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THE ANTI DUMPING DUTIES ORDINANCE, 2000

ORDINANCE NO. LXV of 2000

[22nd December, 2000]

An Ordinance to amend and consolidate the Law relating to imposition of anti dumping duties to offset such dumping

WHEREAS it is expedient to give effect in Pakistan to the provisions of Article VI of the General Agreement on Tariffs and Trade, 1994, and to the Agreement on implementation thereof and to amend and consolidate the law relating to imposition of anti-dumping duties to offset such dumping, to provide a framework for investigation and determination of dumping and injury in respect of goods imported into Pakistan and for matters ancillary thereto or connected therewith;

AND WHEREAS the imposition of anti-dumping duties to offset injurious dumping is in the public interest;

AND WHEREAS the National Assembly and the Senate stand suspended in pursuance of the Proclamation of the fourteenth day of October, 1999, and the Provisional Constitution Order No. I of 1999;

AND WHEREAS the President is satisfied that circumstances exist which render it necessary to take immediate action;

NOW, THEREFORE, in pursuance of the Proclamation of Emergency of the fourteenth day of October, 1999, and the Provisional Constitution Order No. I of 1999, read with the Provisional Constitution (Amendment) Order No. 9 of 1999, and in exercise of all powers enabling him in that behalf, the President of the Islamic Republic of Pakistan is pleased to make and promulgate the following Ordinance:—

PARTI

PRELIMINARY

1. Short title, extent and commencement.—(1) This Ordinance may be called the Anti-Dumping Duties Ordinance, 2000.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

2. Definition. In this Ordinance, unless there is anything repugnant in the subject or context:—

(a) "Appellate Tribunal" means the Appellate Tribunal established under section 64;

(b) "Commission" means the National Tariff Commission established under the National Tariff Commission Act, 1990 (Act VI of 1990);

(c) "country" means any country or territory whether a member of the World Trade Organisation or not and includes a customs union or separate customs territory;

(d) "domestic industry" means the domestic producers as a whole of a 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 any such domestic producers are related to the exporters or importers, or are themselves importers of the allegedly dumped investigated product in such a case "domestic industry" shall mean the rest of the domestic producers.

Explanation—For the purposes of this clause, producers shall be deemed to be related to exporters or importers only if—

- (i) one of them directly or indirectly Controls the other;
- (ii) both of them are directly or indirectly controlled by the same 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 and for that purpose 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:

Provided further that, in exceptional circumstances, as may be determined by the Commission, domestic industry in relation to a product in question may be divided into two or more competitive markets and producers within each such market may be regarded as a separate industry if—

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

(ii) the demand in such a market is not to any substantial degree supplied by producers of the product in question located elsewhere in Pakistan;

(e) "domestic like product" means the domestically produced product which is a like product to an investigated product;

(f) "dumping margin" in relation to a product, means the amount by which its normal value exceeds its export price;

(g) "export price" means export price determined in accordance with Part IV of this Ordinance;

(h) "exporting country" means, save as provided in sub-section (3) of section 5, a country from which an investigated product is exported to Pakistan;

(@ "injury" means, unless otherwise specified, material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of a domestic industry, when dumped imports are causing such injury;

(j) "interested party" includes-

(@ any exporter or foreign producer of an investigated product;

(ii) any importer of an investigated product;

(iii) trade or business association a majority of the members of which are producers, exporters or importers of an investigated product;

(iv) the government of an exporting country;

(v) any producer of a domestic like product in Pakistan;

(vi) trade or business associations a majority of the members of which produce a domestic like product in Pakistan; and

(vii) such other person or group of persons as the Commission may, by notification in the official Gazette, specify;

(k) "investigated product" means a product which is subject to an anti-dumping investigation as described in the notice of initiation of the investigation;

(J) "investigation" means an investigation conducted under this Ordinance;

(m) "like product" means a product which is alike in all respects to an 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;

(n) "normal value" means normal value determined in accordance with Part II of this Ordinance;

(o) "prescribed" means prescribed by rules made under this Ordinance; and

(p) "WTO" means the World Trade Organisation established pursuant to the Marrakesh Agreement concluded in Marrakesh, Morocco, on the 15th April 1994.

PART II ANTI-DUMPING MEASURES

3. Levy of anti-dumping duty.—(1) The Commission shall, by notification in the official Gazette, impose anti-dumping measures on products imported into Pakistan when it determines, pursuant to an investigation initiated and conducted in accordance with the provisions of this Ordinance, that -

- (a) an investigated product is dumped within the meaning of this Ordinance; and
- (b) injury is being caused to domestic industry within the meaning of this Ordinance.

PART III IDENTIFICATION OF DUMPING AND DETERMINATION OF NORMAL VALUE

4. Identification of dumping. For the purposes of this Ordinance, an investigated product shall be considered to be dumped if it is introduced into the commerce of Pakistan at a price which is less than its normal value.

5. Normal value based on prices in exporting country.—(1) Save as provided for in section 6, the Commission shall establish normal value of an investigated product on the basis of comparable price paid or payable, in the ordinary course of trade, for sales of a like, product when destined for consumption in an exporting country.

(2) Notwithstanding anything contained in sub-section (1), the Commission may establish normal value of an investigated product on the basis of comparable price paid or payable in the ordinary course of trade for sales of a like product when destined for consumption in the country of origin of the investigated product if—

- (a) such products are not produced in an exporting country; or
- (b) there is no comparable price for them in an exporting country.

(3) In the event the Commission decides to establish normal value on the basis of the country of origin of an investigated product pursuant to sub-section (2), any reference to an exporting country in this Ordinance shall be deemed to refer to the country of origin of the investigated product.

6. Normal value based on export price to a third country or on constructed value.—(1) When there are no sales of a like product in the ordinary course of trade in domestic market of an exporting country, or when such sales do not permit a proper comparison because of any particular market situation or low volume of the sales in the domestic market of the exporting country, the Commission shall establish normal value of an 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 exporting country plus a reasonable amount for administrative, selling and general costs and for profits.

(2) Sales of a like product destined for consumption in domestic market of an exporting country or sales to an appropriate third country may be considered to be a sufficient quantity for the determination of normal value if such sales constitute five per cent or more of the sales of an investigated product to Pakistan:

Provided that the Commission shall apply a lower ratio if, on the basis of evidence submitted by interested parties or otherwise available to it, it is satisfied that sales at such lower ratio are nonetheless of sufficient magnitude to provide for a proper comparison.

7. Circumstances in which certain sales may be disregarded in determining normal value.—

(1) The Commission may treat sales of a like product in domestic market of an exporting country or sales to a third country at prices below per unit, fixed and variable, cost of production plus administrative, selling and other 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 Commission determines that such sales were made-

(a) within an extended period of time which shall normally be a period of one year and in no case less than a period of 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 sub-clause (b) of sub-section (1), sales below per unit cost shall be deemed to be in substantial quantities if the Commission establishes that—

(a) a weighted average selling price of transactions under consideration for the determination of normal value is below a weighted average cost; or

(b) the volume of sales below per unit cost represents twenty per cent or more of the volume sold in transactions under consideration for the determination of normal value.

(3) If prices which are below per unit cost at the time of sale are above the weighted average cost for the period of investigation, the Commission shall consider such prices as providing for recovery of costs within a reasonable period of time.

