

Countervailing and Anti-Dumping Duties Act 1993

1 Countervailing and Anti-Dumping Duties

LAWS OF MALAYSIA

REPRINT

Act 504

COUNTERVAILING AND ANTI-

DUMPING DUTIES ACT 1993

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COUNTERVAILING AND ANTI-DUMPING

DUTIES ACT 1993

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LAWS OF MALAYSIA

Act 504

COUNTERVAILING AND ANTI-DUMPING

DUTIES ACT 1993

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COUNTERVAILING AND ANTI-DUMPING

DUTIES ACT 1993

An Act to make provisions for the investigation and determination of subsidies being provided on, and the dumping of, merchandise imported into Malaysia, the imposition of countervailing and anti-dumping duties to offset such subsidies or dumping, and other matters connected therewith.

[28 April 1994, P.U. (B) 212/1994]

BE IT ENACTED by the Seri Paduka Baginda Yang di-Pertuan Agong with the advice and consent of the Dewan Negara and Dewan Rakyat in Parliament assembled, and by the authority of the same, as follows:

PART I

PRELIMINARY

Short title and commencement

1. (1) This Act may be cited as the Countervailing and Anti-Dumping Duties Act 1993.

(2) This Act shall come into force on such date as the Minister may, by

notification in the Gazette, appoint.

## Interpretation

2. (1) In this Act, unless the context otherwise requires-- "country" includes a customs union or customs territory that possesses full autonomy in the conduct of its external commercial relations and of the other matters provided for in the World Trade Organization Agreement;

"de minimis"--

(a) in relation to subsidy means the amount of the subsidy in relation to the imports from the country under investigation is less than one per centum ad valorem; and 8 Laws of Malaysia ACT 504

(b) in relation to dumping means the margin of dumping is less than two per centum, expressed as a percentage of the export price;

"domestic industry" means--

(a) the domestic producers as a whole of the like product; (b) the domestic producers whose collective output of the like product constitutes a major proportion of the total domestic production of the like product; or

(c) where appropriate, the regional producers of the like product:

Provided that when any of the producers referred to in paragraphs (a), (b) and (c) are related to the exporters or importers, or are themselves importers of the subject merchandise or, in relation to Part II, are importers of a like product from other countries, the expression "domestic industry" may be construed as referring to the rest of the producers referred to in paragraph (a), (b) or (c), as the case may be, other than such related producers or producers who are importers;

"dumping" means the importation of merchandise into Malaysia at less than its normal value as sold in the domestic market of the exporting country;

"dumping margin" means the amount by which the normal value of a merchandise exceeds the export price;

"export price" means the export price of a merchandise as determined in accordance with section 17;

"exporting country" means--



(a) the country of export of the subject merchandise; or (b) in cases where the subject merchandise is not exported directly to Malaysia but is transhipped through an intermediate country--

(i) where the subject merchandise is not substantially transformed in the intermediate country, the country of origin of the subject merchandise;

(ii) where the subject merchandise is substantially transformed in the intermediate country, the

intermediate country;

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"General Agreement on Tariffs and Trade 1994" means the General Agreement on Tariffs and Trade 1994 set out in Annex 1A to the World Trade Organization Agreement; "Government" means the Government of Malaysia;

"injury" means material injury or threat of material injury to the domestic industry or material retardation of the establishment of such an industry;

"interested party" means--

(a) a producer, exporter or importer of the subject merchandise; (b) a trade or business association of which a majority of its members are producers, exporters or importers of the subject merchandise;

(c) the government of a country in which the subject merchandise is produced or from which it is exported; (d) a producer of the like product in Malaysia;

(e) a trade or business association of which a majority of its members produce a like product in Malaysia; or

(f) any other party as the Government considers appropriate; "like product" means a product that is identical or alike in all respects to the subject merchandise or, in the absence of such a product, another product that although not alike in all respects has characteristics closely resembling the subject merchandise; "Member" means a Member to the World Trade Organization Agreement;

"Minister" means the Minister responsible for international trade and industry;

"negligible"--

(a) in relation to a countervailing duty action, in the case of a developing country Member, means the volume of imports of the subject merchandise, actual or potential, from a particular developing country Member into Malaysia accounts for less than four per centum of the total imports of the like product unless developing country Members 10 Laws of Malaysia ACT 504

that individually account for less than four per centum of the imports of the like product into Malaysia collectively account for more than nine per centum of the total imports of the like product into Malaysia; and

(b) in relation to an anti-dumping duty action means the volume of imports of the subject merchandise, actual or potential, from a particular country into Malaysia accounts for less than three per centum of the total imports of the like product unless countries that individually account for less than three per centum of the imports of the like product into Malaysia collectively account for more than seven per centum of the total imports of the like product into Malaysia;

"non-market economy country" means any foreign country that the Government determines operates on a centrally-planned economy and not on market principles of cost or pricing structures or free-enterprise economy;

"normal value" means the normal value of a merchandise as determined in accordance with section 16 or 19;

"officer of customs" has the same meaning as is assigned to that expression under section 2 of the Customs Act 1967 [Act 235]; "prescribed" means prescribed by the regulations; "producer" means a producer, manufacturer or processor; "provisional measures" means--

(a) in relation to Part II, the requirement to post a security equal to the estimated subsidy found in the preliminary determination; and

(b) in relation to Part III, the requirement to post a security equal to the estimated dumping margin found in the preliminary determination;

"regional producers" means the domestic producers of the like product located in a specific regional market within Malaysia where in exceptional circumstances there are two or more competitive 11Countervailing and Anti-Dumping Duties

markets within Malaysia for the production in question and in such case, the producers of the like product within each market may be regarded as a separate industry if--



(a) the producers within each market sell all or almost all of their production of the merchandise in question within that market; and

(b) the demand in each market is not to any substantial degree supplied by producers of the merchandise in question located elsewhere in Malaysia;

"subject merchandise" means the class or kind of merchandise imported or sold for importation into Malaysia that is the subject of any countervailing or anti-dumping duty action under this Act, as determined by the Government to be appropriate for establishing the scope of the action;

"undertakings" means undertakings as may be prescribed under section 50;

"World Trade Organization" means the World Trade Organization established by the World Trade Organization Agreement; "World Trade Organization Agreement" means the Marrakesh Agreement Establishing the World Trade Organization done at Marrakesh on 15 April 1994.

(2) (Deleted by Act A1046).

(3) Notwithstanding any other provisions of this Act, the Minister may regard such activities as are recognized under Malaysia's international obligations to be activities which shall or shall not be subject to action under this Act.

(4) (Deleted by Act A1046).

(5) Parties shall be deemed to be related if--

(a) one of them directly or indirectly controls the other; (b) both of them are directly or indirectly controlled by a third party; or

(c) together they directly or indirectly control a third party: Provided that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the party concerned to behave differently from non-related parties.

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(6) One party shall be deemed to control another when the first-mentioned party is legally or operationally in a position to exercise restraint or direction over the latter.

