part II] of this law; and
- (b) there is injury to the [Country] industry and a causal link within the meaning of [Part II] of this law.

PART II: DETERMINATION OF DUMPING, INJURY AND CAUSAL LINK

TITLE I
DETERMINATION OF DUMPING

SUB-TITLE I
PRINCIPLES

Article 3
Identification of Dumping

For the purposes of this [law], an investigated product shall be considered to be dumped if it is introduced into the commerce of [Country] at a price which is less than its normal value.

SUB-TITLE II
DETERMINATION OF THE NORMAL VALUE

Article 4
Normal Value Based on Prices in Country of Export or Origin

1. Except in the circumstances foreseen in Article [5] of this [law], the [Investigating Authorities] shall establish the normal value of the investigated product on the basis of the comparable price paid or payable, in the ordinary course of trade, for sales of the like product when destined for consumption in the exporting country.

2. Notwithstanding paragraph 1 above, the [Investigating Authorities] may establish the normal value on the basis of comparable price paid or payable, in the ordinary course of trade for sales of the like product when destined for consumption in the country of origin if, for example, the products are merely trans-shipped 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. If the [Investigating Authorities] apply this paragraph to establish the normal value on the basis of the country of origin, references to the exporting country in Articles [5], [6], [7], and [9] of this law shall be considered to refer to the country of origin.

Article 5
Normal Value Based on Export Price to a Third Country or on Constructed Value

1. When there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country, or when 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 [Investigating Authorities] shall establish the normal value of the investigated product on the basis of either:

- (a) a comparable price of the like product when exported to an appropriate third country provided that this price is representative; or
- (b) the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits.³

2. Sales of the like product destined for consumption in the domestic market of the exporting country, or sales to an appropriate third country, shall be considered to be a sufficient quantity for the determination of the normal value if such sales constitute five (5) per cent or more of the sales of the investigated product to [Country]. However, the [Investigating Authorities] shall apply a lower ratio if they are satisfied, based on the evidence submitted by interested parties or otherwise available to [them], that sales at such lower ratio are nonetheless of sufficient magnitude to provide for a proper comparison.

Article 6
Sales Below Cost

1. The [Investigating Authorities] may treat 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) cost of production plus administrative, selling and general costs as not being in the ordinary course of trade by reason of price and may disregard such sales in determining normal value only if the [Investigating Authorities] determine that such sales were made:

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

2. For the purposes of this Article, sales below cost shall be considered as made in substantial quantities when the [Investigating Authorities] establish that:

- (a) the weighted average selling price of the transactions under consideration for the determination of the normal value is below the weighted average cost; or
- (b) the volume of sales below cost represents twenty (20) per cent or more of the volume sold in transactions under consideration for the determination of the normal value.

3. If prices which are below cost at the time of sale are above the weighted average cost for the period of investigation, the [Investigating Authorities] shall consider such prices as providing for recovery of costs within a reasonable period of time.

Article 7
Calculation of Costs for the Purposes of Articles [5] and [6]

1. For the purposes of Articles [5] and [6], the [Investigating Authorities] shall normally calculate costs 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 like product.
2. For the purposes of Articles [5] and [6], the amounts for administrative, selling and general costs and for profits shall be based on actual data pertaining to production and sales in the ordinary course of trade of the like product by the exporter or producer under investigation. When 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;
 - (b) the weighted average of the actual amounts incurred and realized by 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; or
 - (c) any other reasonable method, provided that the amount for profit so established shall not exceed the profit normally realized by other exporters or producers on sales of products of the same general category in the domestic market of the country of origin of the like product.
3. The [Investigating Authorities] 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.
4. Unless already reflected in the cost allocations under this Article, the [Investigating Authorities] shall adjust costs appropriately for those non-recurring items of cost which benefit future and/or current production, or for circumstances in which costs during the period of investigation are affected by start-up operations. 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 [Investigating Authorities] during the investigation.

Article 8
Non-Market Economies

1. Where the country exporting the investigated product is a non-market economy country, the [Investigating Authorities] may, to the extent [they] consider the methodology for determining normal value set forth in this [law] 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 sales 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 [Country];
 - (c) the price actually paid or payable in [Country] for the domestic like product, duly adjusted if necessary to include a profit margin corresponding to the margin to be expected under the existing economic circumstances for the sector concerned; or

(d) any other reasonable basis.

2. This Article shall be applied to imports from WTO Members only to the extent that its application is consistent with the second Supplementary Provision to paragraph 1 of Article VI of GATT 1994, and other WTO obligations of [Country].

SUB-TITLE III DETERMINATION OF THE EXPORT PRICE

Article 9 Export Price

1. Except as provided for in paragraph 2 and 3 of this Article, the export price shall be the price actually paid or payable for the investigated product when sold for export from the exporting country to [Country].

2. In cases where there is no export price or where it appears to the [Investigating Authorities] that the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party:

(a) the export price may be constructed on the basis of the price at which the imported products are first resold to an independent buyer; or

(b) if the products are not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as the [Investigating Authorities] may determine.

3. Where, in the case contemplated in Article [4.2], the [Investigating Authorities] determine the normal value on the basis of the country of origin, the export price shall be the price actually paid or payable for the investigated product when sold for export in the country of origin.

SUB-TITLE IV COMPARISON BETWEEN THE NORMAL VALUE AND THE EXPORT PRICE

Article 10 Adjustments

1. The [Investigating Authorities] shall make a fair comparison between the export price and the normal value. This comparison shall be made 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 shall be made in each case, on its 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 also demonstrated by interested parties to affect price comparability. As some of the above factors may overlap, the [Investigating Authorities] shall ensure that they do not duplicate adjustments that have been already made under this Article.

2. In cases where the export price is constructed on the basis of the price at which the imported products are first resold to an independent buyer pursuant to Article [9.2(a)], allowances for costs, including duties and taxes, incurred between importation and resale, and [a reasonable amount]⁴ for profits accruing, may also be made. If in these cases, price comparability has been affected, the [Investigating Authorities] shall establish the normal value at a level of trade equivalent to the level of trade of the constructed export price, or shall make due allowance as warranted under this Article.

3. The [Investigating Authorities] 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.

Article 11
Comparison Methods

1. Subject to the provisions governing fair comparison in Article [10], the existence of dumping margins shall normally be established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions or by a comparison of normal value and export prices on a transaction-to-transaction basis.

2. A normal value established on a weighted average basis may be compared to prices of individual export transactions if the [Investigating Authorities] find a pattern of export prices which differs significantly among different purchasers, regions or time periods. In such circumstances, the [Investigating Authorities] shall explain why such differences cannot be taken into account appropriately by the use of a weighted average-to-weighted average or transaction-to-transaction comparison.

Article 12
Currency Conversion

1. When the price comparison under Articles [10] and [11] requires a conversion of currencies, the [Investigating Authorities] shall make such conversion using the rate of exchange on the date of sale.

2. The date of sale shall normally be the date of contract, purchase order, order confirmation, or invoice, whichever establishes the material terms of sale.

3. Notwithstanding paragraphs (1) and (2) above, when a sale of foreign currency on forward markets is used in direct relation to an export sale, the [Investigating Authorities] shall use the rate of exchange in the forward sale for all the related transactions.

4. The [Investigating Authorities] shall ignore fluctuations in exchange rates, and shall allow exporters at least 60 days to have adjusted their export prices to reflect sustained movements in exchange rates during the period of investigation.