8. Calculation of costs for the purposes of sections 6 and 7.—(1) For the purposes of sections 6 and 7, the Commission shall normally calculate costs on the basis of records kept by an exporter or a producer under investigation provided that such records are in accordance with the generally accepted accounting principles of an exporting country and reasonably reflect the costs associated with the production and sale of a like product.

(2) For the purposes of sections 6 and 7, 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 a like product for consumption in an exporting country by any exporter or producer under investigation:

Provided that where the Commission is satisfied that such amounts cannot be determined on the basis set out in sub-section (2), the amounts may be determined on the basis of—

- (a) the actual amounts incurred and realised by an exporter or a producer in question in respect of production and sales in domestic market of an exporting country of the same general category of products;
- (b) the weighted average of the actual amounts incurred and realised by other exporters or producers subject to investigation in respect of production and sales of a like product in domestic market of an exporting country; or
- (c) any other reasonable method provided that the amount for profit so established shall not exceed the profit normally realised by other exporters or producers on sales of products of the same general category in domestic market of an exporting country of a like product.

(3) The Commission shall consider all available evidence on the proper allocation of costs, including such information as is made available by any exporter or producer of a like product in the course of an investigation provided that such allocations have been historically utilised by the exporter or producer, in relation to establishing appropriate amortisation and depreciation periods and allowances for capital expenditures and other development costs, as the case may be.

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

9. Exports from a country in which the government exercises sufficient control over economic decisions so that the domestic market does not operate freely—(1) Where the Commission determines that the government of an exporting country exercises sufficient control over economic decisions so that domestic market of such exporting country does not operate freely, the Commission may, determine normal value on the basis of —

- (a) a comparable price paid or payable, in the ordinary course of trade, for sales of a like product when destined for consumption in an appropriate market economy country;
- (b) where the Commission determines that the provisions of clause (a) cannot be applied, a comparable price paid or payable, in the ordinary course of trade, for exports of a like product from an appropriate market economy country to other countries, including Pakistan;

(c) where the Commission determines that the provisions of clauses (a) and (b) cannot be applied, a price actually paid or payable in Pakistan for a 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) where the Commission determines that the provisions of clauses (a), (b) and (c) cannot be applied, any other reasonable basis.

(2) In identifying an appropriate market economy country for the purposes of sub-section (1), the Commission shall take into account factors such as—

- (a) similarity of the product in terms of materials and end use;
- (b) similarity of production methods; and
- (c) availability of necessary information to the Commission.

PART IV

DETERMINATION OF EXPORT PRICE

10. Export price. —(1) Save as provided for in sub-sections (2) and (3), an export price shall be a price actually paid or payable for an investigated product when sold for export from an exporting country to Pakistan.

(2) In cases where there is no export price or where it appears to the Commission that an export price is unreliable because of association or a compensatory arrangement between an exporter and an importer or a third party-

- (a) the export price may be constructed on the basis of a price at which imported products are first resold to an independent buyer; or
- (b) if the imported products are not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as the Commission may determine.

(3) Where, the Commission determines normal value on the basis of the country of origin pursuant to sub-section (2) of section 5, an export price shall be a price actually paid or payable, as determined by the Commission, for an investigated product when sold for export in the country of origin of the investigated product.

PART V

COMPARISON BETWEEN NORMAL VALUE AND EXPORT PRICE

11. Comparison.—(1) To ensure a fair comparison between export price and normal value, the Commission shall, where possible, compare export price and normal value with the same characteristics in terms of level of trade, time of sale, quantities, taxes, physical characteristics, conditions and terms of sale and for delivery at the same place which shall

normally be at ex-factory level. Where an interested party demonstrates to the Commission that any of the factors set out in this sub-section or any other factors identified by such interested party affect price comparability, the Commission shall make due allowance for differences in such factors to the extent that the same affect price comparability.

(2) In cases where export price is constructed on the basis of a price at which imported products are first resold to an independent buyer pursuant to sub-clause (a) of sub-section (2) of section 10, allowances for costs including duties and taxes incurred between importation and resale, and a reasonable amount for profits accruing, may also be made. If in such cases price comparability has been affected, the Commission shall establish normal value at a level of trade equivalent to a level of trade of a constructed export price, or shall make due allowance as warranted under this section.

(3) The Commission 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.

12. Comparison methods.—(1) Subject to section 11, existence of dumping margin 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) Normal value established on a weighted average basis may be compared to prices of individual export transactions if-

(a) the Commission finds a pattern of export prices, which differs significantly among different purchasers, regions or time periods; and

(b) the Commission provides an explanation as to why such differences cannot be taken into account appropriately by the use of a weighted average-to-weighted average or transaction-to-transaction comparison.

13. Currency conversion.—(1) Should the price comparison under sections 11 and 12 require a conversion of currencies, the Commission shall make such conversion using the rate of exchange on the date of sale.

(2) For the purposes of sub-section (1), 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 anything in sub-sections (1) and (2), when a sale of foreign currency on forward markets is used in direct relation to an export sale, the Commission shall use the rate of exchange in the forward sale for all the related transactions.

(4) The Commission shall ignore fluctuations in exchange rates and shall allow exporters at least sixty days to have adjusted their export prices to reflect sustained movements in exchange rates during the period of investigation.

14. Individual dumping margin.—(1) The Commission shall determine an individual dumping margin for each known exporter or producer of an investigated product.

(2) Notwithstanding anything contained in sub-section (1), where the Commission is satisfied that the number of exporters, producers or 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 an investigated product, the Commission may limit its 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 Commission at the time of selection, or to the largest percentage of volume of exports from the country in question which can reasonably be investigated.

(3) The selection of exporters, producers, importers or types of products shall normally be made by the Commission in consultation with the exporters, producers or importers concerned:

Provided that the final selection of the exporters, producers, importers or types of products shall rest with the Commission.

(4) In cases where the Commission has limited its examination as provided for in sub-sections (2) and (3), the Commission 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 an investigation:

Provided that where the Commission determines that the number of exporters or producers is so large that individual examinations would be unduly burdensome to the Commission and prevent the timely completion of the investigation, the Commission may decline to determine an individual dumping margin on the basis of such voluntary responses and limit its examination to such exporters and producers selected pursuant to sub-section (2).

PART VI DETERMINATION OF INJURY

15. Determination of injury.—(1) A determination of injury, for the purposes of this Ordinance, shall be based on an objective examination of all relevant factors by the Commission which may include but shall not be limited to-

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

(2) With regard to volume of dumped imports, the Commission shall consider whether there has

been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in Pakistan.

(3) With regard to effect of dumped imports on prices in domestic market, the Commission shall consider whether-

(a) there has been a significant price undercutting by the dumped imports as compared with price of a domestic like product; or

(b) whether the effect of dumped imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.

(4) No one or several of the factors identified in sub-section (2) or (3) shall be deemed to necessarily give decisive guidance and the Commission may take into account such other factors as it considers relevant for the determination of injury.

(5) In circumstances where domestic industry in relation to a product in question has been divided into two or more competitive markets, and producers within each such market are regarded as a separate industry under the second proviso to the explanation to clause (d) of section 2, injury may be found to exist even where a major portion of the total domestic industry does not suffer injury provided that, there is a concentration of dumped imports into such a market, and provided further that dumped imports are causing injury to the producers of all or almost all of the production within such market.