PART IA

## SUBSIDIES

### Subsidy

2A. For the purposes of this Act, "subsidy", in relation to merchandise that is imported into Malaysia, means-- (a) a financial contribution by a government or a public body, or by a private body entrusted or directed by the government or public body to carry out a governmental function, that is made in connection with the production, manufacture or export of the merchandise and that involves one or more of the following:

(i) a direct transfer of funds from the government or public body or private body to the enterprise by

whom the merchandise is produced, manufactured

or exported (after this referred to as "the enterprise"); (ii) a potential direct transfer of funds from the government or public body or private body to the

enterprise contingent on the occurrence of particular circumstances;

(iii) the acceptance of liabilities, actual or potential, of the enterprise by the government or public body

or private body;

(iv) the forgoing, or non-collection, of revenue (other than an allowable exemption or remission) due to

the government or public body or private body

from the enterprise;

(v) the provision by the government or public body or private body of goods or services to the enterprise other than general infrastructure;

(vi) the purchase by the government or public body or private body of goods provided by the enterprise; (vii) the making of payments to a funding mechanism by the government or public body; or

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(b) any form of income or price support as specified in Article XVI of the General Agreement on Tariffs and Trade 1994 that is received from a government

or public body, if that financial contribution or income or price support confers a benefit in relation to the merchandise.

#### Prohibited subsidy

2B. The following subsidies shall be prohibited:

(a) subsidies contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance, including those as may be prescribed; and

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

#### Actionable subsidy

2C. A subsidy that causes the following adverse effects to the domestic interest shall be subject to countervailing measures under this Act:

(a) injury to the domestic industry;

(b) nullification or impairment of benefits accruing directly or indirectly under the General Agreement on Tariffs and Trade 1994, in particular the benefits of concessions bound under Article II of the General Agreement on Tariffs and Trade 1994; or

(c) serious prejudice to domestic interests:

Provided that this section shall not apply to subsidies maintained on agricultural products as provided in Article 13 of the Agreement on Agriculture set out in Annex 1A to the World Trade Organization Agreement.

#### Non-actionable subsidy

2D. The following subsidies shall be regarded as non-actionable subsidies and shall not be subject to countervailing duties under this Act:

(a) subsidies that are not specific within the meaning of subsection 3(2); and

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(b) subsidies that are specific within the meaning of subsection 3(2) but meet all the prescribed conditions. Calculation of subsidy

2E. Subsidy shall be calculated in the prescribed manner. PART II

## COUNTERVAILING DUTIES

### Imposition of countervailing duties

3. (1) No countervailing duty shall be imposed except in accordance with this Act.

(2) A subsidy as specified in section 2A shall be subject to countervailing duties as provided under this Act only if the subsidy is specific, as may be prescribed, and is not a non-actionable subsidy.

(3) The amount of the countervailing duty to be imposed shall be calculated in accordance with the method as may be prescribed. Initiation of investigation

4. (1) The Government may initiate an investigation to determine the existence, degree and effect of any alleged subsidy upon the submission of a written petition by or on behalf of the domestic industry producing the like product.

(2) A petition under subsection (1) shall contain such information as may be prescribed and shall include sufficient evidence of the existence of a subsidy and injury and a causal link between the imports of the subject merchandise and the alleged injury. (3) The Government shall, within the prescribed period, examine the petition and other available information and evidence to determine whether--

(a) the evidence is sufficient to justify the initiation of an investigation;

(b) there is a sufficient degree of support for or opposition to the petition expressed by the domestic industry; and (c) an investigation is in the public interest.

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(4) A petition under subsection (1) shall be immediately rejected if the Government is satisfied that--

(a) there is no sufficient evidence of either subsidization or of injury to justify the initiation of a countervailing duty investigation, such as but not limited to cases where the amount of a subsidy is de minimis or where the volume of imports of the subject merchandise, actual or potential, or the injury, is negligible; or

(b) an investigation is not in the public interest. (5) Where the Government rejects a petition under subsection (4), the Government shall, as soon as practicable, notify the petitioner in writing of its determination not to initiate an investigation.

(6) Notwithstanding subsection (1) the Government may, in special circumstances, initiate a countervailing duty investigation on its own accord without having received a written petition by or on behalf of the domestic industry for the initiation of such investigation if it has sufficient evidence of each of the matters specified in subsection (2).

(7) Where the Government decides to initiate an investigation under subsection (1) or (6), it shall notify the appropriate interested parties and publish a notice of initiation of investigation. (8) Evidence of both subsidy and injury shall be considered simultaneously in the decision whether to initiate an investigation and after that during the course of the investigation, starting on a date not later than the earliest date the provisional measures may be applied.

(9) The Government shall not disclose any petition made under this section unless the Government has made a decision to initiate an investigation.

#### Consultations with interested foreign governments

5. (1) Before initiating an investigation, the Government shall provide the Members the merchandise of which are subject to investigation and any interested foreign government an opportunity for consultation for the purpose of clarifying matters relevant to the investigation and arriving at a mutually agreed solution. 16 Laws of Malaysia ACT 504

(2) The Government shall provide a reasonable opportunity for further consultations throughout the investigation. (3) No affirmative determination whether preliminary or final shall be made without reasonable opportunity for consultations having been given.

(4) The consultations referred to in subsection (1) may establish the basis for proceeding under section 4.

(5) The Government shall also permit, upon request, the Members the merchandise of which are subject to investigation access to non-confidential evidence, including the non-confidential summary of confidential information, being used for initiating or conducting the investigation.

#### Amendments to the petition



6. A petition requesting a countervailing duty investigation be initiated may be amended subject to such conditions as the Government deems fit.

#### Duration of investigation

7. The Government shall conclude a countervailing duty investigation within such period as may be prescribed. Injury and causal link

7A. (1) A determination of injury for the purpose of a countervailing duty investigation under this Act shall be based on relevant evidence and shall involve an objective examination of both the volume of imports of the subject merchandise and the effect of the subject merchandise on prices in the domestic market for like products and the consequent impact of these imports on the domestic producers of such products.

(2) For the purposes of this Act, it shall be demonstrated that the subject merchandise is, through the effects of subsidies, causing injury.

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(3) The demonstration of a causal relationship between the subject merchandise and the injury to the domestic industry shall be based on an examination of all relevant evidence available to the Government.

(4) The Government shall also examine any known factors other than the subject merchandise that at the same time are injuring the domestic industry and the injuries caused by these other factors shall not be attributed to the subject merchandise. (5) A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. (6) In making a determination regarding the existence of a threat of material injury, the Government shall consider such factors as may be prescribed.

(7) In cases where injury is threatened by the subject merchandise, the application of countervailing measures shall be considered and decided with special care.

#### Preliminary determination of subsidy and injury

8. (1) The Government shall, within such period as may be prescribed, make a preliminary determination regarding-- (a) whether a subsidy is being provided with respect to the subject merchandise and the amount of such subsidy; and (b) whether injury is found to exist in any one of the following ways:

(i) the subject merchandise, through the effects of the subsidy, is causing



material injury to the

domestic industry in Malaysia producing the like

product;

(ii) the subject merchandise, through the effects of the subsidy, is threatening to cause material injury to the domestic industry in Malaysia producing

the like product; or

(iii) the subject merchandise, through the effects of the subsidy, is causing material retardation of the establishment of such an industry in Malaysia.

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(2) If the Government makes a negative preliminary determination with regard to subsection (1), it shall publish a notice stating the reasons for the negative determination and--

(a) continue the investigation; or

(b) terminate the investigation if the Government deems fit. (3) If the Government makes an affirmative preliminary determination with regard to subsection (1), it shall continue the investigation and publish a notice of--

(a) the affirmative preliminary determination, stating the reasons for its determination with respect to paragraphs (1) (a) and (b); and

(b) the provisional measures applicable.