Article 13
Individual Dumping Margin

1. The [Investigating Authorities] shall, as a rule, determine an individual dumping margin for each known exporter or producer concerned of the investigated product.

2. Notwithstanding paragraph 1 of this Article, in cases where the number of exporters, producers, importers or types of products involved is so large as to make it impracticable to determine an individual dumping margin for each known exporter or producer concerned of the investigated product, the [Investigating Authorities] may limit [their] examination to a reasonable number of interested parties or investigated products by using samples which are statistically valid on the basis of information available to the [Investigating Authorities] at the time of the selection, or to the largest percentage of the volume of the exports from the country in question which can reasonably be investigated.

3. Any selection of exporters, producers, importers or types of products made under this Article shall be chosen after consultation with the exporters, producers or importers concerned.

4. In cases where the [Investigating Authorities] have limited their examination as provided for in paragraphs 2 and 3 of this Article, the [Investigating Authorities] shall nevertheless determine an individual dumping margin for any exporter or producer who voluntarily submits the necessary information in time for that information to be considered during the course of the investigation. Notwithstanding the previous sentence, where the number of exporters or producers is so large that individual examinations would be unduly burdensome to the [Investigating Authorities] and prevent the timely completion of the investigation, the [Investigating Authorities] may decline to determine an individual dumping margin on the basis of such voluntary responses and limit their examination to the exporters and producers in the sample.

TITLE II DETERMINATION OF INJURY AND OF CAUSAL LINK

Article 14 Determination of Injury

A determination of injury for the purposes of this [law] shall be based on positive evidence and involve an objective examination of:

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

Article 15 Examination of the Volume of Dumped Imports and their Effects on Prices in [Country]

1. With regard to the volume of the dumped imports, the [Investigating Authorities] shall consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in [Country].

2. With regard to the effect of the dumped imports on prices in the market of [Country], the [Investigating Authorities] shall consider whether:

- (a) there has been a significant price undercutting by the dumped imports as compared with the price of the domestic like product; or
- (b) whether 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. No one or several of the factors identified in paragraphs 1 and 2 of this Article can necessarily give decisive guidance.

Article 16 Cumulation

Where imports of a like product from more than one country are the subject of simultaneous anti-dumping duty investigations, the [Investigating Authorities] may cumulatively assess the effects of such imports on the [Country] industry only if they determine that:

- (a) the amount of dumping established in relation to the investigated product from each country is more than *de minimis* and the volume of the investigated product imported from each country is not negligible as specified in Article [27] of this law; 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.

Article 17

Examination of the Impact of the Dumped Imports on the [Country] Industry

1. The examination of the impact of the dumped imports on the [Country] industry concerned shall include an evaluation by the [Investigating Authorities] of all relevant economic factors and indices having a bearing on the state of the industry, including:
 - (a) actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilization of capacity;
 - (b) factors affecting domestic prices;
 - (c) the magnitude of the dumping margin; and
 - (d) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments.

This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.

2. The [Investigating Authorities] shall assess the effect of the dumped imports in relation to the [Country] production of the domestic like product when available data permit the separate identification of that production on the basis of such criteria as the production process, producers' sales and profits. If such separate identification of that production is not possible, the [Investigating Authorities] shall assess the effects of the dumped imports by the examination of the production of the narrowest group or range of products, which includes the domestic like product, for which the necessary information can be provided.

Article 18

Threat of Material Injury

1. The [Investigating Authorities] shall base [their] determination of a threat of material injury on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent.
2. In making a determination regarding the existence of a threat of material injury, the [Investigating Authorities] should consider, *inter alia*, such factors as:
 - (a) a significant rate of increase of dumped imports into the [Country] 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 [Country] market, taking into account the availability of other export markets to absorb any additional exports;

- (c) whether imports are entering at prices that will have a significant depressing or suppressing effect on [Country] prices, and would likely increase demand for further imports; and
- (d) inventories of the investigated product.

No one of these factors by itself can necessarily give decisive guidance but the totality of the factors considered must lead to the conclusion that further dumped exports are imminent and that, unless protective action is taken, material injury will occur.

3. With respect to cases where injury is threatened by dumped imports, the [Investigating Authorities] shall consider and decide the application of anti-dumping measures with special care.

Article 19
Causal Link

1. [The Investigating Authorities] shall demonstrate that the dumped imports are, through the effects of dumping, as set forth in Articles [15] and [17] of this [law], causing injury within the meaning of this [law]. The demonstration of a causal link between the dumped imports and the injury to the [Country] industry shall be based on an examination of all relevant evidence before the [Investigating Authorities].

2. The [Investigating Authorities] shall also examine any known factors other than the dumped imports which at the same time are injuring the [Country] industry, and the injuries caused by these other factors must not be attributed to the dumped imports. Factors which may be relevant in this respect include, *inter alia*:

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

PART III: INITIATION AND CONDUCT OF INVESTIGATIONS

TITLE I
INITIATION OF INVESTIGATIONS

Article 20
Requirement of a Written Application

1. Except as provided in Article [26], an investigation shall only be initiated upon a written application by or on behalf of a [Country] industry.

2. Applications shall be submitted to [Investigating Authorities] in such number and form as the [Investigating Authorities] may specify.

Article 21
Evidence and Information Required in the Application

1. An application under Article [20] shall include evidence of (a) dumping, (b) injury and (c) a causal link, within the meaning of [Part II] of this [law]. The application shall contain such information as is reasonably available to the applicant on the following:

- (a) name, address and telephone number of the applicant;
- (b) the identity of the [Country] 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 [Country] industry;
- (c) information relating to the degree of [Country] industry support for the application, including:
 - (i) the total volume and value of [Country] production of the domestic like product; and
 - (ii) the volume and value of the domestic like product produced by the applicant and by each [Country] producer identified;
- (d) a complete description of the allegedly dumped product, including the technical characteristics and uses of the product and its current tariff classification number;
- (e) the country in which the allegedly dumped product is manufactured or produced and, if 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 product and the proportion of total exports to [Country] that person accounted for during the most recent twelve-month period;
- (g) information on prices at which the product in question is sold when destined for consumption in the domestic market(s) of the country(ies) of export or origin (or, where appropriate, information on the prices at which the product is sold from the country(ies) of export or origin to a third country(ies) or on the constructed value of the allegedly dumped product) and information on export prices or, where appropriate, on the prices at which the allegedly dumped product is first resold to an independent buyer in [Country], and on any adjustments as provided for in Article [10] of this [law];
- (h) information on the evolution of the volume of the allegedly dumped imports, the effect of these imports on prices of the domestic like product in the [Country] market and the consequent impact of the imports on the [Country] industry, as demonstrated by relevant factors and indices having a bearing on the state of the [Country] industry, such as those listed in Articles [14], [15], [17], and [18] of this [law], and information on the existence of a causal link within the meaning of Article [19] of this [law].

Article 22
Publicizing of the Application

1. The [Investigating Authorities] shall avoid, unless a decision has been made to initiate an investigation, any publicizing of the application for the initiation of an investigation.

2. Notwithstanding paragraph 1 of this Article, the [Investigating Authorities] shall, upon receipt of an application fulfilling the requirements of Article [21] of this [law], promptly notify the government of each exporting country concerned.

Article 23
Withdrawal of the Application Before Initiation

Any application under Article [20] may be withdrawn prior to initiation, in which case it shall be considered not to have been made.