16. Cumulation. Where imports of a like product from more than one country are the subject of simultaneous investigations under this Ordinance, the Commission may cumulatively assess the effects of such imports on domestic industry only if it determines that-

(a) dumping margin in relation to an investigated product from each country is more than the negligible amount as specified in clause (a) of sub-section (3) of section 41, and volume of dumped imports from each investigated country is not less than the negligible quantity as specified in clause (b) of sub-section (3) of section 41; and

(b) a cumulative assessment of the effects of the imports is appropriate in the light of—
(i) the conditions of competition between the imports; and

(ii) the conditions of competition between the imports and a domestic like product.

17. Examination of impact of dumped imports on domestic industry.—(1) An examination of Impact of dumped imports on domestic industry concerned shall include an evaluation by the

Commission of all relevant economic factors and indices having a bearing on the state of the domestic industry, including, but not limited to—

(a) actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilisation of capacity;

(b) factors affecting domestic prices;

(c) magnitude of dumping margin; and

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

Explanation.—The list of factors specified in sub-section (1) shall not be exhaustive, nor shall one or several of these factors be deemed to necessarily give decisive guidance.

(2) The Commission shall assess effect of dumped imports in relation to production of a domestic like product in Pakistan when available data permit separate identification of that production on the basis of criteria of production process, producer's sales and profits:

Provided that if such separate identification of that production is not possible, the Commission shall assess effects of dumped imports by examination of the production of the narrowest group or range of products, which includes a domestic like product, for which necessary information can be provided.

18. Causation.—(1) The Commission shall satisfy itself that dumped imports are, through the effects of dumping, as provided in sections 15 and 17, causing injury within the meaning of this Ordinance. The consideration of a causal relationship between dumped imports and injury to domestic industry shall be based on an examination by the Commission of all relevant evidence before it.

(2) The Commission shall examine any known factors other than dumped imports which are injuring domestic industry and injuries caused by such other factors shall not be attributed by the Commission to the dumped imports.

(3) Factors which may be relevant for the purposes of an examination by the Commission pursuant to sub-section (2) may include the following, namely:-

(a) volume and price 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 foreign and domestic producers;

(d) Developments in technology; and

(e) Export performance and productivity of domestic industry.

19. Threat of material injury.—(1) In making a determination regarding existence of a threat of material injury, the Commission shall consider all relevant factors, including but not limited to, such factors as-

- (a) a significant rate of increase of dumped imports into domestic market indicating the likelihood of substantially increased importation;
- (b) Sufficient freely disposable, or an imminent and substantial increase in capacity of an exporter indicating the likelihood of substantially increased dumped exports to market in Pakistan, taking into account the availability of other export markets to absorb any additional exports;
- (c) whether imports are entering at prices that shall have a significant depressing or suppressing effect on prices in Pakistan, and would likely increase demand for further imports; and
- (d) inventories of an investigated product.

(2) No one of the factors specified in sub-section (1) by itself shall be deemed to necessarily give decisive guidance and in making a determination regarding a threat of material injury the Commission shall, on the basis of the totality of the factors considered, satisfy itself that further dumped exports are imminent and that, unless protective action is taken, material injury shall occur.

PART VII INITIATION AND CONDUCT OF INVESTIGATIONS

20. Requirement of a written application.—(1) Subject to section 24 and save as provided for in section 25, an investigation by the Commission shall only be initiated upon a written application by or on behalf of domestic industry.

(2) An application under sub-section (1) shall-

- (a) be submitted to the Commission in such manner, number and form and with such fee as may be prescribed;
- (b) include evidence of dumping and injury within the meaning of this Ordinance as is reasonably available to the applicant; and
- (c) contain such further information as may be prescribed.

21. Notice to government of exporting country. Upon receipt of an application compliant with the requirements of sections 20 and 24, the Commission shall promptly give notice to the government of each exporting country of the receipt of such application.

22. Withdrawal of application before initiation. An application under section 20 may be withdrawn prior to initiation, in which case it shall be considered not to have been made:

Provided that upon the withdrawal of an application any fee paid along with the application pursuant to clause (i) of sub-section (2) of section 20 shall stand forfeited in favour of the Commission.

23. Initiation of an investigation.—(1) Subject to section 24, the Commission shall examine accuracy and adequacy of evidence provided in an application to determine whether it is compliant with the requirements of section 20 and if so whether there is sufficient evidence to justify initiation of an investigation.

(2) An application under section 20 shall be rejected as soon as the Commission is satisfied that there is not sufficient evidence of either dumping or of any injury to justify initiation of an investigation.

(3) The Commission may seek additional information from an applicant before deciding whether to initiate an investigation and such information shall be provided by the applicant to the Commission within such time and in such manner as may be prescribed.

(4) When the Commission is satisfied that—

(a) an application under section 20 has been made by or on behalf of domestic industry; and

(b) there is sufficient evidence of dumping and injury within the meaning of this Ordinance, the Commission shall initiate an investigation.

(5) Where the Commission does not consider it appropriate to initiate an investigation, it shall inform all the applicants of the reasons for not initiating the investigation and shall inform the exporting country of its decision.

24. Application by or on behalf of domestic industry.—(1) For the purposes of section 20, an application shall be considered to have been made by or on behalf of domestic industry only if it is supported by those domestic producers whose collective output constitutes more than fifty per cent of the total production of a domestic like product produced by that portion of the domestic industry expressing either support for or opposition to the application.

(2) For the purposes of section 23, no investigation, shall be initiated when domestic producers expressly supporting an application account for less than twenty five percent of the total production of a domestic like product produced by domestic industry.

(3) In the case of fragmented industries involving an exceptionally large number of producers, the Commission may determine support and opposition for an application submitted under section 20 by using statistically valid sampling techniques.

25. Self-initiation. The Commission may, suo moto, initiate an investigation without having received a written application by or on behalf of domestic industry if it has sufficient evidence of dumping and injury, within the meaning of this Ordinance, to justify initiation of an investigation.

26. Imposition of anti-dumping measures on behalf of a third country.—(1) An application for imposition of anti-dumping measures may be made to the Commission on behalf of a third country by its authorities provided that—

(a) such application is supported by price information to show that imported goods are being dumped and by detailed information to show that such dumping is causing injury to domestic industry concerned in the third country; and

(b) the government of the third country affords all assistance to the Commission to obtain such further information as the Commission may require.

(2) In considering an application received under sub section (1), the Commission shall consider the effects of alleged dumping on the industry concerned as a whole in the third country and injury shall not be assessed in relation only to the effect of the alleged dumping on the industry's exports to Pakistan or on the industry's total exports of the product.

(3) The decision whether or not to initiate an investigation pursuant to an application received under sub-section (1) shall rest with the Commission:

Provided that the Commission shall not initiate such investigation until the Federal Government has requested and received approval for such an initiation from the Council for Trade in Goods of the WTO.

27. Notice of decision to initiate investigation—(1) When the Commission has decided to initiate an investigation it shall—

(a) give notice to all exporters, importers and any representative associations of importers or exporters known to the Commission to be concerned, as well as representatives of the exporting country, the applicant and other interested parties known to the Commission to have an interest therein; and

(b) publish a copy of such notice in the official Gazette and in at least one issue each of a daily newspaper in the English language and a daily newspaper in the Urdu language having wide circulation in Pakistan.

(2) The notice of initiation of an investigation referred to in sub-section (1) shall be in such form and contain information as may be prescribed and the initiation of investigation shall be effective on the date on which such notice is published in the newspapers as provided for in clause (b) of sub-section (1).