Provisional measures

9. (1) The Government shall apply provisional measures with regard to the subject merchandise imported into Malaysia on or after the publication of the notice of affirmative preliminary determination where the Government determines that such measures are necessary to prevent the injury referred to in paragraph 8(1) (b) from occurring during the period of investigation. (2) Provisional measures shall take the form of provisional countervailing duties guaranteed by a security equal to the amount of the estimated subsidy determined under subsection 8(1). (3) The provisional measures imposed under this section shall not exceed such period as may be prescribed.

Final determination of subsidy and injury

10. (1) The Government shall, within such period as may be prescribed, make a final determination regarding-- (a) whether a subsidy is being provided with respect to the subject merchandise and the amount of such subsidy; and (b) whether injury is found to exist in any one of the following ways:

(i) the subject merchandise, through the effects of the subsidy, is causing material injury to the

domestic industry in Malaysia producing the like

product;

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(ii) the subject merchandise, through the effects of the subsidy, is threatening to cause material injury to the domestic industry in Malaysia producing

the like product; or

(iii) the subject merchandise, through the effects of the subsidy, is causing material retardation of the establishment of such an industry in Malaysia.

(2) The Government shall, before making a final determination, inform all interested Members and interested parties of the essential facts under consideration that form the basis for the decision whether to apply definitive measures.

(2A) A disclosure under subsection (2) shall be made in sufficient time for all interested Members and interested parties to defend their interests.

(3) Where the Government makes a negative final determination with regard to subsection (1), it shall--

(a) terminate the investigation;

(b) terminate the provisional measures applied under section 9 and release the security required by such measures; and

(c) publish a notice of the negative final determination, stating the reasons for its negative determination.

(4) Where the Government makes an affirmative final determination with regard

to subsection (1), it shall-- (a) publish a notice of affirmative final determination stating the reasons for its affirmative determination, the countervailing duties applicable and the subject merchandise on which the countervailing duties apply;

(b) impose countervailing duties in the amounts determined in accordance with subsection 3(3) on the subject merchandise imported into Malaysia on or after the date of publication of the final determination; and

(c) impose countervailing duties in accordance with subsections (5) and (6) on imports into Malaysia for which provisional measures were applied.

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(4A) Where an affirmative final determination has been made, the Government may take into consideration public interest in determining whether to impose countervailing duties and the amount of such duties.

(5) The Government shall impose countervailing duties on the subject merchandise against which provisional measures were applied where--

(a) the Government makes a determination of material injury under subparagraph (1) (b) (i); or

(b) the Government makes a determination of threat of material injury under subparagraph (1) (b) (ii), it finds that the subject merchandise, in the absence of the provisional measures, would have led to a finding of material injury under subparagraph (1) (b) (i).

(5A) Notwithstanding subsection (5), where a determination of threat of injury or material retardation is made but no injury has occurred, a definitive countervailing duty may be imposed only from the date of the determination of the existence of a threat of injury or material retardation, and any security submitted during the period of the application of provisional measures shall be released immediately.

(6) With respect to the imposition of countervailing duties under subsection (5)--

(a) where the countervailing duty is higher than the amount guaranteed by the security required under the provisional measures, only the amount equal to the security shall be imposed; and

(b) where the countervailing duty is less than the amount guaranteed by the security required under the provisional measures, the full amount of the

countervailing duty shall be imposed and the excess amount of the security shall be reimbursed or released.

(7) Notwithstanding subsections (4) and (5), the Government may impose countervailing duties on the subject merchandise imported into Malaysia within a period of ninety days prior to the application of provisional measures if--

(a) the Government finds injury that is difficult to repair; 21Countervailing and Anti-Dumping Duties

(b) such injury is being caused by massive imports of the subject merchandise in a short period of time; and (c) export subsidies are being provided with respect to the subject merchandise contrary to the interested foreign government's international obligations.

(7A) No countervailing duties shall be imposed retroactively under subsection (7) on merchandise entered for consumption before the date of initiation of the investigation.

(8) When a countervailing duty is imposed on the subject merchandise, such countervailing duty shall be imposed in the appropriate amount in each case on a non-discriminatory basis on all imports of such merchandise into Malaysia from the country found to be subsidizing the subject merchandise causing injury. (9) Provisional measures and definitive countervailing duties shall only be applied to subject merchandise that enters for consumption after the time when the decision under subsection 9(1) or 10(4), as the case may be, enters into force. Termination of investigation

11. (1) Notwithstanding any other provisions of this Act, an investigation may be terminated at any time if--

(a) the petitioner withdraws the petition;

(b) there are changed circumstances;

(c) the Government is satisfied that there is no sufficient evidence of subsidization or injury to justify proceeding with the investigation;

(d) the amount of subsidy is de minimis or the volume of imports of the subject merchandise, actual or potential, or the injury, is negligible; or

(e) the Government determines that termination of the investigation is in the public interest.

(2) If a termination pursuant to subsection (1) occurs prior to the preliminary determination, the Government shall publish a notice of such termination stating the reasons for the termination. 22 Laws of Malaysia ACT 504

(3) If a termination pursuant to subsection (1) occurs after the preliminary determination, the Government shall-- (a) terminate any provisional measures referred to in section 9 and release the security required by such measures; and (b) publish a notice of such termination, stating the reasons for the termination.

#### Suspension of investigation

12. (1) An investigation may be suspended at any time if undertakings are accepted by the Government.

(2) Before accepting the undertakings, the Government shall determine that--

(a) the undertakings--

(i) will eliminate the subsidy or the injurious effects caused by the subject merchandise; and

(ii) can be monitored effectively; or

(b) the undertakings are in the public interest.

(3) Undertakings shall not be sought or accepted unless the Government has made a preliminary affirmative determination of subsidization and injury caused by such subsidization and, in the case of undertakings from exporters, has obtained the consent of the exporting Member.

(4) If the undertakings are accepted by the Government after the preliminary determination, the Government shall-- (a) suspend the investigation;

(b) suspend any provisional measures applied under section 9 and release all or part of the security required by such measures as the Government deems appropriate; and (c) publish a notice stating the reasons for the suspension of the investigation and actions under paragraph (b). (5) Notwithstanding the acceptance of the undertakings, the investigation shall be completed upon the written request of the interested foreign government or if the Government so decides. 23Countervailing and Anti-Dumping Duties

(6) Where the Government completes the investigation pursuant to subsection (5) and makes an affirmative determination, the undertakings shall remain in



effect consistent with the provisions of this Act.

(7) Where the Government completes the investigation pursuant to subsection (5) and makes a negative determination, the undertakings shall lapse, except where the negative determination is due in large part to the existence of the undertakings.

(8) Where the negative determination referred to in subsection (7) is due in large part to the existence of the undertakings, the undertakings may be maintained for a reasonable period consistent with the provisions of this Act.

(8A) The Government may suggest for price undertakings to be provided by exporting Members or exporters, but no exporter shall be obliged to enter into such undertakings.