Article 24
Initiation Decision

1. The [Investigating Authorities] shall examine the accuracy and adequacy of the evidence provided in the application to determine whether there is sufficient evidence to justify the initiation of an investigation. Simple assertion, unsubstantiated by relevant evidence, shall not be considered sufficient to meet the requirements of this paragraph. The [Investigating Authorities] may seek additional information from the applicant before deciding whether to initiate an investigation.

2. When the [Investigating Authorities] have determined that:

(a) the application is made by or on behalf of the [Country] industry as set forth in Article [25]; and

(b) there is sufficient evidence of dumping, injury and causal link within the meaning of [Part II] of this [law];

the [Investigating Authorities] may initiate an investigation.

3. Where the [Investigating Authorities] do not consider it appropriate to initiate an investigation, they shall notify the applicant(s) of the reasons for not initiating the investigation.

4. The [Investigating Authorities] shall normally decide whether or not to initiate an anti-dumping investigation within [45] days of the date of receipt of the written application. When the application involves complex issues, or if the [Investigating Authorities] have sought additional information from the applicant, this time period may be extended to [60] days.

Article 25
By or on Behalf of the [Country] Industry

1. For the purposes of this law, an application shall be considered to have been made "by or on behalf of the [Country] industry" only if :

(a) it is supported by those [Country] producers whose collective output constitutes more than fifty (50) per cent of the total production of the domestic like product produced by that portion of the [Country] industry expressing either support for or opposition to the application; and

(b) [Country] producers expressly supporting the application account for at least twenty-five (25) per cent of total production of the domestic like product produced by the [Country] industry.

2. In the case of fragmented industries involving an exceptionally large number of producers, the [Investigating Authorities] may determine support and opposition by using statistically valid sampling techniques.

Article 26
Self Initiation

In special circumstances, the [Investigating Authorities] may initiate an investigation without having received a written application by or on behalf of the [Country] industry for the initiation of such investigation. In such a case, they shall proceed only if they have sufficient evidence of dumping, injury and a causal link, within the meaning of [Part II] of this law, to justify the initiation of an investigation.

Article 27
Negligible Import Volumes and De Minimis Dumping Margins

Notwithstanding Articles [24] and [26] above, the [Investigating Authorities] shall not initiate an investigation with respect to a given allegedly dumped product and country if, from information reasonably available to the [Investigating Authorities], they determine that:

- (a) imports of the allegedly dumped product from that country into [Country] represent less than three (3) per cent of total imports of the allegedly dumped and like product in [Country], unless imports of the allegedly dumped product from countries under investigation which individually account for less than three (3) per cent of the imports of the allegedly dumped and like product in [Country] collectively account for more than seven (7) per cent of imports of the allegedly dumped and like product in [Country]; or
- (b) the dumping margin is less than two (2) per cent, expressed as a percentage of the export price.

Article 28
Public Notice and Explanation of Initiation Determinations

1. When the [Investigating Authorities] have decided to initiate an investigation the [Investigating Authorities] shall:

- (a) notify the initiation of an investigation to the exporters, importers and representative associations of importers or exporters known to the [Investigating Authorities] to be concerned, as well as representatives of the exporting country(ies), the complainant(s) and other interested parties known to the [Investigating Authorities] to have an interest therein; and
- (b) give public notice [in the Official Journal of [Country] and/or in a domestic newspaper widely disseminated in [Country]].

2. The notification and public notice of the initiation of an investigation required by paragraph 1 above shall contain adequate information on the following:

- (a) the name of the country or countries of export, and if different, the country or countries 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 to be investigated, including the basis for such allegations;
- (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 shall be effective on the date on which the public notice required by paragraph 1(b) above appears.

Article 29
Disclosure of Application

1. Subject to the requirement to protect confidential information pursuant to Article [32], the [Investigating Authorities] shall, as soon as the investigation is initiated, provide the full text of the written application received under Article [20] to the known exporters and foreign producers and to the authorities of the exporting country and make it available, upon request, to other interested parties.

2. Notwithstanding paragraph 1 above, where the number of exporters involved is particularly high, the [Investigating Authorities] may provide of the text to the relevant trade association(s) or, where that is not possible, to the authorities of the exporting country(ies).

TITLE II
CONDUCT OF INVESTIGATIONS

SUB-TITLE I
GENERAL PROVISIONS

Article 30
Duration of Investigations

The [Investigating Authorities] shall, except in special circumstances, conclude anti-dumping investigations within one year, and in no case more than 18 months, after their initiation.

Article 31
Customs Clearance

An anti-dumping proceeding shall not hinder the procedures of customs clearance. Once measures are adopted, no additional formalities other than those required for the application of these measures shall be applied.

Article 32
Confidentiality

1. The [Investigating Authorities] shall, during and after an investigation, keep confidential any information submitted to [them] which is entitled to such treatment pursuant to paragraph 2 of this Article. Such information shall not be disclosed without specific permission of the party submitting it.

2. Information which is

- (a) by nature confidential, for example because its disclosure would be of significant competitive advantage to a competitor, or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom he/she acquired the information; or
- (b) provided on a confidential basis by parties to an investigation;

shall, upon good cause shown, be treated as confidential by the [Investigating Authorities].

3. The following types of information shall be deemed to be by nature confidential, unless the [Investigating Authorities] determine that disclosure in a particular case would neither be of significant competitive advantage to a competitor, nor have a significantly adverse effect upon a person supplying the information or upon a person from whom he/she acquired the information:

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

4. Parties seeking confidential status for certain information shall request such treatment at the time information is submitted, including the reasons confidential treatment is warranted. The [Investigating Authorities] shall consider such requests expeditiously, and inform the party submitting the information if they determine that the request for confidential treatment is not warranted.

5. Parties shall furnish non-confidential summaries of all information for which confidential treatment is sought. These summaries may, for example, take the form of indexation of figures provided in the confidential version, or marked deletions in text. The non-confidential summaries shall permit a reasonable understanding of the substance of the information submitted in confidence. In exceptional circumstances, parties may indicate that information for which confidential treatment is sought is not susceptible of summary, in which case a statement of the reasons why summarization is not possible shall be provided. If the [Investigating Authorities] conclude that the non-confidential summary provided fails to satisfy the requirements of this paragraph, they may determine that the request for confidential treatment is not warranted.

6. If the [Investigating Authorities] find that a request for confidential treatment is not warranted, and if the supplier of the information is unwilling to make the information public, the [Investigating Authorities] shall disregard such information, and return the information concerned to the party submitting it.

*Article 33
Reliance on Information Available*

1. If, at any time during the investigation, any interested party:

- (a) refuses access to, or otherwise does not provide, necessary information within the period of time prescribed by the [Investigating Authorities]; or
- (b) otherwise significantly impedes the investigation;

the [Investigating Authorities] may reach preliminary and final determinations, affirmative or negative, on the basis of the information available, including the application. The provisions of Annex II shall be followed in the application of this paragraph.

2. The [Investigating Authorities] shall take due account of any difficulties experienced by interested parties, in particular small companies, in supplying information requested. In that context, the [Investigating Authorities] shall provide any assistance practicable and/or may extend any time period prescribed for the submission of a given information whenever applicable.

Article 34
Public File and Access Thereto

1. The [Investigating Authorities] shall establish and maintain a public file relating to each investigation or review pursuant to [Part V] of this [law]. Subject to the requirement to protect confidential information, the [Investigating Authorities] shall promptly place in the public file:

- (a) all public notices relating to the investigation or review;
- (b) all materials, including questionnaires, responses to questionnaires, and written communications submitted to the [Investigating Authorities];
- (c) all other information developed or obtained by the [Investigating Authorities], including any verification report(s) prepared pursuant to Article [41.2]; and
- (d) any other documents the [Investigating Authorities] deem appropriate for public disclosure.