28. Provision of copy of an application. Subject to the requirement to protect confidential information pursuant to section 31, the Commission shall, after initiation of an investigation, provide to any interested party the full text of the written application received by the Commission under sub-section (1) of section 20:

Provided that where the Commission determines that the number of interested parties is particularly high, the Commission shall only provide the full text of the written application received by it under sub-section (1) of section 20 to exporting country or to the relevant trade association of exporting country.

PART VIII CONDUCT OF INVESTIGATIONS

29. Duration of investigation. The Commission shall, except in special circumstances, conclude an investigation within twelve months, and in no case more than eighteen months, after its initiation.

30. Customs clearance. Any proceedings or investigation under this Ordinance shall not hinder the procedures of customs clearance.

31. Confidentiality.—(1) Subject to sub-section (2), the Commission shall, during and after an investigation, keep confidential any information submitted to it and such information shall not be disclosed without specific permission of the party submitting it.

(2) Any information which is—

(a) by nature confidential, because its disclosure shall 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 the information was acquired;

(b) determined by the Commission to be of a confidential nature for any other reason; or

(c) provided as confidential by parties to an investigation, shall, upon good cause shown be kept confidential by the Commission.

(3) The following types of information shall be deemed to be by nature confidential, unless the Commission determines 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 such information was acquired, namely:—

(a) business or trade secrets concerning the nature of a product, production processes, operations, production equipment, or machinery;

(b) information concerning financial condition of a company which is not publicly available; and

(c) information concerning costs, identification of customers, sales, inventories, shipments, or amount or source of any income, profit, loss or expenditure related to manufacture and sale of a product.

(4) Any party seeking any information to be kept confidential shall request for the same at the time the information is submitted, along with the reasons warranting confidentiality. The Commission shall consider such request expeditiously and inform the party submitting the information if it determines that the request for keeping the information confidential is not warranted.

(5) Any party submitting any information with the request to keep it confidential shall furnish non-confidential summary of all such information. Such summary may take the form of ranges or indexation of figures provided in the confidential version or marked deletions in text or in such other form as the Commission may require:

Provided that such non-confidential summary shall permit a reasonable understanding of the substance of the information submitted in confidence:

Provided further that any deletion in text shall, unless otherwise allowed by the Commission, only relate to names of the buyer or supplier.

(6) In exceptional circumstances, any party submitting confidential information may indicate that such information is not susceptible of summary, in which case a statement of the reasons why summarisation is not possible shall be provided. If the Commission concludes that the non-confidential summary, provided fails to satisfy the requirements of sub-section (5), it may determine that the request for keeping the information confidential is not warranted.

(7) If the Commission finds that a request for keeping the information confidential is not warranted, and if the supplier of such information is unwilling to make it public or to authorise the disclosure in generalised or summary form, the Commission shall disregard such information and return the same to the party submitting it.

(8) Subject to sub-section (9), notwithstanding anything contained in this Ordinance or in any other law for the time being in force, any confidential information received or obtained directly or indirectly, by the Commission pursuant to or in connection with an investigation shall not be subject to disclosure by the Commission to any Ministry, Division, department, agency or instrumentality of the Federal Government or a Provincial Government without the prior permission of the party submitting such confidential information.

(9) The provisions of sub-section (8) shall not preclude the supply of any information called for by the Appellate Tribunal pursuant to section 65:

Provided that the obligation to protect confidential information as provided for in this Chapter shall, mutatis mutandis, extends to the Appellate Tribunal.

32. Reliance on best information available—(1) Subject to sub-section (2), if, at any time during an investigation, any interested party—

(a) refuses access to, or otherwise does not provide, necessary information within the period of time as may be prescribed; or

(b) otherwise significantly impedes the investigation, the Commission may reach preliminary and final determinations, whether affirmative or negative, on the basis of the best information available.

(2) The provisions of the Schedule to this Ordinance shall be followed in the application of sub-section (1).

(3) The Commission shall take due account of any difficulties experienced by interested parties, in particular, small companies, in supplying information requested by it and may, where it deems fit, provide such assistance as is practicable including, but not limited to, extension of any time period prescribed for submission of information under this Ordinance.

(4) The Commission shall satisfy itself of the accuracy of the information supplied by interested parties during the course of an investigation in such manner as may be prescribed.

33. Information to parties. The Commission shall provide an opportunity to all interested parties to see information submitted to it, which is not confidential and is relevant to the presentation of their case.

PART IX INVESTIGATION PROCEDURES, PRELIMINARY AND FINAL DETERMINATIONS

34. Proposed schedule for investigation. The Commission shall, in a notice of initiation of an investigation referred to in section 27, include the proposed schedule for conduct of an investigation, including the proposed time limits for submission of written arguments, the proposed date for any hearing, if requested, the proposed date for preliminary determination, and the proposed date for final determination.

35. Acquisition of information by the Commission. The Commission shall solicit, gather, obtain, verify, accept and reject information for the purposes of an investigation in such manner as may be prescribed.

36. Assessments to be on the basis of data relating to defined periods.—(1) The Commission shall base its assessments, of dumping and injury on data relating to defined periods which shall be the periods for which information is required by the Commission.

(2) For the purposes of an investigation of dumping, an investigation period shall normally cover

twelve months preceding the month of initiation of the investigation for which data is available and in no case the investigation period shall be shorter than six months.

(3) For the purposes of an investigation of injury, the investigation period shall normally cover thirty-six months:

Provided that the Commission may at its sole discretion, select a shorter or longer period if it deems it appropriate in view of available information regarding domestic industry and an investigated product.

37. Preliminary determination.—(1) The Commission shall make a preliminary determination of dumping and injury, if any, not earlier than sixty days and not later than one hundred and eighty days, after initiation of an investigation. Such preliminary determination shall be based on the information available to the Commission at that time.

(2) The Commission shall issue a notice of preliminary determination, whether affirmative or negative, which shall, subject to the requirements of section 31, set forth in sufficient detail the findings and conclusions reached on all issues of fact and law consider material. Such notice of preliminary determination may also contain such other information may be prescribed.

(3) The Commission shall publish a copy of the notice of preliminary determination the official Gazette and in at least one issue each of daily newspaper in the English language and a daily newspaper in the Urdu language having wide circulation in Pakistan.

(4) The Commission shall forward a copy of the notice preliminary determination to exporting country and to other known interested parties.

38. Written arguments. In an investigation, any interested party may submit written arguments to the Commission in such form and manner and within such time as may prescribed.

39. Final determination.—(1) The Commission shall normally make a final determination of dumping and injury within one hundred and eighty days of the date of publication of a notice of preliminary determination in the official Gazette under sub-section (3) of section 37.

(2) The final determination shall be based on information obtained by the Commission during the course of the investigation that has been disclosed by the interested parties:

Provided that the Commission shall not be precluded from taking into consideration information or data received or collected from any other source.

(3) The Commission shall, subject to the requirements for the protection of confidential information under section 31, issue a notice of the final determination, whether affirmative or negative, containing relevant information on the matters of fact and law and reasons that have led to the determination.