(8B) The fact that the exporting Members or exporters do not offer price undertakings, or do not accept an invitation to do so, shall in no way affect the consideration of the case. (8C) Notwithstanding subsections (8A) and (8B), the Government shall be free to determine that a threat of injury is more likely to be realized if the importation of the subject merchandise continues. (8D) The Government may require any exporting Member or exporter from whom an undertaking has been accepted to provide, periodically, information relevant to the fulfilment of such undertaking and to permit verification of pertinent information. (8E) Non-compliance with subsection (8D) shall be construed as a breach of the undertaking.

(9) The Government may resume a suspended investigation at any time if it determines that the undertakings accepted under subsection (1) no longer meet the requirements of subsection (2) or there is a material violation of the undertakings. 24 Laws of Malaysia ACT 504

(10) If the Government resumes an investigation pursuant to subsection (9), it shall take expeditious action to-- (a) (Deleted by Act A1046);

(b) apply provisional measures in conformity with section 9, if appropriate; and

(c) make a final determination pursuant to section 10. (11) The Government may use the facts available with respect to any determination under subsection (10) where a material violation of the undertakings occur.

(12) In the cases mentioned in subsection (9), the Government may impose countervailing duties in conformity with section 10 on the subject merchandise imported into Malaysia within a period of ninety days prior to the provisional



measures applied under subsection (10):

Provided that such retroactive assessment shall not be applied to subject merchandise imported prior to the violation. Duration of duty

12A. A countervailing duty imposed under this Act shall remain in force only for as long as and to the extent necessary to counteract the subsidization that is causing the injury.

Administrative review

13. (1) Whenever an interested party provides information to the Government, or the Government otherwise obtains information, that--

(a) the amount of subsidy has changed substantially; (b) the imposition of a countervailing duty is no longer necessary;

(c) an undertaking is no longer necessary or should be revised; (d) a countervailing duty or undertaking which is required to be terminated pursuant to subsection (6) should be maintained; or

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(e) an administrative review is in the public interest, the Government may conduct an administrative review: Provided that no administrative review shall be undertaken unless the period prescribed has lapsed.

(2) If the Government decides to conduct an administrative review under subsection (1), the Government shall-- (a) publish a notice of the initiation of an administrative review; and

(b) conduct such review, allowing appropriate interested parties an opportunity to provide comments.

(3) Any administrative review conducted pursuant to subsection (2) shall be completed within such period as may be prescribed.

(4) On the completion of the administrative review, the Government shall publish a final administrative review determination stating the reasons for its determination.

(5) Any determination made pursuant to subsection (4) shall apply to the subject merchandise imported on or after the date of publication of the administrative review determination. (6) No countervailing duty shall be collected on imports made after five years from the date of its imposition, or

five years from the date of the conclusion of the most recent administrative review under subsection (1) that covered both subsidy and injury, and undertakings shall automatically lapse with respect to imports made after five years from the date of publication of the notice of suspension of the investigation, unless the Government determines, in an administrative review initiated before that date on the Government's own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time before that date, that the expiry of the duty or undertaking would be likely to lead to a continuation or recurrence of subsidization and injury.

(7) A countervailing duty duly imposed under this Act may remain in force pending the outcome of an administrative review under this section.

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(8) An interested party who submits relevant information substantiating the need for an administrative review shall have the right to request for an administrative review by the Government to determine one or more of the following:

- (a) whether the continued imposition of the countervailing duty is necessary to offset subsidization;
- (b) whether the injury would be likely to continue to recur if the duty were removed or varied:

Provided that the period specified in subsection (6) has lapsed since the imposition of the definitive countervailing duty. Refund review

13A. (1) Without prejudice to section 13, an importer may request for a refund of the countervailing duties paid where the importer can show that the amount of the countervailable subsidy on the basis of which the countervailing duties were imposed has been either eliminated or reduced to a level that is below the level of the countervailing duties in force.

(2) A request for a refund review shall be submitted in writing to the Government and shall contain--

(a) a list of all entries of the subject merchandise into Malaysia for which the refund review is requested; and

(b) all relevant evidence to show that the importer is entitled to a refund on each such entry.

(3) Where, on the completion of a refund review under this section, the Government determines that--

(a) a refund of the countervailing duty, wholly or partly, is appropriate;

(b) no countervailing duty should have been imposed; or (c) the countervailing duty that was imposed is higher than the countervailing duty that should have been imposed in the circumstances,

the Government shall refund such amount of the countervailing duty collected as it deems fit.

(4) A refund under subsection (3) shall, as far as practicable, be made within ninety days from the date of the determination of the refund review.

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(5) A finding in the refund review that no countervailing duty should have been imposed shall not by itself require the Government to terminate the definitive countervailing duty.

## Expedited review

13B. (1) An exporter or a producer whose exports of the subject merchandise are subject to a definitive countervailing duty but who was not actually investigated for reasons other than a refusal to co-operate shall be entitled to an expedited review in order that the Government may immediately establish an individual countervailing duty rate for the exporter or producer. (2) No countervailing duty shall be imposed on imports from the exporters or producers referred to in subsection (1) while the review is being carried out.

(3) Notwithstanding subsection (2), the Government may withhold an appraisement or request guarantees to ensure that, should a review under subsection (1) result in a determination of subsidization and injury caused thereby in respect of exports of the subject merchandise into Malaysia by the exporters or producers referred to in subsection (1), countervailing duties may be imposed retroactively to the date of the initiation of the review.

## Developing country Member

14. Notwithstanding any other provisions of this Act, countervailing duty proceedings against exporters or producers from developing country Members of the World Trade Organization shall be carried out in such manner as may be prescribed.

## PART III

### ANTI-DUMPING DUTIES

#### Imposition of anti-dumping duties

15. (1) No anti-dumping duty shall be imposed except in accordance with this Act.

(2) The amount of anti-dumping duty to be imposed-- (a) shall be equal to the dumping margin determined to exist with respect to the subject merchandise; or

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(b) if the Government determines that a lower anti-dumping duty will be sufficient to eliminate the injury, may be such lower duty.

#### Normal value

16. (1) For the purpose of this Act, the normal value shall be the comparable price actually paid or payable in the ordinary course of trade for the like product sold for consumption in the domestic market of the exporting country.

(2) When there are no sales in the domestic market of the exporting country under subsection (1), or when such sales do not permit a proper comparison, normal value shall be determined-- (a) by comparison with a comparable price of the like product when exported to an appropriate third country provided that the comparable price is representative; or

(b) by constructing the value of the subject merchandise by adding cost of production in the country of origin plus a reasonable amount for selling, administrative and other general expenses and for profits.

(3) If there are reasonable grounds for believing or suspecting that a sale of the like product under subsection (1) or paragraph (2) (a) is at a price below unit production costs (fixed and variable) plus selling, administrative and other general expenses, the sale may be treated as not having been made in the ordinary course of trade by reason of price and may be disregarded in determining normal value only if the Government determines that such sale was made within an extended period of time in substantial quantities and is at a price that does not provide for the recovery of all costs within a reasonable period of time.

(4) If the price of a sale referred to in subsection (3) is above the weighted average per unit cost for the period of investigation, such price shall be



considered to provide for the recovery of costs within a reasonable period of time.

(5) For the purpose of this section, the amount for selling, administrative and other general expenses and for profits shall be based on actual information pertaining to production and sales in the ordinary course of trade of the like product by the exporter or producer under investigation.