2. The public file shall be available to the general public for review and copying at the offices of the [Investigating Authorities] throughout the course of the investigation or review and any resulting judicial review.

SUB-TITLE II
INVESTIGATION PROCEDURES

Article 35
Proposed Schedule for Investigation

The [Investigating Authorities] shall, in the public notice of initiation, include the proposed schedule for the conduct of the investigation, including the proposed time-limits for submission of written arguments, the proposed date for any hearing, if requested, the proposed date for the preliminary determination, and the proposed date for the final determination.

Article 36
Gathering Information

1. Upon initiation of the investigation, the [Investigating Authorities] shall send questionnaires to any person they believe may have information relevant to the investigation, including known domestic producers, importers, exporters and foreign producers.

2. The [Investigating Authorities] shall give exporters and foreign producers receiving a questionnaire at least thirty-seven days for reply. This time limit shall be counted from the date on which the questionnaire was sent to the respondent or transmitted to the appropriate diplomatic or official representative of the exporting country. The [Investigating Authorities] shall give due consideration to any request for an extension of the period, and shall grant such an extension

whenever practicable, upon good cause shown, taking into account the time limits for the investigation.

3. The [Investigating Authorities] may disregard any reply to a questionnaire that is not submitted within the time provided and in the form requested.

4. The [Investigating Authorities] may, during the course of the investigation, request further information from interested parties, in the form of supplementary questionnaires, or written requests for clarification or additional information. Such requests shall state the date by which reply is due. Sufficient time shall be granted in order to allow meaningful replies.

5. Any interested party may, on its own initiative, submit, in writing, any information it considers relevant to the investigation. The [Investigating Authorities] shall consider such information unless such consideration would be unduly burdensome to the [Investigating Authorities] or disrupt the timely progress of the investigation.

6. The [Investigating Authorities] shall base [their] assessments of dumping, injury and causal link on data relating to defined periods, which shall be the periods for which information is requested in questionnaires.

(a) In the case of dumping, the investigation period shall normally cover a one year period preceding the date of initiation of the investigation for which data are available. In no case shall the investigation period in the case of dumping be shorter than six (6) months.

(b) In the case of injury, the investigation period shall normally cover a period of three years. However, the [Investigating Authorities] may select a shorter or longer period if they deem it appropriate in light of available information regarding the [Country] industry and the investigated product.

Article 37

Preliminary Written Arguments

No later than 15 days before the scheduled date of the preliminary determination, interested parties may submit written arguments to the [Investigating Authorities] concerning any matter relevant to the investigation.

Article 38

Preliminary Determination⁵

1. The [Investigating Authorities] shall make a preliminary determination of dumping, injury, and causal link no earlier than 60 days, and no later than 180 days, after initiation. The preliminary determination shall be based on all information available to the [Investigating Authorities] at that time.

2. The [Investigating Authorities] shall issue a public notice of the preliminary determination, whether affirmative or negative. The notice of preliminary determination shall set forth in sufficient detail the findings and conclusions reached on all issues of fact and law considered material, due regard being given to the requirement for protection of confidential information. The notice shall also contain:

(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 [Country] tariff classification;

- (c) the amount of the dumping margin, if any, found to exist and the basis for such determination, including a description of the methodology used in determining normal value, export price, and any adjustments made in comparing the two;
 - (d) if the method of comparison provided for in Article [11.2] of this [law] was used, the explanation required by that Article;
 - (e) if the [Investigating Authorities] declined to determine an individual dumping margin on the basis of voluntary responses, as provided for in Article [13.4] of this [law], the basis for that decision;
 - (f) the factors that have led to the determinations of injury and causal link, including information on factors other than dumped imports that have been taken into account; and
 - (g) the amount of any provisional measures to be applied and the reasons why such provisional measures are necessary to prevent injury caused during the investigation.
4. The [Investigating Authorities] shall publish the notice in the [Official Journal of [Country] and/or in a domestic newspaper widely disseminated in [Country]].
5. The public notice shall be forwarded to the country or countries exporting the investigated product and to other known interested parties.

Article 39
Disclosure after Preliminary Determination

The [Investigating Authorities] shall, on request made within 15 days of the publication of the preliminary determination, hold separate disclosure meetings with exporters or producers requesting such a meeting, to explain the dumping calculation methodology preliminarily applied for that exporter or producer.

Article 40
Acceptance of a Price Undertaking

1. Where the [Investigating Authorities]:
- (a) accept an undertaking, they shall publish a notice in the [Official Journal of [Country] and/or in a domestic newspaper widely disseminated in [Country]]; or
 - (b) refuse an undertaking, they shall provide the reasons which have led to the determination that the acceptance of an undertaking is inappropriate and shall give the exporter an opportunity to make comments thereon.
2. The public notice of the acceptance of an undertaking shall include the non-confidential part of the undertaking and set forth in sufficient detail the findings and conclusions on all issues of fact and law considered material by the [Investigating Authorities].
3. The notice shall be forwarded to the country or countries the products of which are subject to such determination and to other known interested parties.
4. Where the [Investigating Authorities] continue the investigation under Article [57] of this law, they shall publish a notice of the continuation of the investigation, setting forth the proposed date for the final determination, and any other modifications to the proposed schedule of the investigation. Any final determination in such a continued investigation shall be made within 180 days from the date of publication of the notice.

Article 41
Verification of Information

1. Except in the circumstances provided for in Article [33], the [Investigating Authorities] shall, during the course of an investigation, satisfy themselves as to the accuracy of the information supplied by interested parties upon which [their] findings are based.
2. In order to verify information provided or to obtain further details, the [Investigating Authorities] may carry out investigations in other countries as required, provided [they] obtain the agreement of the firms concerned and provided they notify the representatives of the government of the country in question and unless the latter object to the investigation. The procedures described in Annex I shall apply to verifications carried out in the territory of other countries. The [Investigating Authorities] shall prepare a report on any verification conducted pursuant to this Article. This report shall be available to the company to which it pertains in full, and a non-confidential version shall be placed in the public file kept pursuant to Article [34]. The [Investigating Authorities] shall endeavour to complete any such verifications prior to the date of any hearing in the investigation.

Article 42
Written Arguments

1. In an investigation in which no hearing is requested, any interested party may submit written arguments concerning any matter it considers relevant to the investigation no later than 45 days before the date proposed for the final determination.
2. In an investigation in which a hearing is held, no later than 10 days before the scheduled date of the hearing, any interested party may submit written arguments concerning any matter it considers relevant to the investigation. Following the hearing, interested parties who participated in the hearing may, within 10 days, submit further written arguments in response to arguments and information presented at the hearing.

Article 43
Hearings

1. The [Investigating Authorities] shall, upon request by an interested party made no later than [30] days after publication of the preliminary determination, schedule a hearing at which all interested parties may present information and arguments. Any hearing shall be held no later than 60 days prior to the date proposed for the final determination.
2. There shall be no obligation on any interested party to attend a hearing, and failure to do so shall not be prejudicial to that interested party's case. Hearings shall, to the maximum extent possible, be organized by the [Investigating Authorities] so as to take into account the convenience of the interested parties.
3. Interested parties intending to appear at the hearing shall notify the [Investigating Authorities] of the names of representatives and witnesses who will appear at the hearing at least 7 days before the date of the hearing.
4. Hearings shall be presided over by an official of the [Investigating Authorities], who shall ensure that confidentiality is preserved, and shall organize the hearing in a manner to ensure that all parties participating have an adequate opportunity to present their views. The [Investigating Authorities] shall maintain a record of the hearing, which shall be promptly placed in the public file, with the exception of any confidential information.