(4) Without prejudice to the generality of the provisions of sub-section (3) and in addition to such further information as may be prescribed, the notice of the final determination referred to in sub-section (3) shall specify:—

- (a) the amount of the dumping margin, if any, found to exist and the basis for such determination;
- (b) the amount of the definitive anti-dumping duties to be imposed; where applicable; and
- (c) if definitive anti-dumping duties are to be collected with regard to the imports to which provisional measures were applied along with the reasons for the decision to do so.

(5) The Commission shall publish a copy of the notice of the final determination referred to in sub-section (3) in the official Gazette and in at least one issue each of a daily newspaper in the English language and a daily newspaper in the Urdu language having wide circulation in Pakistan:

Provided that such notice may, if the Commission deems it fit, only contain a summary of the salient features of the final determination:

Provided further that where the notice of the final determination contains only a summary of the salient features of the final determination, the Commission shall make available to any interested party applying for the same in writing a copy of the complete notice of final determination.

(6) The copy of the notice of the final determination shall be forwarded by the Commission to the exporting country and to other known interested parties.

PART X **TERMINATION OF INVESTIGATION WITHOUT ADOPTION OF MEASURES**

40. Withdrawal of an application. An application submitted pursuant to section 20 may be withdrawn at any time after an investigation has been initiated, in which case the Commission shall terminate the investigation without imposition of any measures provided for in this Ordinance:

Provided that the Commission may, if it considers it fit to do so, continue an investigation notwithstanding the withdrawal of an application as provided for in this section in which event, the Commission may, subject to the provisions of this Ordinance, impose such measures as are provided for in this Ordinance.

41. Termination for insufficient evidence, negligible dumping margin or negligible volume.

—(1) An investigation may be terminated at any time by the Commission if it is satisfied that there is not sufficient evidence of either dumping or injury to justify proceeding with an investigation.

(2) The Commission shall immediately terminate an investigation if it determines that dumping margin is negligible or that volume of dumped imports, actual or potential, or injury is negligible.

(3) For the purposes of sub-section (2)-

(a) dumping margin shall be considered to be negligible if it is less than two per-cent, expressed as a percentage of the export price; and

(b) volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports of an investigated product is found to account for less than three per cent of total imports of a like product unless imports of the investigated product from all countries under investigation which individually account for less than three per cent of the total imports of a like product collectively account for more than seven per cent of imports of a like product.

42. Notice of conclusion of an investigation without imposition of measures.—(1) The Commission shall, subject to the requirements for the protection of confidential information under section 31, issue a 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 Commission including the matters of fact and law which have led to arguments being accepted or rejected.

(2) The Commission shall publish a copy of the notice of conclusion of an investigation without imposition of measures referred to in sub-section (1) in the official Gazette and summary thereof in at least one issue each of a daily newspaper in the English language and a daily newspaper in the Urdu language having wide circulation in Pakistan.

PART XI PROVISIONAL MEASURES

43. Imposition of provisional measures.—(1) The Commission may impose provisional measures if it makes an affirmative preliminary determination of dumping and injury, and determines that provisional measures are necessary to prevent injury being caused during the course of an investigation:

Provided that provisional measures shall not be applied sooner than sixty days from the date of initiation of the investigation.

(2) A negative preliminary determination of dumping shall not automatically terminate an investigation, but no provisional measures shall be imposed in such case.

(3) The provisions of sections 51 and 52 shall be followed in the application of provisional measures.

44. Form of provisional measures. Provisional measures shall take the form of security by way of cash deposit in an amount equal to the provisionally determined dumping margin set forth in the notice of preliminary determination referred to in sub-section (2) of section 37:

Provided that release of a product concerned for free circulation in Pakistan shall be subject to provision of such security by way of cash deposit.

45. Duration of application of provisional measures. Provisional measures shall be applied for a period not exceeding four months:

Provided that the Commission may, upon request by exporters which the Commission considers to be representing a significant percentage of the trade involved, extend the period of application of provisional measures to a period not exceeding six months.

PART XII PRICE UNDERTAKINGS

46. Acceptance of price undertaking.—(1) Where the Commission has made a preliminary affirmative determination of dumping and injury in accordance with the provisions of this Ordinance, the Commission may suspend or terminate an investigation without imposition of anti- dumping duties, whether preliminary or definitive, upon receipt of satisfactory price undertaking from an exporter to revise its prices or to cease export to the area in question at dumped prices so that the Commission is satisfied that injurious effect of dumping in question is eliminated:

Provided that the Commission shall not seek or accept any price undertaking from an exporter unless the Commission has made a preliminary affirmative determination of dumping and injury in accordance with the provisions of this Ordinance.

(2) Price increases under such price undertakings shall not be higher than necessary to eliminate dumping margin and shall be less than the provisionally determined dumping margin set forth in the notice of preliminary determination referred to in sub-section (2) of section 37 if, the Commission determines that such lesser price increase would be adequate to remove injury to domestic industry.

(3) The Commission may suggest price undertakings, but no exporter shall be forced to enter into any such undertaking and the fact that exporters do not offer such undertakings, or do not accept an invitation to do so, shall not prejudice consideration of the case by the Commission:

Provided that in such circumstances the Commission shall be free to determine that a threat of injury is more likely to be realised if the dumped imports continue.

47. Conditions for acceptance of price undertaking.—(1) Except in extraordinary circumstances, a price undertaking shall not be offered later than sixty days before the proposed date of final determination as set forth in a notice of initiation of an investigation in accordance with the provisions of section 34.

(2) Notwithstanding anything contained in this section, the decision to accept a price undertaking shall rest with the Commission.

Explanation.—The Commission may not accept a price undertaking if it considers the acceptance thereof to be impractical because the number of actual or potential exporters is too great, or for reasons of general policy or for any other reason.

(3) If the Commission decides not to accept a price undertaking, it shall provide to an exporter the reasons which have led it to consider acceptance of a price undertaking as inappropriate and the exporter may, not later than seven days from the submission of such reasons, submit its written response to the Commission on the reasons given by the Commission.

(4) The Commission may require an 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 such information. The communication of such information shall be subject to the provisions of section 31.

(5) Failure to provide any information requested by the Commission pursuant to sub section (4) shall be deemed to be a violation of a price undertaking.

(6) Where the Commission accepts a price undertaking or a price undertaking is terminated, it shall publish a notice to this effect in the official Gazette and in at least one issue each of a daily newspaper in the English language and a daily newspaper in the Urdu language having wide circulation in Pakistan. Such notice shall contain the non-confidential part of the price undertaking accepted, when applicable, and details of the findings and conclusions reached by the Commission on all the issues of fact and law considered material by the Commission and such other information as the Commission may determine necessary:

Provided that where the notice relates to acceptance by the Commission of a price undertaking it shall contain such further information as may be prescribed.

(7) A notice of acceptance of a price undertaking or termination thereof referred to in sub-section (6) shall be forwarded by the Commission to the country the product of which is the subject of such notice and to other interested parties known to have an interest therein.

(8) Where the Commission continues an investigation pursuant to sub-section (1) of section 48, it shall publish a notice of the continuation of the investigation, setting forth the proposed date for final determination, and any other modifications to the proposed schedule of the investigation as originally set out in the notice of initiation of the investigation in accordance with section 34:

Provided that the final determination in such case shall be made by the Commission no later than one hundred and eighty days from the date of publication of the notice of acceptance of a price undertaking referred to in sub-section (6) in the official Gazette.

48. Completion of an investigation.—(1) If one or more price undertakings are accepted by the Commission, it shall nevertheless complete an investigation of dumping and injury if it receives a request from an exporter in writing to continue such investigation, or where the Commission so decides of its own accord.