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(6) If the amount referred to in subsection (5) cannot be determined on the basis specified in that subsection, the amount may be determined on any of the following basis:

(a) the weighted average of the actual amount 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;

(b) the actual amount 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; or

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

(7) For the purpose of this section, production costs shall be calculated on the basis of records kept by the exporter or producer under investigation, provided that such records are in accordance with the generally accepted accounting principles of the exporting country concerned and reasonably reflect the costs associated with the production and sale of the subject merchandise. (8) The Government shall consider all available evidence on the proper allocation of costs, including any evidence that is made available by the exporter or producer in the course of the investigation, provided that it is shown that such allocations have historically been 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.

## Export price

17. (1) The export price shall be the price actually paid or payable for the subject merchandise.

(2) In cases where there is no export price or where it appears that the export price is unreliable because the exporter and the importer or a third party are related, or that there is a compensatory arrangement between the exporter and the importer or a third 30 Laws of Malaysia ACT 504

party, the export price may be constructed on the basis of the price at which the subject merchandise is first resold to an independent buyer, or if the subject merchandise is not resold to an independent buyer, or not resold in the condition imported, on any reasonable basis.

(3) If the export price is constructed as described in subsection (2), allowance shall be made for all costs incurred between importation and resale.

#### Comparison of normal value and export price

18. (1) A fair comparison shall be made between the export price and the normal value.

(2) The comparison shall be made at the same level of trade, normally at ex-factory level, and in respect of sales made at as nearly as possible the same time and due account shall be taken of other differences that affect price comparability. (3) Where the normal value and the export price as established are not on a comparable basis, due allowance, in the form of adjustments, shall be made in each case, on its merits, for differences in factors that are claimed, and demonstrated, to affect prices and price comparability.

(4) If the determination of the export price under subsection 17(2) affects price comparability, the Government 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 provided under this section. (5) In a case where the subject merchandise is not imported directly from the country of origin but is exported from an intermediate country, the price at which the subject merchandise is sold from the exporting country to Malaysia shall be compared with the comparable price in the exporting country.

(6) Notwithstanding subsection (5), comparison may be made with the price in the country of origin if—

(a) the subject merchandise is merely transhipped through the exporting country;

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(b) the subject merchandise is not produced in the exporting country; or



(c) there is no comparable price for the subject merchandise in the exporting country.

(7) Where an exporter or importer claims for an adjustment under subsection (3), it shall prove that its claim is justified. (8) The Government shall indicate to the parties in question the information that is necessary to ensure a fair comparison. Subject merchandise from a non-market economy country

19. Where the country of origin of the subject merchandise is a non-market economy country, the normal value shall be determined in the prescribed manner.

#### Initiation of investigation

20. (1) The Government may initiate an investigation to determine the existence, degree and effect of any alleged dumping upon the submission of a written petition by or on behalf of the domestic industry producing the like product.

(2) A petition under subsection (1) shall contain such information as may be prescribed and shall include sufficient evidence of the dumping and injury and a causal link between the imports of the subject merchandise and the alleged injury.

(3) After receipt of a petition under subsection (1) but before proceeding under subsection (4), the Government shall notify the government of the exporting country of the receipt of the petition. (4) The Government shall, within the prescribed period, examine the petition and other available information and evidence to determine whether--

- (a) the evidence is sufficient to justify the initiation of an investigation;
- (b) there is a sufficient degree of support for or opposition to the petition expressed by the domestic industry; and (c) an investigation is in the public interest.

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(5) A petition under subsection (1) shall be immediately rejected if the Government is satisfied that--

- (a) there is no sufficient evidence of either dumping or of injury to justify the initiation of an anti-dumping duty investigation, such as but not limited

to cases where the dumping margin is de minimis or where the volume of imports of the subject merchandise, actual or potential, or the injury, is negligible; or

(b) an investigation is not in the public interest. (6) Where the Government rejects a petition under subsection (5), the Government shall, as soon as practicable, notify the petitioner in writing of its determination not to initiate an investigation.

(7) Notwithstanding subsection (1) the Government may, in special circumstances, initiate an anti-dumping duty investigation on its own accord without having received a written petition by or on behalf of the domestic industry for the initiation of such investigation if it has sufficient evidence of each of the matters specified in subsection (2).

(8) Where the Government decides to initiate an investigation under subsection (1) or subsection (7), it shall notify the appropriate interested parties and publish a notice of initiation of investigation. (9) Evidence of both dumping and injury shall be considered simultaneously in the decision whether to initiate an investigation and after that during the course of the investigation, starting on a date not later than the earliest date the provisional measures may be applied.

(10) The Government shall not disclose any petition made under this section unless the Government has made a decision to initiate an investigation.

#### Amendments to the petition

21. A petition requesting an anti-dumping duty investigation be initiated may be amended subject to such conditions as the Government deems fit.

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##### Duration of investigation

22. The Government shall conclude an anti-dumping duty investigation within such period as may be prescribed. Injury and causal link

22A. (1) A determination of injury for the purpose of an anti-dumping duty investigation under this Act shall be based on relevant evidence and shall involve an objective examination of both the volume of imports of the subject merchandise and the effect of the subject merchandise on prices in the domestic market for like products and the consequent impact of these imports on the domestic producers of such products.

(2) For the purposes of this Act, it shall be demonstrated that the subject merchandise is, through the effects of dumping, causing injury.

(3) The demonstration of a causal relationship between the subject merchandise and the injury to the domestic industry shall be based on an examination of all relevant evidence available to the Government.

(4) The Government shall also examine any known factors other than the subject merchandise that at the same time are injuring the domestic industry and the injuries caused by these other factors shall not be attributed to the subject merchandise. (5) A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. (6) In making a determination regarding the existence of a threat of material injury, the Government shall consider such factors as may be prescribed.

(7) In cases where injury is threatened by the subject merchandise, the application of anti-dumping measures shall be considered and decided with special care.

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#### Preliminary determination of dumping and injury

23. (1) The Government shall, within such period as may be prescribed, make a preliminary determination regarding-- (a) whether a dumping margin exists with respect to the subject merchandise and the margin of such dumping; and

(b) whether injury is found to exist in any one of the following ways:

(i) the subject merchandise, through the effects of dumping, is causing material injury to the domestic industry in Malaysia producing the like product;

(ii) the subject merchandise, through the effects of dumping, is threatening to cause material injury

to the domestic industry in Malaysia producing

the like product; or

(iii) the subject merchandise, through the effects of dumping, is causing material retardation of the

establishment of such an industry in Malaysia.

(2) If the Government makes a negative preliminary determination with regard to subsection (1), it shall publish a notice stating the reasons for the negative determination and--

(a) continue the investigation; or

(b) terminate the investigation if the Government deems fit. (3) If the Government makes an affirmative preliminary determination with regard to subsection (1), it shall continue the investigation and publish a notice of--

(a) the affirmative preliminary determination, stating the reasons for its determination with respect to paragraphs (1) (a) and (b); and

(b) the provisional measures applicable.

#### Provisional measures

24. (1) The Government shall apply provisional measures with regard to the subject merchandise imported into Malaysia on or after the publication of the notice of affirmative preliminary 35Countervailing and Anti-Dumping Duties

determination where the Government determines that such measures are necessary to prevent the injury referred to in paragraph 23(1) (b) from occurring during the period of investigation. (2) Provisional measures shall take the form of provisional anti-dumping duties guaranteed by a security equal to the amount of estimated dumping margin determined under subsection 23(1). (3) The provisional measures imposed under this section shall not exceed such period as may be prescribed.