5. Interested parties shall also have the right, on justification, to present other information orally to the [Investigating Authorities] during meetings with officials of the [Investigating Authorities]. A detailed record of such meetings shall be kept by the [Investigating Authorities], and promptly placed in the public file, with the exception of confidential information.

Article 44

Contributions by Industrial Users and Representative Consumer Organizations

The [Investigating Authorities] shall provide opportunities for industrial users of the investigated product in [Country], and for representative consumer organizations in cases where the product is commonly sold at the retail level in [Country], to provide information and submit written arguments concerning matters relevant to the investigation, including the interest of [Country] in imposing measures.⁶ Such information shall be provided in writing. The [Investigating Authorities] shall allow industrial users of the investigated product and/or representative consumer organizations to make oral presentations at any hearing held during the course of an investigation.

Article 45

Essential Facts

1. After any hearing has been held and the [Investigating Authorities] have completed verification of information collected in the course of the investigation and, in any event, at least 30 days before the proposed date for the final determination, the [Investigating Authorities] shall inform all interested parties, in writing, subject to the confidentiality requirements of Article [32], of the essential facts under consideration which will form the basis for the decision whether to apply definitive measures.

2. Interested parties shall submit comments, if any, on information disclosed to them pursuant to this Article, in writing within [15] days of the disclosure.

Article 46

Final Determination

1. The [Investigating Authorities] shall normally make a final determination of dumping, injury, and causal link within 180 days of the preliminary determination. The final determination shall be based on all information obtained by the [Investigating Authorities] during the course of the investigation that has been disclosed to interested parties, subject to the confidentiality requirements of Article [32].

2. The [Investigating Authorities] shall issue a public notice of the final determination, whether affirmative or negative. The notice of final determination shall include all relevant information on the matters of fact and law and reasons that have led to the determination, due regard being given to the requirement for the protection of confidential information, and in particular:

- (a) the names of the known exporters and producers of the investigated product;
- (b) description of the investigated product that is sufficient for customs purposes, including the current [Country] tariff classification;
- (c) the amount of the dumping margin, if any, found to exist and the basis for such determination, including a description of the methodology used in determining normal value, export price, and any adjustments made in comparing the two;
- (d) if the method of comparison provided for in Article [11.2] of this [law] was used, the explanation required by that Article;

- (e) if the [Investigating Authorities] declined to determine an individual dumping margin on the basis of voluntary responses, as provided for in Article [13.4] of this [law], the basis for that decision;
 - (f) the factors that have led to the determination of injury and causal link, including information on factors other than dumped imports that have been taken into account;
 - (g) any other reasons leading to the final determination;
 - (h) the reasons for the acceptance or rejection of relevant arguments or claims made by exporters and importers;
 - (i) the amount of any anti-dumping duties to be imposed, including any considerations relevant to the [Investigating Authorities'] examination of the [Country] interest and of whether a duty less than the dumping margin would be adequate to remove the injury to the [Country] industry; and
 - (j) if final anti-dumping duties are to be collected with regard to the imports to which provisional measures were applied, the reasons for the decision to do so.
3. The [Investigating Authorities] shall publish the notice in the [Official Journal of [Country]] and/or in a domestic newspaper widely disseminated in [Country]].
4. The notice shall be forwarded to the country or countries the products of which are subject to such determination and to other known interested parties.

Article 47
Disclosure

After the final determination has been issued, the [Investigating Authorities] shall, on request made within 15 days of the publication of the final determination, hold separate disclosure meetings with exporters or producers requesting such a meeting, to explain the dumping calculation methodology finally applied for that exporter or producer.

PART IV: CONCLUSION OF THE INVESTIGATION

TITLE I
TERMINATION WITHOUT ADOPTION OF MEASURES

Article 48
Withdrawal of the Application

An application under Article [20] may be withdrawn at any time after an investigation has been initiated, in which case the [Investigating Authorities] shall terminate the investigation without measures, unless [they] determine that it is in the interest of [Country] to continue the investigation.

Article 49
Termination for Insufficient Evidence, de Minimis Dumping Margin or Negligible Volume

1. An investigation shall be terminated promptly at any time the [Investigating Authorities] are satisfied that there is not sufficient evidence of either dumping or injury to justify proceeding with the case.

2. The [Investigating Authorities] shall immediately terminate an investigation if [they] determine that the dumping margin is *de minimis*, or that the volume of dumped imports, actual or potential, or the injury, is negligible.

(a) The dumping margin shall be considered to be *de minimis* if this margin is less than two (2) per cent, expressed as a percentage of the export price.

(b) The volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports of the investigated product from a particular country is found to account for less than three (3) per cent of total imports of the investigated and like product in [Country] unless imports of the investigated product from all countries under investigation which individually account for less than three (3) per cent of the total imports of the investigated and like product in [Country] collectively account for more than seven (7) per cent of imports of the investigated and like product in [Country].

Article 50

Public Notice of Conclusion of an Investigation without Imposition of Measures

The [Investigating Authorities] shall, due regard being paid to the requirement for the protection of confidential information, issue a public notice of the conclusion of an investigation without imposition of measures which shall set forth in sufficient detail the findings and conclusions reached on all issues of fact and law considered material by the [Investigating Authorities] including the matters of fact and law which have led to arguments being accepted or rejected.

TITLE II PROVISIONAL MEASURES

Article 51

Imposition of Provisional Measures

The [Investigating Authorities] may impose provisional measures if [they] make an affirmative preliminary determination of dumping, injury, and causal link, and determine that provisional measures are necessary to prevent injury being caused during the investigation. A negative preliminary determination of dumping shall not automatically terminate the investigation, but no provisional measures shall be imposed in such a case.

Article 52

Form of Provisional Measures

Provisional measures shall take the form of a security - by cash deposit or bond - not greater than the estimated dumping margin set forth in the notice of preliminary determination.

Article 53⁷

Duration of Application of Provisional Measures

1. Provisional measures shall be applied for a period not exceeding six (6) months.

2. The [Investigating Authorities] may, upon request by exporters representing a significant percentage of the trade involved, extend the period of application of provisional duties to a period not exceeding nine months.

Article 54
Application of Relevant Provisions of Title V

The provisions of Articles [60] and [61] of [Title V] shall be followed in the application of provisional measures.

TITLE III
PRICE UNDERTAKINGS

Article 55
Principles

1. The [Investigating Authorities] may suspend an investigation without the imposition of provisional measures or anti-dumping 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 prices so that the [Investigating Authorities] are satisfied that the injurious effect of the dumping is eliminated.
2. Price increases under such undertakings shall not be higher than necessary to eliminate the dumping margin, and shall be less than the dumping margin if the [Investigating Authorities] determine that such lesser price increase would be adequate to remove the injury to the [Country] industry.
3. Price undertakings may be suggested by the [Investigating Authorities], but no exporter shall be forced to enter into such an undertaking. 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. However, the [Investigating Authorities] shall be free to determine that a threat of injury is more likely to be realized if the dumped imports continue.