(2) In the event the Commission makes a negative determination of dumping or injury pursuant to an investigation continued under sub-section (1), a price undertaking in question shall automatically lapse except in a case where the Commission determines that such a determination is due in large part to the existence of such price undertaking in which case, the Commission may require that an undertaking be maintained for a reasonable period of time to be determined by the Commission.

(3) In the event the Commission makes an affirmative determination of dumping and injury pursuant to an investigation continued under sub-section (1), a price undertaking in question shall continue consistent with its terms and the provisions of this Ordinance.

49. Violation of price undertaking. If a price undertaking is violated or deemed to be violated, the Commission may, subject to the provisions of this Ordinance, take expeditious action, which may include immediate application of provisional measures using the best information available. In such cases, definitive duties may be levied in accordance with the provisions of this Ordinance on products imported for consumption not more than ninety days before the application of such provisional measures, except that any such retroactive assessment shall not apply to imports entered before such violation of the price undertaking.

PART XIII IMPOSITION AND COLLECTION OF ANTI-DUMPING DUTIES

50. Mandatory Imposition of anti-dumping duty. When the Commission has established the existence of dumping and injury in accordance with the provisions of this Ordinance, it shall, by notification in the official Gazette, impose an anti-dumping duty in an amount equal to dumping margin established by the Commission.

51. Imposition and collection of anti-dumping duties—(1) Anti-dumping duties, whether provisional or definitive, as the case may be, imposed under this Ordinance shall—

(a) take the form of ad valorem or specific duties:

Provided that provisional measures shall take the form of security by way of cash deposit;

(b) be imposed in addition to other import duties levied on an investigated product;

(c) be collected in the same manner as customs-duties under the Customs Act, 1969 (Act IV of 1969); or

(d) be levied and collected 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 have been accepted by the Commission in accordance with the provisions of Part XII of this Ordinance.

(2) Save as provided for in sub-section (3), the Commission shall establish an individual anti-dumping duty for each known exporter or producer of dumped imports.

(3) Subject to sub-sections (4) and (7), where the Commission has limited its examination of dumping margin in accordance with sub-sections (2) and (3) of section 14, any anti-dumping duty applied to imports from exporters or producers not included in an examination by the Commission shall not exceed a weighted average dumping margin established with respect to selected exporters or producers.

(4) The Commission shall disregard for the purposes of sub-section (3) any negligible margins, as defined in sub-section (3) of section 41, and margins established under the circumstances referred to in section 32.

(5) Save as provided for in sub-section (4) of section 14, the Commission shall apply individual anti-dumping duties to imports from any exporter or producer not included in an examination who has provided the necessary information during the course of an investigation.

(6) The Commission may apply a residual anti-dumping duty rate for imports from exporters and producers not known to the Commission at time of final determination at a rate which shall not exceed a weighted average of individual dumping margins established for exporters and producers examined during an investigation, excluding margins established in accordance with section 32.

(7) Where all dumping margins are established pursuant to section 32, the Commission shall use such alternative method of determining dumping margins for exporters or producers not included in its examination as it considers reasonable in the circumstances.

52. Refund of anti-dumping duties paid in excess of dumping margin.—(1) An importer shall be granted a refund of the actual amount of anti-dumping duties collected if the Commission determines that dumping margin, on the basis of which such anti-dumping duties were paid, has been eliminated or reduced to a level which is below the level of the anti-dumping duty in force.

(2) An importer may submit an application for refund of anti-dumping duties collected within any twelve months period to the Commission not later than sixty days from the end of such period.

(3) An application under sub-section (2) shall contain such information as may be prescribed.

Explanation —When investigating an application for refund under this section, the Commission shall apply the relevant provisions of this Ordinance to its determinations. In particular, when determining whether and to what extent a refund should be made when an

export price is constructed on the basis of a price at which 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 sub-section (2) of section 10, the Commission shall take account of any change in normal value, any change of costs incurred between importation and resale, and any movement in 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.

(4) The Commission shall provide an importer making an application under sub-section (2) with an explanation of the reasons for the decision concerning a request for refund.

(5) A refund of anti-dumping duties under this section shall normally take place within twelve months, and in no case later than eighteen months, after the date on which an application for refund compliant with the requirements of sub-section (3) is received by the Commission.

53. Anti-dumping duties and fees to be held in a non-lapseable personal ledger account.—(1) The Commission shall establish and maintain a non-lapseable personal ledger account in its name for the purposes of this Ordinance and all anti-dumping duties and fees collected under this Ordinance shall be held in such account.

(2) The account established under sub-section (1) shall be maintained and operated in such manner as may be prescribed.

PART XIV RETROACTIVITY

54. Retroactive application of definitive anti-dumping duties in certain circumstances. A definitive anti-dumping duty may be collected on products, which were imported for consumption not more than ninety days prior to the date of application of provisional measures if, the Commission determines, for a 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 practices dumping and that such dumping would cause injury; and

(b) injury is caused by massive dumped imports of a product in a relatively short time which in the light of timing and volume of dumped imports and other circumstances including, but not limited to, 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 of being heard in respect of such proposed action.

55. Imposition of definitive anti-dumping duties retroactively—(1) Where the Commission makes 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 Commission determines that the effect of dumped imports would, in the absence of 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 definitive anti-dumping duty imposed under sub-section (1) is higher than the amount of provisionally determined dumping margin set forth in the notice of preliminary determination referred to in sub-section (2) of section 37, the difference shall not be collected, and if such definitive anti-dumping duty is lower than the amount of such provisionally determined dumping margin the difference shall be refunded by the Commission within forty-five days of such determination.

(3) Save as provided for in sub-section (1), where the Commission makes a determination of threat of injury or material retardation, but no injury has yet occurred, definitive anti-dumping duties may be imposed only from the date of the determination of threat of injury or material retardation and any cash deposit made during the period of application of provisional measures shall be refunded by the Commission within forty-five days of such determination.

(4) Where the Commission makes a negative final determination, any cash deposit made, during the period of application of provisional measures shall be refunded by the Commission within forty-five days of such determination.

56. Circumstances in which provisional measures and anti-dumping duties shall apply. Save as provided for in sections 49, 54 and 55, provisional measures and definitive anti-dumping duties shall only be applied to products which enter into Pakistan for consumption on or after the date of publication of a notice of affirmative preliminary or final determination in an investigation.

PART XV DURATION AND REVIEW OF ANTI-DUMPING DUTIES AND PRICE UNDERTAKINGS

57. Duration of anti-dumping duty. Subject to the provisions of this Ordinance, any anti-dumping duty imposed under this Ordinance shall remain in force only as long as and to the extent necessary to counteract dumping, which is causing injury.

58. Review of anti-dumping duty.—(1) Any definitive anti-dumping duty imposed under this Ordinance shall be terminated on a date not later than five years from the date of its imposition or from the date of the most recent review under section 59, if such review has covered both dumping and injury.

(2) The Commission shall, not later than ninety days preceding the date of expiry of a definitive anti-dumping duty, publish a notice of impending expiry of such anti-dumping duty in the official Gazette and in at least one issue each of a daily newspaper in the English language and a daily newspaper in the Urdu language having wide circulation in Pakistan.