#### Final determination of dumping and injury

25. (1) The Government shall, within such period as may be prescribed, make a final determination regarding-- (a) whether a dumping margin exists with regard to the subject merchandise and the margin of such dumping; and

(b) whether injury is found to exist in any one of the following ways:

(i) the subject merchandise, through the effects of dumping, is causing material injury to the domestic industry in Malaysia producing the like product;

(ii) the subject merchandise, through the effects of dumping, is threatening to cause material injury

to the domestic industry in Malaysia producing

the like product; or

(iii) the subject merchandise, through the effects of dumping, is causing material retardation of the establishment of such an industry in Malaysia.

(2) The Government shall, before making a final determination, inform all interested parties of the essential facts under consideration that form the basis for the decision whether to apply definitive measures.

(2A) A disclosure under subsection (2) shall be made in sufficient time for all interested parties to defend their interests. 36 Laws of Malaysia ACT 504

(3) Where the Government makes a negative final determination with regard to subsection (1), it shall--

(a) terminate the investigation;

(b) terminate the provisional measures applied under section 24, and release the security required by such measures; and

(c) publish a notice of the negative final determination, stating the reasons for its negative determination.

(4) Where the Government makes an affirmative final determination with regard to subsection (1), it shall-- (a) publish a notice of affirmative final determination stating the reasons for its affirmative determination, the anti-dumping duties applicable and the subject merchandise on which the anti-dumping duties apply;

(b) impose anti-dumping duties in the amounts determined in accordance with subsection 15(2) on the subject merchandise imported into Malaysia on or after the date of publication of the final determination; and

(c) impose anti-dumping duties in accordance with subsections (5) and (6) on imports into Malaysia for which provisional measures were applied.

(4A) Where an affirmative final determination has been made, the Government may take into consideration public interest in determining whether to impose anti-dumping duties and the amount of such duties.

(5) The Government shall impose anti-dumping duties on the subject merchandise



against which provisional measures were applied where--

(a) the Government makes a determination of material injury under subparagraph (1) (b) (i); or

(b) the Government makes a determination of threat of material injury under subparagraph (1) (b) (ii), it finds that the subject merchandise, in the absence of the provisional measures, would have led to a finding of material injury under subparagraph (1) (b) (i).

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(5A) Notwithstanding subsection (5), where a determination of threat of injury or material retardation is made but no injury has occurred, a definitive anti-dumping duty may be imposed only from the date of the determination of the existence of a threat of injury or material retardation, and any security submitted during the period of the application of provisional measures shall be released immediately.

(6) With respect to the imposition of anti-dumping duties under subsection (5)--

(a) where the anti-dumping duty is higher than the amount guaranteed by the security required under the provisional measures, only the amount equal to the security shall be imposed; and

(b) where the anti-dumping duty is less than the amount guaranteed by the security required under the provisional measures, the full amount of the anti-dumping duty shall be imposed and the excess amount of the security shall be reimbursed or released.

(7) Notwithstanding subsections (4) and (5), the Government may impose anti-dumping duties on the subject merchandise imported into Malaysia within a period of ninety days prior to the application of provisional measures if--

(a) the Government finds injury that is difficult to repair; (b) such injury is being caused by massive imports of the subject merchandise in a short period of time; and (c) there is a history of dumping which caused injury, or the importer was or should have been aware that the exporter practises dumping and that such dumping would cause injury.

(7A) No anti-dumping duties shall be imposed retroactively under subsection (7) on merchandise entered for consumption before the date of initiation of the investigation.



(8) When an anti-dumping duty is imposed on the subject merchandise, such anti-dumping duty shall be imposed in the appropriate amount in each case on a non-discriminatory basis on all imports of such merchandise into Malaysia from the country found to be dumping the subject merchandise causing injury. 38  
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(9) Provisional measures and definitive anti-dumping duties shall only be applied to subject merchandise that enters for consumption after the time when the decision under subsection 24(1) or 25(4), as the case may be, enters into force.

#### Termination of investigation

26. (1) Notwithstanding any other provisions of this Act, an investigation may be terminated at any time if--

- (a) the petitioner withdraws the petition;
- (b) there are changed circumstances;
- (c) the Government is satisfied that there is no sufficient evidence of dumping or injury to justify proceeding with the investigation;
- (d) the dumping margin is de minimis or the volume of imports of the subject merchandise, actual or potential, or the injury, is negligible; or
- (e) the Government determines that termination of the investigation is in the public interest.

(2) If a termination pursuant to subsection (1) occurs prior to the preliminary determination, the Government shall publish a notice of such termination stating the reasons for the termination. (3) If a termination pursuant to subsection (1) occurs after the preliminary determination, the Government shall-- (a) terminate any provisional measures referred to in section 24 and release the security required by such measures; and

(b) publish a notice of such termination, stating the reasons for the termination.

#### Suspension of investigation

27. (1) An investigation may be suspended at any time if price undertakings are accepted by the Government.

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(8A) The Government may suggest for price undertakings to be provided by exporters, but no exporter shall be obliged to enter into such undertakings.

(8B) The fact that the exporters do not offer price undertakings, or do not accept an invitation to do so, shall in no way affect the consideration of the case.

(8C) Notwithstanding subsections (8A) and (8B), the Government shall be free to determine that a threat of injury is more likely to be realized if the importation of the subject merchandise continues. (8D) The Government may require any exporter from whom a price undertaking has been accepted to provide, periodically, information relevant to the fulfilment of such undertaking and to permit verification of pertinent information.

(8E) Non-compliance with subsection (8D) shall be construed as a breach of the price undertaking.

(9) The Government may resume a suspended investigation at any time if it determines that the price undertakings accepted under subsection (1) no longer meet the requirements of subsection (2) or there is a material violation of the price undertakings. (10) If the Government resumes an investigation pursuant to subsection (9), it shall take expeditious action to-- (a) (Deleted by Act A1046);

(b) apply provisional measures in conformity with section 24, if appropriate; and

(c) make a final determination pursuant to section 25. (11) The Government may use the facts available with respect to any determination under subsection (10) where a material violation of the price undertakings occur.

(12) In the cases mentioned in subsection (9), the Government may impose anti-dumping duties in conformity with section 25 on the subject merchandise imported into Malaysia within a period of ninety days prior to the provisional measures applied under subsection (10):

Provided that such retroactive assessment shall not be applied to subject merchandise imported prior to the violation. 40 Laws of Malaysia ACT 504

### Duration of duty

27A. An anti-dumping duty imposed under this Act shall remain in force only for as long as and to the extent necessary to counteract the dumping that is

causing the injury.

#### Administrative review

28. (1) Whenever an interested party provides information to the Government, or the Government otherwise obtains information, that--

(a) the dumping margin has changed substantially; (b) (Deleted by Act A1046);

(c) the imposition of an anti-dumping duty is no longer necessary;

(d) an undertaking is no longer necessary or should be revised; (e) an anti-dumping duty or undertaking which is required to be terminated pursuant to subsection (6) should be maintained; or

(f) an administrative review is in the public interest, the Government may conduct an administrative review: Provided that no administrative review shall be undertaken unless the period prescribed has lapsed.