Article 56
Conditions for Acceptance

1. The [Investigating Authorities] shall not seek or accept price undertakings from exporters unless the [Investigating Authorities] have made a preliminary affirmative determination of dumping, injury, and causal link. Except in extraordinary circumstances, any undertakings shall be offered not later than 60 days before the proposed date of the final determination.
2. Undertakings offered need not be accepted if the [Investigating Authorities] consider their acceptance impractical, for example, if the number of actual or potential exporters is too great, or for other reasons, including reasons of general policy. If the [Investigating Authorities] decide not to accept an undertaking, they shall provide to the exporter the reasons which have led [them] to consider acceptance of an undertaking as inappropriate. The [Investigating Authorities] shall give exporters an opportunity to make written comments thereon.
3. The [Investigating Authorities] may require any exporter from whom undertakings have been accepted to provide periodically information relevant to the fulfilment of such undertakings, and to permit verification of pertinent data. The communication of these data shall be subject to the relevant provisions of Article [32] on confidentiality. Failure to provide information requested by the [Investigating Authorities] may be deemed to be a violation of the undertaking.

Article 57
Completion of the Investigation

If one or more undertakings are accepted, the [Investigating Authorities] shall nevertheless complete the investigation of dumping and injury if an exporter so desires or the [Investigating Authorities] so decide. In such a case, if the [Investigating Authorities] make a negative determination of dumping or injury, the undertaking(s) shall automatically lapse except in cases where such a determination is due in large part to the existence of such undertaking(s). In such cases the [Investigating Authorities] may require that an undertaking be maintained for a reasonable period of time to be determined by the [Investigating Authorities]. In the event that an affirmative determination of dumping and injury is made, the undertaking shall continue consistent with its terms and the provisions of this [law].

Article 58
Violation of Undertakings

If an undertaking is violated, the [Investigating Authorities] may, in conformity with the provisions of this [law], take expeditious actions which may constitute immediate application of provisional measures using the best information available. In such cases, definitive duties may be levied in accordance with this [law] on goods entered for consumption not more than ninety (90) 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.

TITLE IV
IMPOSITION AND COLLECTION OF ANTI-DUMPING DUTIES

Article 59
Country Interest and Lesser Duty Rule

1. The amount of the anti-dumping duty shall not exceed the dumping margin as established pursuant to [Title I of Part II]. When the [Investigating Authorities] have determined that all requirements for the imposition of anti-dumping measures have been fulfilled, [they] shall examine whether the imposition of such measures would be in the interest of [Country]. Consideration of the [Country] interest shall include, in addition to the interest of the [Country] industry concerned, the situation of domestic competition for the product under investigation, the needs of industrial users and the interest of final consumers where applicable.

2. The [Investigating Authorities] shall examine whether a duty less than the full dumping margin would be adequate to remove the injury to the [Country] industry. Where the [Investigating Authorities] determine that such a lesser duty would be adequate to remove the injury, the amount of the final anti-dumping duty imposed shall not exceed that lesser duty.

Article 60
Imposition and Collection of Anti-Dumping Duties

1. Anti-dumping duties shall take the form of *ad valorem* or specific duties. Anti-dumping duties shall be imposed in addition to other import duties levied on the imported products concerned. Anti-dumping duties shall be collected by [competent authorities]⁸ in the appropriate amounts in each case, on a non-discriminatory basis on imports of such product from all sources found to be dumped and causing injury, except as to imports from those sources from which price undertakings under the terms of this [law] have been accepted.

2. Except in the circumstances provided for in paragraph 3 of this Article, the [Investigating Authorities] shall establish an individual anti-dumping duty for each known exporter or producer of dumped imports concerned.

3. When the [Investigating Authorities] have limited their examination in accordance with paragraphs 2 and 3 of Article [13], any anti-dumping duty applied to imports from exporters or producers not included in the examination shall not exceed the weighted average dumping margin established with respect to the selected exporters or producers, provided that the [Investigating Authorities] shall disregard for the purpose of this paragraph any zero and *de minimis* margins and margins established under the circumstances referred to in Article [33]. Except as otherwise provided for in Article [13.4] of this [law], the [Investigating Authorities] shall apply individual duties to imports from any exporter or producer not included in the examination who has provided the necessary information during the course of the investigation.

4. The [Investigating Authorities] may apply a residual anti-dumping duty rate for imports from exporters and producers not known to the [Investigating Authorities] at the time the final determination was made. The residual anti-dumping duty rate shall not exceed the weighted average of the individual dumping margins established for exporters and producers examined during the investigation, excluding margins established under the circumstances referred to in Article [33].⁹

Article 61

Refund of Duties Paid in Excess of the Dumping Margin

1. An importer shall be granted a refund of duties collected by [competent authorities] if the [Investigating Authorities] determine that the dumping margin, 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 importer shall submit an application for the refund of anti-dumping duties collected within any six-month period to the [Investigating Authorities] within [60] days of the end of that period. The application shall contain information on the amount of refund of anti-dumping duties claimed for the period and all customs documentation relating to the calculation and payment of such amount. It shall include evidence of normal value and export prices to [Country] for the exporter or the producer to which the duty applies. In case the importer is not associated with the producer or exporter and such information is not immediately available, or where the producer or the exporter is unwilling to release it to the importer, the application shall contain a statement from the producer or exporter that the dumping margin has been reduced or eliminated and that the relevant supporting evidence will be directly provided to the [Investigating Authorities]. Where such evidence is not forthcoming from the exporter or producer within a reasonable period of time, the application shall be rejected.

3. When investigating pursuant to an application for refund, the [Investigating Authorities] shall apply the relevant provisions of this [law] to [their] determinations. In particular, when determining whether and to what extent a refund should be made when the export price is constructed on the basis of the price at which the imported products are first resold to an independent buyer due to the absence of export price or because it appears that the export price is unreliable pursuant to Article [9.2], the [Investigating Authorities] shall take account of any change in normal value, any change of costs incurred between importation and resale, and any movement in the resale price which is duly reflected in subsequent selling prices, and shall calculate the export price with no deduction for the amount of anti-dumping duties paid when satisfactory evidence of the above is provided. The [Investigating Authorities] shall provide the importer making the request with a detailed explanation of the reasons for the decision concerning the request for refund.

4. Refunds of duties shall normally 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. Any refund authorized, plus a reasonable amount for interest, shall be made by [competent authorities] within ninety (90) days of the decision to grant a refund. The observance of the time-limits mentioned in this paragraph may not

be possible where the determination to apply the duties in question is subject to judicial review proceedings.

Article 62
Suspension¹⁰

The [Investigating Authorities] may, in the [Country] interest, suspend the application of measures imposed pursuant to this [law] for a specified period. The [Investigating Authorities] may suspend measures only where market conditions have temporarily changed and the [Investigating Authorities] determine that the application of the measures would not be in the [Country] interest, and provided that the [Country] industry has been given an opportunity to comment.

TITLE V
RETROACTIVITY

Article 63
Principles

Except as provided for in Articles [58], [64] and [65] of this law, provisional measures and anti-dumping duties shall only be applied to products which enter into [Country] for consumption on or after the date of publication of an affirmative preliminary or final determination in an investigation or review conducted under [Part V].

Article 64
Retroactive Application of Definitive Duties in Certain Circumstances

A definitive anti-dumping duty may be collected on products which were entered for consumption not more than 90 days prior to the date of application of provisional measures if the [Investigating Authorities] determine, for the dumped product in question, that:

- (a) there is a history of dumping which caused injury or that the importer was, or should have been, aware that the exporter practises dumping and that such dumping would cause injury; and
- (b) the injury is caused by massive dumped imports of a product in a relatively short time which in light of the timing and the volume of the dumped 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 duty to be applied, provided that the importers concerned have been given an opportunity to comment.