(3) A definitive anti-dumping duty shall not expire if the Commission determines, in a review initiated before the date of expiry on its own initiative or upon a duly substantiated request made by or on behalf of domestic industry within forty-five days from public notice of impending termination of the definitive anti-dumping duty concerned, that the expiry of such anti-dumping duty would be likely to lead to continuation or recurrence of dumping and injury and such anti-dumping duty shall remain in force pending the outcome of such a review.

59. Review for change of circumstances.—(1) The Commission shall review the need for continued imposition of anti-dumping duty, where warranted, on its own initiative or provided that a period of twenty-four months has elapsed since the imposition of definitive anti-dumping duty, upon a written request submitted by any interested party, which contains positive information substantiating the occurrence of changed circumstances justifying a need for a review including sufficient information to enable the Commission to calculate export price and normal value of a product in question.

(2) The Commission shall, upon initiation of a review under sub-section (1), publish a notice in the official Gazette and in at least one issue each of a daily newspaper in the English language and a daily newspaper in the Urdu language having wide circulation in Pakistan.

(3) In undertaking a review under sub-section (1), the Commission shall consider whether continued imposition of anti-dumping duty is necessary to offset dumping and whether injury would be likely to continue to recur if anti-dumping duty were removed or varied and if, as a result, the Commission determines that continued imposition of anti-dumping duty is no longer warranted it shall be terminated immediately.

(4) The Commission may require an applicant requesting a review under this section to fill in, an additional questionnaire provided by it requiring such information and for such period as the Commission deems necessary before such review is initiated in which case the review shall be initiated following the receipt by the Commission of such questionnaire duly filled in.

60. Newcomer review.—(1) If a product is subject to definitive anti-dumping duties, the Commission shall carry out a review for the purpose of determining individual dumping margins for any exporters or producers in an exporting country concerned who did not export the product to Pakistan during the period of investigation if such 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 an investigated product.

(2) A review under sub-section (1) shall be initiated within thirty days following the date of receipt of an application for such review by any producer or exporter concerned and shall normally be completed within six months from its initiation and, in any event, no later than twelve months:

Provided that the Commission may require an applicant requesting a review under sub-section (1) to fill in an additional questionnaire provided by it requiring such information and for such period as the Commission deems necessary before such review is initiated in which case a review under sub-section (1) shall be initiated within thirty days following the receipt by the Commission of such questionnaire duly filled in.

(3) No anti-dumping measures shall be imposed on imports from any exporters or producers referred to in sub-section (1) while the review under sub-section (2) is being carried out:

Provided that the Commission may require a cash deposit in the amount of the residual anti-dumping duty rate determined pursuant to sub-section (5) of section 51 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 initiation of the review.

61. Duration and review of price undertaking. The provisions of sections 57, 58 and 59 shall apply, mutatis mutandis, to price undertakings accepted in accordance with Part XII of this Ordinance.

62. Evidence and procedure.—(1) The provisions of sections 27, 31, 32, 33, 35, 39, and 46 shall apply, mutatis mutandis, to any review carried out under Part XV of this Ordinance.

(2) Any review conducted under sections 58 and 59 shall be carried out expeditiously and shall normally be concluded within twelve months of the date of initiation of the review.

63. Anti-circumvention measures. If there is a change in the pattern of trade between any third country and Pakistan which stems from a practice, process or work for which there is insufficient due cause or economic justification, other than imposition of anti-dumping duty, and there is evidence that the remedial effects of such duty are being undermined in terms of the prices or quantities of the like goods, or both, and there is evidence of dumping in relation to normal values previously established for the like or similar goods, then the Commission may take action to prevent circumvention of the application of anti-dumping duties as may be prescribed.

PART XVI

APPEAL TO APPELLATE TRIBUNAL

64. Appeal to the Appellate Tribunal.—![(1) The Federal Government may, by notification in the Official Gazette,-

(a) establish an Appellate Tribunal consisting of three persons, one of such persons being a retired judge of the Supreme Court of Pakistan, who shall also be its Chairman and two persons of known integrity having experience and expertise in the fields of economics, international trade related issues and matters related to customs law and practice; or

(b) designate an existing Tribunal to be the Appellate Tribunal for the purposes of this Ordinance.

Explanations.- For the purpose of sub-section (1), the expression "existing Tribunal" means any Tribunal established by the Federal Government under any law for the time being in force"; and]

¹ Subs. by Act 23 of 2011, s. 2.

(2) Any interested party may prefer an appeal to the Appellate Tribunal against—
(@ an affirmative or a negative final determination by the Commission; and
(ii) any final determination pursuant to a review.

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(4) The salary allowances and other terms and conditions of services of a person appointed to the Appellate Tribunal shall be such as may be determined by the Federal Government.

(5) Every appeal under sub-section (2) shall be filed within forty-five days from the date of the notice published in newspapers of an affirmative or a negative final determination by the Commission, as the case may be, and shall be in such form and contain such information as may be prescribed.

(6) In examining an appeal under sub-section (2), the Appellate Tribunal may make such further inquiry as it may consider necessary, and after giving an appellant and the Commission an opportunity of being heard, pass such order as it thinks fit, confirming, altering or annulling a determination of the Commission appealed against:

Provided that in examining an appeal, the Appellate Tribunal shall, as regards assessment of facts relating to an impugned determination of the Commission, determine on the basis of official record maintained by the Commission or any other documents relied upon by the Commission in reaching the determination appealed against, whether the establishment of facts by the Commission was proper and whether the Commission's evaluation of those facts was unbiased and objective. Where the Appellate Tribunal determines, that the Commission's establishment of facts was proper and its evaluation was unbiased and objective, it may confirm an impugned determination of the Commission subject to the condition that the Appellate Tribunal is satisfied that in reaching the impugned determination, the Commission complied with the relevant provisions of this Ordinance.

(7) An appeal under sub-section (2) shall be disposed of and the decision of the Appellate Tribunal pronounced, as expeditiously as possible but not later than ninety days from the date of receipt of an appeal compliant with the requirements of sub-section (5) except in extraordinary circumstances and on grounds to be recorded. The Appellate Tribunal shall hear the appeal from day to day.

(8) The decision of the Appellate Tribunal shall be in writing and shall give details of the issues raised in appeal and the arguments adopted by an appellant and the Commission, and shall give reasons for reaching its decision with reference to the provisions of this Ordinance and the facts of the case.

(9) The Appellate Tribunal shall provide copies of its decision to all the appellants and the Commission no later than five days from the date of rendering its decision.

! Omitted by Act 23 of 2011, s. 2.

(10) The Appellate Tribunal may, if it deems necessary, require an appellant to provide security in such form as may be prescribed, at the time of filing of an appeal.

(11) The decision of the Appellate Tribunal shall be final and no further appeal shall lie therefrom:

Provided that the Appellate Tribunal may, if it thinks fit, accept an application from any party to an appeal in which the Appellate Tribunal has rendered its decision, for a clarification of any of the issues raised by the Appellate Tribunal in its decision:

Provided further that such application shall specify the precise issue in respect of which a clarification is sought and give reasons as to why a clarification is necessary and the Appellate Tribunal shall only accept such application if it is satisfied that a material issue discussed in its decision requires further clarification or elaboration and a party to be adversely affected by such clarification or elaboration shall also be given a notice before clarification or elaboration is made:

Provided further that no application under this sub-section shall be accepted by the Appellate Tribunal later than thirty days of its decision.