(2) If the Government decides to conduct an administrative review under subsection (1), the Government shall-- (a) publish a notice of the initiation of an administrative review; and

(b) conduct such review, allowing appropriate interested parties an opportunity to provide comments.

(3) Any administrative review conducted pursuant to subsection (2) shall be completed within such period as may be prescribed.

(4) On the completion of the administrative review, the Government shall publish a final administrative review determination, stating the reasons for its determination.

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(5) Any determination made pursuant to subsection (4) shall apply to the subject merchandise imported on or after the date of publication of the administrative review determination. (6) No anti-dumping duty shall be collected on imports made after five years from the date of its imposition, or five years from the date of the conclusion of the most recent administrative review under subsection (1) that covered both dumping and injury, and undertakings shall automatically lapse with respect to imports made after five years from the date of publication of the notice of suspension of the investigation, unless the Government determines, in an administrative review

initiated before that date on the Government's own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time before that date, that the expiry of the duty or undertaking would be likely to lead to a continuation or recurrence of dumping and injury.

(7) An anti-dumping duty duly imposed under this Act may remain in force pending the outcome of an administrative review under this section.

(8) An interested party who submits relevant information substantiating the need for an administrative review shall have the right to request for an administrative review by the Government to determine one or more of the following:

(a) whether the continued imposition of the anti-dumping duty is necessary to offset dumping;

(b) whether the injury would be likely to continue to recur if the duty were removed or varied:

Provided that the period specified in subsection (6) has lapsed since the imposition of the definitive anti-dumping duty. Refund review

28A. (1) Without prejudice to section 28, an importer may request for a refund of the anti-dumping duties paid where the importer can show that the dumping on the basis of which the anti-dumping duties were imposed has been either eliminated or reduced to a level that is below the level of the anti-dumping duties in force. 42 Laws of Malaysia ACT 504

(2) A request for a refund review shall be submitted in writing to the Government and shall contain--

(a) a list of all entries of the subject merchandise into Malaysia for which the refund review is requested; and

(b) all relevant evidence to show that the importer is entitled to a refund on each such entry.

(3) Where, on the completion of a refund review under this section, the Government determines that--

(a) a refund of the anti-dumping duty, wholly or partly, is appropriate;

(b) no anti-dumping duty should have been imposed; or (c) the anti-dumping duty that was imposed is higher than the anti-dumping duty that should have



been imposed in the circumstances,

the Government shall refund such amount of the anti-dumping duty collected as it deems fit.

(4) A refund under subsection (3) shall, as far as practicable, be made within ninety days from the date of the determination of the refund review.

(5) A finding in the refund review that no anti-dumping duty should have been imposed shall not by itself require the Government to terminate the definitive anti-dumping duty.

#### Expedited review

28B. (1) An exporter or a producer whose exports of the subject merchandise are subject to a definitive anti-dumping duty but who has not exported the subject merchandise to Malaysia during the period of investigation shall be entitled to an expedited review in order that the Government may immediately establish an individual anti-dumping duty rate for the exporter or producer, provided that the exporter or producer can show that the exporter or producer is not related to any of the exporters or producers in the exporting country who are subject to the anti-dumping duties on the subject merchandise.

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(2) No anti-dumping duty shall be imposed on imports from the exporters or producers referred to in subsection (1) while the review is being carried out.

(3) Notwithstanding subsection (2), the Government may withhold an appraisal or request guarantees to ensure that, should a review under subsection (1) result in a determination of dumping and injury caused thereby in respect of exports of the subject merchandise into Malaysia by the exporters or producers referred to in subsection (1), anti-dumping duties may be imposed retroactively to the date of the initiation of the review.

#### Anti-dumping action on behalf of third country

29. (1) The Government may initiate an anti-dumping duty investigation on behalf of a third country upon receipt of a written request for an anti-dumping action from the government of the third country.

(2) The request referred to in subsection (1) shall be supported by price information to show that the imports are being dumped and by detailed information to show that the alleged dumping is causing injury to the domestic



industry concerned in the third country.

(3) The government of the third country shall give all assistance to the Government to obtain any further information as may be necessary for the investigation.

(4) In considering a request under this section, the Government shall consider the effects of the alleged dumping on the industry concerned as a whole in the third country.

(5) The decision whether to proceed with an anti-dumping duty investigation on behalf of a third country shall rest solely with the Government.

(6) If the Government decides to initiate an anti-dumping duty investigation under this section, the Government shall obtain the approval of the Council for Trade in Goods of the World Trade Organization before beginning the investigation.

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## PART IV

### ADMINISTRATION

#### Administrative matters

30. (1) Any petition to be submitted under Parts II and III shall be submitted to the Minister.

(2) Subject to the provisions of this Act, any action to be conducted or taken under this Act shall be conducted or taken by any person or officer authorized in writing in that behalf by the Minister. (3) Any finding of an investigation, whether for the purpose of a preliminary or final determination, or a review, under this Act, shall be forwarded to the Minister.

(4) The Minister shall make a recommendation to the Minister of Finance who shall make a determination or a decision. (5) The collection of any countervailing or anti-dumping duty imposed under this Act shall be conducted by an officer of customs. (6) If any question arises as to whether any particular product is or is not included in any notification given under this Act, such question shall be referred to the Minister who shall make a decision on the matter.

Protection of officers and persons acting under direction of officers

31. No action or prosecution shall be brought, instituted or maintained in any court against any person or officer authorized under this Act for or on account of or in respect of any act ordered or done for the purpose of carrying into effect this Act, and no suit or prosecution shall lie in any court against any other person for or on account of or in respect of any act done or purported to be done by him under the order, direction or instruction of any such person or officer if the act was done in good faith and in a reasonable belief that it was necessary for the purpose intended to be served thereby.

32. (Deleted by Act A1046). 45Countervailing and Anti-Dumping Duties

Regulations in respect of specified areas

33. The Minister of Finance may, in respect of certain areas to be specified in regulations made under this section, make special provision to regulate those specified areas for the purposes of this Act.

Application of the Customs Act 1967

34. (1) This Act shall be construed as one with the Customs Act 1967.

(2) In the event of any inconsistency occurring between the provisions of the Customs Act 1967 and the provisions of this Act, the provisions of this Act shall prevail.

Judicial review

34A. (1) An interested party who is not satisfied or who is aggrieved by the decision of the Government in relation to a final determination or a final administrative review determination under this Act shall have the right to refer such matter to the High Court for judicial review in accordance with Order 53 of the Rules of the High Court 1980 [P.U. (A) 50/1980].

(2) A request for judicial review shall be filed in the High Court within thirty days after the publication of the final determination or the final administrative review determination in question. (3) A request for judicial review shall not be filed in the High Court unless the final determination or final administrative review determination in question has been published by the Government in accordance with this Act.

(4) Notwithstanding subrule 1(5) of Order 53 of the Rules of the High Court 1980, a request for judicial review in the High Court shall not hinder the

Government from collecting the countervailing duty or anti-dumping duty imposed under any final determination or final administrative review determination. 46 Laws of Malaysia ACT 504

## PART V

### GENERAL

#### Cumulative assessment

35. (1) Where imports of subject merchandise from more than one country are simultaneously subject to countervailing or anti-dumping duty investigations, the Government may cumulatively assess the effects of such imports.