Article 65
Definitive Collection of Provisional Duties

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

2. If the definitive anti-dumping duty is higher than the amount estimated for the purpose of the security, the difference shall not be collected. If the definitive duty is lower than the amount

estimated for the purpose of the security, the difference shall be released in the case of a bond, or reimbursed, with an appropriate amount for interest, in the case of a cash deposit.

3. Except as provided in paragraph 1 above, where the [Investigating Authorities] make a determination of threat of injury or material retardation (but no injury has yet occurred) a definitive anti-dumping duty may be imposed only from the date of the determination of threat of injury or material retardation. Any security provided during the period of the application of provisional measures shall be released within 45 days.

4. Where the [Investigating Authorities] make a negative final determination, any security provided during the period of application of the provisional measures shall be released within 45 days.

PART V: DURATION AND REVIEW OF ANTI-DUMPING DUTIES AND PRICE UNDERTAKINGS

Article 66 Principles

An anti-dumping duty shall remain in force only as long as and to the extent necessary to counteract dumping which is causing injury.

Article 67 Sunset Review

Any definitive anti-dumping measure shall be terminated on a date not later than five years from its imposition or from the date of the most recent review under Article [68] if that review has covered both dumping and injury. The [Investigating Authorities] shall, no later than [ninety (90) days] preceding the date of expiry of the measure, publish a notice of impending expiry of anti-dumping measures in the [Official Journal of [Country] and/or in a domestic newspaper widely disseminated in [Country]]. However, definitive measures may not expire if the [Investigating Authorities] determine, in a review initiated before the date of expiry on [their] own initiative or upon a duly substantiated request made by or on behalf of the [Country] industry within 45 days from the public notice of impending termination of the definitive anti-dumping measures concerned, that the expiry of the duty would be likely to lead to continuation or recurrence of dumping and injury. The duty may remain in force pending the outcome of such a review.

Article 68 Review for Change of Circumstances

1. The [Investigating Authorities] 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 duty, upon a written request submitted by any interested party which contains positive information substantiating the need for a review. The [Investigating Authorities] shall, upon initiation of the review publish a notice in the [Official Journal of [Country] and/or in a domestic newspaper widely disseminated in [Country]].

2. In conducting a review under this Article, the [Investigating Authorities] shall, upon request from any interested party, examine whether the continued imposition of the duty is necessary to offset dumping, whether the injury would be likely to continue or recur if the duty were removed or varied, or both. If, as a result of a review under this Article, the [Investigating Authorities] determine that the anti-dumping duty is no longer warranted, it shall be terminated immediately.

Article 69
Newcomer Review

1. If a product is subject to definitive anti-dumping duties, the [Investigating Authorities] shall promptly carry out a review for the purpose of determining individual dumping margins for any exporters or producers in the exporting country(ies) concerned who did not export the product to [Country] 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 who are subject to the anti-dumping duties on the imported investigated product. Such a review shall be initiated within thirty (30) days following the date of receipt of the application by the producer or exporter concerned. The review shall normally be completed within six (6) months from its initiation and, in any event, no later than twelve (12) months.

2. No anti-dumping duties shall be levied on imports from such exporters or producers while the review is being carried out. The [Investigating Authorities] may, however, request guarantees in the amount of the residual anti-dumping duty rate determined pursuant to Article [60.4] of this [law] to ensure that, should such a review result in a determination of dumping in respect of such producers or exporters, anti-dumping duties can be levied retroactively to the date of the initiation of the review.

Article 70
Duration and Review of Price Undertakings

The provisions of Articles [66], [67] and [68] of this [law] shall apply, *mutatis mutandis*, to price undertakings accepted under [Title IV of Part IV].

Article 71
Evidence and Procedure

1. The provisions of Articles [28], [32], [33], [34], [36], [40], [41], [43], [44], [45], and [46] of this [law] shall apply, *mutatis mutandis*, to any review carried out under this Part.

2. The provisions of Article [29] of this [law] shall apply to any review conducted under Articles [67] and [68] of this [law]. Any such review shall be carried out expeditiously and shall normally be concluded within twelve months of the date of initiation of the review.

PART VI:
ADMINISTRATION AND JUDICIAL REVIEW

TITLE I
ADMINISTRATION

Article 72
The [Investigating Authorities]

1. Any investigation or action under this [law] shall be conducted or taken by the [Investigating Authorities].

2. [Organization and functioning of the investigating authorities].¹¹

Article 73
Duties of the [Investigating Authorities]

1. In the course of the proceedings and after, officials of the [Investigating Authorities] shall not disclose any confidential information unless required or authorised to do so under this [law]. Any person acting under the authority of the [Investigating Authorities] who discloses any confidential information within the meaning of this [law] shall be subject to [administrative and/or criminal sanctions applicable to breach of secrecy under domestic law].

TITLE II
JUDICIAL REVIEW

Article 74
Judicial Review

1. Any interested party who participated in an investigation, review pursuant to [Part V] conducted by the [Investigating Authorities], or refund procedure, by submitting information or written argument, or participating in any hearing, may seek prompt review of actions taken by the [Investigating Authorities] relating to final determinations, reviews of determinations, and refund determinations in the [court of competent jurisdiction, or independent arbitral or administrative tribunal].

2. "Actions relating to final determinations" shall include intermediate decisions and actions taken by the [Investigating Authorities] during the course of the investigation, including actions relating to the preliminary determination, the acceptance or rejection of price undertakings, and the conduct of the investigation.

PART VII:
FINAL PROVISIONS

Article 75
International Obligations¹²

This [law] shall be applied in conformity with the obligations of [Country] under the international agreements to which [Country] is a party, in particular the Agreement Establishing the World Trade Organization, done at Marrakesh, on 15 April 1994, including the General Agreement on Tariffs and Trade 1994 (GATT 1994) and the Agreement on Implementation of Article VI of GATT 1994 annexed thereto.¹³

Article 76
Implementing Measures

The [Investigating Authorities] may adopt any [administrative regulations]¹⁴ necessary for the implementation of this [law].

Article 77
Entry into Force and Applicability

1. This [law] shall enter into force on [...].

2. It shall be applicable to investigations, reviews of existing measures, and refund procedures initiated on or after the date of entry into force of this [law] pursuant to paragraph 1 of this Article.

Article 78

Annexes

Annexes shall be considered integral parts of this [law].

ANNEX I

Procedures for On-The-Spot Investigations Pursuant to Article [41]

1. Upon initiation of an investigation, the authorities of the exporting country and the firms known to be concerned should be informed of the intention of the [Investigating Authorities] to carry out on-the-spot investigations.
2. If in exceptional circumstances it is intended to include non-governmental experts in the investigating team, the firms and the authorities of the exporting country should be so informed. Such non-governmental experts should be subject to sanctions for breach of confidentiality requirements provided for in Article [73] of this [law].
3. It should be standard practice to obtain explicit agreement of the firms concerned in the exporting country before the visit is finally scheduled.
4. As soon as the agreement of the firms concerned has been obtained the [Investigating Authorities] should notify the authorities of the exporting country of the names and addresses of the firms to be visited and the dates agreed.
5. The [Investigating Authorities] should give sufficient advance notice to the firms in question before the visit is made.
6. Visits to explain the questionnaire should only be made at the request of an exporting firm. Such a visit may only be made if the [Investigating Authorities] notify the representatives of the government of the country in question and unless the latter do not object to the visit.
7. As the main purpose of the on-the-spot investigation is to verify information provided or to obtain further details, it should be carried out after the response to the questionnaire has been received unless the firm agrees to the contrary and the government of the exporting country is informed by the [Investigating Authorities] of the anticipated visit and does not object to it; further, it should be standard practice prior to the visit to advise the firms concerned of the general nature of the information to be verified and of any further information which needs to be provided, though this should not preclude requests to be made on the spot for further details to be provided in the light of information obtained.
8. Enquiries or questions put by the authorities or firms of the exporting countries and essential to a successful on-the-spot investigation should, whenever possible, be answered before the visit is made.