(12) The Appellate Tribunal shall perform its functions under this Ordinance in accordance with such procedures as may be prescribed.

65. Powers of the Appellate Tribunal. The Appellate Tribunal shall, for the purpose of deciding an appeal, be deemed to be a civil court and shall have the same powers as are vested in such court under, the Code of Civil Procedure 1908, (Act V of 1908) including the powers of-

- (a) enforcing the attendance of any person and examining him on oath;
- (b) compelling the production of documents; and
- (c) issuing commission for the examination of witnesses and documents.

66 Power of the Appellate Tribunal to call for and examine record. The Appellate Tribunal may call for and examine the official records of an investigation conducted by the Commission and any other information or documents relied upon by the Commission in reaching a determination appealed against for the purpose of satisfying itself as to the legality of propriety of an impugned determination of the Commission.

PART XVII MISCELLANEOUS

67. Power to make rules. The Federal Government may, by notification in the official Gazette, make rule's for carrying out the purposes of this Ordinance.

68. Public servants. The employees and other persons authorised to perform or exercise any function or power under this Ordinance or rendering services to the Commission as consultant or adviser shall be deemed to be public servants within the meaning of section 21 of the Pakistan Penal Code, 1860. (Act XLV of 1860).

69. Failure to disclose correct information. Any person who knowingly and wilfully provides false, misleading incorrect information to the Commission whether in an application received under this Ordinance, or Otherwise in connection with an investigation under this Ordinance, shall be guilty of an offence and shall on conviction be liable to imprisonment for a term which may extend to three years, or a fine not exceeding five million rupees, or both.

70. Cognizance of offences.—(1) Notwithstanding anything contained in the Code of Criminal procedure, 1898 (Act V of 1898) no other than a court of session shall have jurisdiction to try any person charged with an offence under section 69.

(2) No court of session shall take cognizance of an offence under sub-section (1) except on a complaint in writing made by order of, or authority from the Commission signed by any two members of the Commission.

71. Protection to persons prejudiced in employment because of assisting the Commission.—

(1) An employer shall not-

(a) dismiss an employee, or prejudice an employee in his employment, because the employee has assisted the Commission in connection with an inquiry or investigation under this Ordinance; or

(b) dismiss or threaten to dismiss an employee, or prejudice or threaten to prejudice an employee in his employment, because the employee proposes to assist the Commission in connection with an inquiry or investigation under this Ordinance.

(2) For the purposes of sub-section (1), a person shall be taken to assist the Commission in connection with an inquiry if the person—

(a) gives information, whether orally or in writing, or gives documents, to the Commission in connection with an inquiry or investigation under this Ordinance; or

(b) gives evidence or produces documents, at an inquiry, investigation or hearing held under this Ordinance.

72. Appointment of advisers and consultants.—(1) Subject to sub-section (2), the Commission may, employ and pay consultants and agents, and technical, professional and other advisers, including bankers, economists, actuaries, accountants, lawyers and other persons to do any act required to be done in the exercise of its powers, the performance of its functions or for the better implementation of the purposes, of this Ordinance.

(2) The decision to employ and the terms and conditions of employment of external advisers and consultants pursuant to subsection (1) shall be made by the Commission in accordance with such policy guidelines as may be established by the Federal Government, in consultation with the Commission, from time to time.

73. Indemnity. No suit, prosecution or other legal proceedings shall lie against the Commission, the Chairman or any member of the Commission or any employee, consultant, agent or adviser of the Commission for anything which is in good faith done or intended to be done under this Ordinance or rules made thereunder.

74. Removal of difficulties. If any difficulties arise in giving effect to any of the provisions of this Ordinance, the Federal Government may make such order, not inconsistent with the provisions of this Ordinance, as may appear to it to be necessary for the purpose of removing the difficulty:

Provided that no such power shall be exercised after the expiry of one year from the coming into force of this Ordinance.

75. Ordinance override other laws. The provisions of this Ordinance shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force, including, without limitation the National Tariff Commission Act, 1990 (Act VI of 1990) and the Customs Act, 1969. (Act IV of 1969).

76. Repeal. The Import of Goods (Anti-Dumping and Countervailing Duties) Ordinance. 1983 (Act II of 1983) and clause (ii) of section 4 of the National Tariff Commission Act, 1990 (Act VII of 1990) are, hereby repealed.

77. Savings. Save as otherwise provided in this Ordinance, nothing in this Ordinance shall affect or be deemed to affect anything done, action taken, investigation or proceedings commenced, order, rule, regulation, appointment, document, or agreement made, fee directed, resolution passed, direction given, proceedings taken or instrument executed or issued under or pursuant to any law amended or repealed by this Ordinance, and any such thing, action investigation, proceedings, orders, rule, regulation, appointment, document, agreement, fee, resolution, direction, proceedings or instrument shall, if in force at the commencement of this Ordinance and not inconsistent with any of the provisions of this Ordinance, continue in force and have effect as if had been respectively done, taken, commenced, made, directed, passed, given, executed or issued under this Ordinance or the law as amended by this Ordinance.

THE SCHEDULE

[See section 32(2)]

BEST INFORMATION AVAILABLE

1. As soon as possible after initiation of an investigation, the Commission should specify in detail the information required from any interested party, and the manner in which that information should be structured by the interested party in its response. The Commission should also ensure that the interested party is aware that if information is not supplied within a reasonable time, the Commission shall be free to make determination on the basis of facts available, including those contained in an application for initiation of an investigation by domestic industry.
2. The Commission may also request an interested party to provide its response in a particular medium such as computer tape or computer language. Where such a request is made, the Commission should consider the reasonable ability of the interested party to respond in the preferred medium or computer language, and should not request the party to use for its response a computer system other than that used by the party. The Commission should not maintain a request for a computerised response if the interested party does not maintain computerised accounts and if presenting the response as requested would result in an unreasonable extra burden on the interested party or it would entail unreasonable additional cost and trouble. The Commission should not maintain a request for a response in a particular medium or computer language if the interested party does not maintain its computerised 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 or 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 an investigation without undue difficulties, which is supplied in a timely fashion, and, where applicable, which is supplied in a medium or computer language requested by the Commission, should be taken into account when determinations are made. If a party does not respond in the preferred medium or computer language but the Commission finds that the circumstances set out in para 2 have been satisfied, any failure to respond in the preferred medium or computer language shall not be considered to significantly impede the investigation.
4. Where the Commission does not have the ability to process information if provided in a particular medium such as computer tape, the information should be supplied in the form of written material or any other form acceptable to the Commission.
5. If an information provided is not ideal in all respects, this shall not justify the Commission from disregarding it, provided an interested party has acted to the best of its ability.

6. If evidence or information is not accepted by the Commission, the supplying party shall be informed forthwith of the reasons therefore, and shall be given an opportunity to provide further explanations within a reasonable period, as may be determined by the Commission, due account being taken of the time-limits of an investigation. If the explanations are considered by the Commission as not being satisfactory, the reasons for rejection of such evidence or information should be given in any published determinations.

7. If the Commission has to base its findings, including those with respect to normal value, on any information from a secondary source, including any information supplied in an application for initiation of an investigation, it shall do so with special circumspection. In such cases, the Commission shall, 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 provided that if an interested party does not co-operate and thus relevant information is being withheld from the Commission, this situation may lead to a result which is less favourable to the party than if the party did co-operate.