(2) Subsection (1) shall apply only if the Government determines-- (a) that the amount of a subsidy or the margin of dumping established in relation to the imports from each country is more than de minimis;

(b) that the volume of imports of the subject merchandise from each country is not negligible; and

(c) that the cumulative assessment of the effects of the imports of the subject merchandise is appropriate in view of the conditions of competition between the subject merchandise, and the conditions of competition between the subject merchandise and the like domestic product.

#### False statements

36. Any information provided which is false or materially inaccurate shall be rejected without prejudice to whatever penalties that may be applicable under regulations made under this Act or any other written law.

#### Anti-circumvention measures

37. The Government may take action to prevent circumvention of the application of countervailing and anti-dumping duties as may be prescribed.

#### Notice of information and opportunities to present evidence

38. (1) The Government shall provide a copy of the notice of the information that it requires from the Members and all interested parties whose product is the subject of an investigation under this Act to the Members and interested parties and shall give the Members 47Countervailing and Anti-Dumping Duties and interested parties an opportunity within the period as may be prescribed

to present in writing all evidence that they consider relevant in respect of the investigation.

(2) As soon as an investigation has been initiated, the Government shall provide the full text of the written petition received under subsection 4(1) or 20(1), as the case may be, to the known exporters and the exporting Members and shall make it available, upon request, to the other interested parties involved, due regard being given to the protection of confidential information. (3) Subject to the requirement to protect confidential information, evidence presented in writing by any interested Member or interested party shall be made available immediately to the other interested Members or interested parties involved in the investigation. (4) The Government shall, whenever practicable, provide timely opportunities for all interested Members and interested parties to see all information that is relevant to the presentation of their case provided that the information is not confidential and is used by the Government in the investigation.

#### Confidential information

39. (1) Any information which is by its nature confidential, or any information which is provided on a confidential basis to the Government, shall for good cause shown, be treated as such by the Government.

(2) The confidential nature of a document shall not be used as a reason for refusing to provide it to the Government. (3) The Government shall be responsible for ensuring the confidentiality of such documents.

(4) Confidential information shall not be disclosed without specific written permission from the party submitting the confidential information.

(5) The Government shall require parties providing confidential information to furnish non-confidential summaries that are sufficient in detail to permit reasonable understanding of the substance of the confidential information.

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(6) In the event such parties indicate that such information is not susceptible of summary, a statement of reasons why summarization is not possible shall be provided.

(7) The Government may disregard information presented if-- (a) the Government finds that a request for confidentiality under subsection (1) is not warranted and the supplier of the information nevertheless is unwilling to make the information public or to authorize its disclosure in a generalized or summary



form unless it can be demonstrated to the Government's satisfaction from appropriate sources that the information is correct;

(b) the non-confidential summaries as required under subsection (5) are not in sufficient detail; or

(c) the reasons given for not providing non-confidential summaries under subsection (6) are not deemed adequate and the party supplying the information nevertheless refuses to provide non-confidential summaries.

#### Verification of information

40. The Government may decide to verify the accuracy of any information submitted during an investigation or administrative review in the prescribed manner.

#### Use of facts available

41. Where any interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes an investigation or review, including refusal to allow verification of its information, preliminary and final determinations in investigations or reviews under this Act may be made on the basis of the facts available, including the facts contained in the petition received under subsection 4(1) or 20(1), as the case may be.

#### Other practices discovered during the investigation

42. If in the course of an investigation the Government discovers practices which appear to be subsidies or dumping, but were not included in the matters alleged in the petition, then the Government may, if there is sufficient time, investigate the practices. 49Countervailing and Anti-Dumping Duties

#### Conduct of investigation where no international obligations apply

43. (1) When no applicable international obligation on countervailing and anti-dumping duties exist between Malaysia and the interested foreign government--

(a) countervailing and anti-dumping duties may be imposed without regard to an investigation referred to in sections 4 and 20; and

(b) the Government shall be entitled to use any administrative and legal definition, methodology and procedure it deems appropriate, with regard to the investigations.



(2) When applying the provisions of subsection (1), consideration shall be given to the laws and regulations of the interested foreign government and their application to Malaysian exports. Transshipment

44. In cases where merchandise is not imported into Malaysia directly from the country of origin, but is exported to Malaysia from an intermediate country, the provisions of the Act shall be fully applicable and the transaction, for the purposes of this Act, shall be regarded as having taken place between the country of origin and Malaysia.

#### Publication of notices

45. All notices required to be published under this Act shall be published in the Gazette, unless otherwise specified. Double counting not permitted

46. No merchandise shall be subject to both anti-dumping and countervailing duties to compensate for the same situation of dumping or subsidization.

#### Customs clearance not to be hindered

47. Any investigation conducted under this Act shall not hinder procedures for customs clearance.

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#### Public servants

48. Any person acting for and on behalf of or under the direction of the Government under this Act shall be deemed to be a public servant within the meaning of the Penal Code [Act 574]. Obligation of secrecy

49. (1) No person who has access to any statement, accounts, record, correspondence, document, information or any other material obtained pursuant to the provisions of this Act shall disclose such statement, accounts, record, correspondence, document, information or other material to any other person unless--

(a) such disclosure is authorized by the Minister; or (b) such disclosure is made for the purposes of this Act. (2) Any person who contravenes subsection (1) shall be guilty of an offence and shall, on conviction, be liable to a fine not exceeding one hundred thousand ringgit or to imprisonment for a term not exceeding one year or to both.

## Power to make regulations

50. (1) The Minister may make such regulations as may be necessary or expedient for giving full effect to the provisions of this Act, for carrying out the purposes of this Act or any provisions thereof, or for the further, better or more convenient implementation of the provisions of this Act.

(2) Without prejudice to the generality of subsection (1), regulations may be made--

(a) to prescribe the time periods for any action to be taken under this Act;

(b) to provide for extensions of time for any action to be taken and the circumstances when extensions may be granted;

(c) to provide for the form and content of notices required for the purposes of this Act and the procedures related to the giving of such notices;

(d) to provide for anti-circumvention measures;

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(e) to provide for the procedures of investigations, reviews and appeals;

(f) to provide for any fee to be charged in respect of any matter or things required for the purposes of this Act; (g) to provide for the forms of undertakings which may be accepted by the Government and the procedures related thereto; and

(h) to provide for all matters which are required to be prescribed or which are necessary or expedient to give effect to this Act.

(3) Regulations under this section--

(a) may provide that any act or omission in contravention of any provisions thereof shall be an offence; and

(b) may provide for the imposition of penalties which shall not exceed three hundred thousand ringgit for such offence. Repeal of the Customs (Dumping and Subsidies) Act 1959

51. The Customs (Dumping and Subsidies) Act 1959 [Act 361] is hereby repealed.

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LAWS OF MALAYSIA

Act 504

COUNTERVAILING AND ANTI-DUMPING

DUTIES ACT 1993

LIST OF AMENDMENTS

Amending law Short title In force from

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LAWS OF MALAYSIA

Act 504

COUNTERVAILING AND ANTI-DUMPING

DUTIES ACT 1993

LIST OF SECTIONS AMENDED

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3 Act A1046 01-12-1999

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5 Act A1046 01-12-1999

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DICETAK OLEH

PERCETAKAN NASIONAL MALAYSIA BERHAD,

KUALA LUMPUR

BAGI PIHAK DAN DENGAN PERINTAH KERAJAAN MALAYSIA

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