ANNEX II

Reliance on Information Available

1. As soon as possible after the initiation of the investigation, the [Investigating Authorities] should specify in detail the information required from any interested party, and the way in which that information should be structured by the interested party in its response. The [Investigating Authorities] should also ensure that the party is aware that if information is not supplied within the time period mentioned in the request for information, the [Investigating Authorities] will be free to make determinations on the basis of the facts available, including those contained in the application for the initiation of the investigation by the [Country] industry.

2. The [Investigating Authorities] may also request that an interested party provide its response in a particular medium (e.g., computer tape) or computer language. Where such a request is made, the [Investigating Authorities] should consider the reasonable ability of the interested party to respond in the preferred medium or computer language, and should not request the company to use for its response a computer system other than that used by the firm. The [Investigating Authorities] should not maintain a request for a computerized response, if the interested party does not maintain computerized accounts and if presenting the response as requested would result in an unreasonable extra burden on the interested party, e.g., it would entail unreasonable additional cost and trouble. The [Investigating Authorities] should not maintain a request for a response in a particular medium or computer language if the interested party does not maintain its computerized accounts in such medium or computer language and if presenting the response as requested would result in an unreasonable extra burden on the interested party, e.g., it would entail unreasonable additional cost and trouble.

3. All information which is verifiable, which is appropriately submitted so that it can be used in the investigation without undue difficulties and which is supplied in a timely fashion, and, where applicable, supplied in a medium or computer language requested by the [Investigating Authorities], should be taken into account when determinations are made. If a party does not respond in the preferred medium or computer language but the [Investigating Authorities] find that the circumstances set out in paragraph 2 have been satisfied, this should not be considered to significantly impede the investigation.

4. Where the [Investigating Authorities] do not have the ability to process information if provided in a particular medium (e.g., computer tape) the information should be supplied in the form of written material or any other form acceptable to the [Investigating Authorities].

5. Even though the information provided may not be ideal in all respects, this should not justify the [Investigating Authorities] from disregarding it provided the interested party has acted to the best of its ability.

6. If evidence or information is not accepted, the supplying party should be informed forthwith of the reasons thereof and have an opportunity to provide further explanations within a reasonable period, due account being taken of the time-limits of the investigation. If the explanations are considered by the [Investigating Authorities] as not being satisfactory, the reasons for rejection of such evidence or information should be given in any published findings.

7. If the [Investigating Authorities] have to base their determinations, including those with respect to normal value, on information from a secondary source, including the information supplied in the application for the initiation of the investigation, they should do so with special circumspection. In such cases, the [Investigating Authorities] should, where practicable, check the information from other independent sources at their disposal, such as published price lists, official import statistics and customs returns, and from the information obtained from other interested parties during the investigation. However, if an interested party does not co-operate and thus relevant information is

being withheld from the authorities, this situation could lead to a result which is less favourable to the party than if the party did co-operate.

ENDNOTES

The following endnotes contain comments, suggestions or explanations relating to the preparation of a domestic legislation on the basis of the model legislation. They are not part of the model legislation.

¹ Article 4 of the Anti-Dumping Agreement allows duties to be imposed in cases of injury to a regional industry. In light of the complexity of regional analysis, and the infrequency with which duties have been imposed on this basis, a regional industry provision is not included in the model law.

² In light of the fact that the Anti-Dumping Agreement contains no guidelines for the evaluation of material retardation of the establishment of a domestic industry, and the infrequency with which duties have been imposed on this basis, the concept of material retardation is not further elaborated in the model law.

³ The Anti-Dumping Agreement does not establish or require a hierarchy between options (a) and (b), but such a hierarchy may be established in a Member's legislation.

⁴ The Anti-Dumping Agreement does not specify that a "reasonable amount" be allowed for profits, only that there be an allowance for profits. However, this specification seems to be consistent with the intent of the Agreement, and will facilitate calculations, and is therefore proposed in the model law.

⁵ The model law establishes an obligatory preliminary determination in all anti-dumping investigations, even though the Anti-Dumping Agreement does not require such a determination in all anti-dumping investigations. However, the Anti-Dumping Agreement does require a preliminary affirmative determination before provisional measures may be imposed or a price undertaking may be sought, and does require the issuance of a public notice of an affirmative or negative preliminary determination. Since it is believed most Members will wish to be able to impose provisional measures or enter into undertakings when appropriate, the model law established a requirement of a preliminary determination in all cases, to avoid investigating authorities having to make *ad hoc* decisions as to whether to make a preliminary determination in a given investigation.

⁶ The Anti-Dumping Agreement does not require an opportunity for industrial users and representative consumer associations to provide information on the [Country] interest in imposing measures. However, since the model legislation requires consideration of the [Country] interest, such an opportunity was provided for in order to allow the investigating authorities to make their assessment of [Country] interest on the basis of more complete information.

⁷ The periods provided for in the model law for duration of provisional measures in the model law are those permitted under the Anti-Dumping Agreement only if a Member applies the lesser duty rule. Since the model law requires consideration of whether a lesser duty should be applied, the permitted longer time periods are included.

⁸ "Competent authorities" means in this case the authority in charge of collecting customs duties. This authority may not be the same as the one conducting anti-dumping investigations.

⁹ The Anti-Dumping Agreement does not specifically provide for a residual duty rate, much less specify how such a rate is to be calculated. However, in light of the fact that a number of Members apply such a rate, and it be useful, the model law includes provision for a residual duty rate, and specifies a method for calculating that rate which seems reasonable in light of other provisions of the Agreement.

¹⁰ The Anti-Dumping Agreement does not provide for the suspension of measures. However, since suspension can be useful, as it allows a certain flexibility in the application of measures, e.g. in cases of domestic short supply, a suspension provision has been included in the model law.

¹¹ The Anti-Dumping Agreement imposes limited obligations on the organization and operation of the investigating authorities. Members are largely free to assign competence to any administrative entity. One of the main obligations is that of concurrent examination of dumping and injury which implies a sufficient staff to review both aspects at the same time. A number of Members assign the responsibility to conduct the investigation to a single entity which either takes decisions or report to its hierarchy, often at a political level (e.g. the minister of

finance). This hierarchy takes the appropriate decisions. Another option is to have two entities separately conducting investigations on dumping and injury.

¹² Article 14 of the Anti-Dumping Agreement provides for anti-dumping actions on behalf of a third country. Because this provision has rarely, if ever, been applied, no corresponding provisions are included in the model law.

¹³ This provision implies that international agreements have some sort of legal effect in the internal legal order. This is in principle not the case in dualist legal orders. Thus, in some countries, this provision would have no legal effect and would be deleted as irrelevant.

¹⁴ In some legal orders, the [law] may have to specify clearly the sectors in which the administrative authority may act through regulations .