

0 eo ND

20

22

23

24

25

26

27

CONTENTS

PREAMBLE.

Short title, extent and commencement

Definitions

Levy of countervailing duty

Circumstances in which subsidy shall be deemed to exist
Countervailable subsidies

Non-countervailable subsidies

Calculation of amount of countervailable subsidy

General provisions on calculation of countervailable subsidies
Determination of injury

Further circumstances in which injury may be found to exist
Initiation of investigation

Principles governing investigation

Provisional countervailing duties

Undertakings

Termination of investigation without measures

Imposition of definitive countervailing duties

Retroactivity

Duration of definitive countervailing duty

Expiry reviews

Interim reviews

Accelerated reviews

Refunds

General provisions on reviews and refund
Circumvention

General provisions

Verification visits

Sampling

Page 1 of 50

28
29
30
31
32
33
34
35
36
37

38

39
40
41
42
43
44

Non-cooperation

Confidentiality

Disclosure

Relationships between countervailing duty measures and multilateral remedies

Appeal to the appellate tribunal

Power of the appellate tribunal to call for and examine record

Power to make rules

Public servants

Failure to disclose correct information offence

Cognizance of offences

Protection to persons prejudiced in employment because of assisting the
commission

Public file to be maintained for interested party and access thereto

Official file to be maintained by the commission

Appointment of advisers and consultants

Indemnity

Removal of difficulties

Ordinance to override other laws

FIRST SCHEDULE.

SECOND SCHEDULE.

THIRD SCHEDULE.
FOURTH SCHEDULE.

FIFTH SCHEDULE.

THE COUNTERVAILING DUTIES ORDINANCE, 2001

ORDINANCE No. I OF 2001

[34 January, 2001]

An Ordinance to amend and consolidate the law relating to imposition of countervailing duties to offset subsidies.

WHEREAS it is expedient and to give effect in Pakistan to the provisions of Articles VI and XVI of the General Agreement on Tariffs and Trade, 1994, and to the Agreement on Subsidies and Countervailing Measures and to amend and consolidate the law relating to imposition of countervailing duties to offset such subsidies, to provide a framework for investigation and determination of such subsidies and injury in respect of goods imported into Pakistan and matters ancillary thereto or connected therewith;

AND WHEREAS the imposition of countervailing duties to offset injurious subsidization 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. 1 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. 1 of 1999, read with the Provisional Constitutional (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—

PART I

PRELIMINARY

1. Short title, extent and commencement.— (1) This Ordinance may be called the Countervailing Duties Ordinance, 2001.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

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

(a) “Agreement on Subsidies” means the Agreement on Subsidies and Countervailing Measures included in Annex (1A) to the Final Act of the Results of the Uruguay Round concerning the Implementation of Article XVI of the General Agreement on Tariffs and Trade, 1994;

(b) “Appellate Tribunal” means the Appellate Tribunal established under the Anti-Dumping Ordinance, 2000 (LXV_of 2000);

(c) “application” means an application submitted to the Commission pursuant to sub-section (1) of section 11;

(d) “association” means a trade organisation as defined in the Trade Organisations Ordinance, 1961(XLV of 1961), which has been granted or deemed to have been granted a licence thereunder;

(e) “Commission” means the National Tariff Commission established under the National Tariff Commission Act, 1990 (VL of 1990);

(f) “country” means any country or territory whether a member of the World Trade Organisation or not and includes a customs union or customs territory;

(g) “countervailing measures” means any measures that may be taken by the Commission under this Ordinance including imposition of countervailing duties, whether provisional or definitive, or the acceptance of an undertaking;

(h) “definitive countervailing duty” means a duty imposed by the Commission under section 16, sub-section (15) of section 14 or sub-section (2) of section 17;

(i) “domestic industry” means the domestic producers as a whole of a 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 subsidised 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, the 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;

(j) “exporting country” means a country granting subsidy in respect of an investigated product, which country may be either —

(i) the country of origin of the investigated product; or

(ii) where the investigated product is not exported directly to Pakistan but is transported through an intermediate country, such intermediate country;

(k) “government” means the government or any public body within the territory of an exporting country;

(l) “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 subsidised imports are causing such injury;

(m) “interested party” includes —

(i) an exporter, foreign producer, an importer of an investigated product or an association a majority of the members of which are producers, exporters or importers of such product;

(ii) a producer of a like product in Pakistan or an association a majority of the members of which produce a like product in Pakistan; and

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

n) “investigated product” means a product which is subject to an investigation under this Ordinance;

(o) “investigation” means an investigation conducted under this Ordinance;

“like product” means a product which is alike in all respects to an investigated product or, Pp Pp Pp P g Pp

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;

(q) “prescribed” means prescribed by rules made under this Ordinance;

(r) “provisional countervailing duty” means a duty imposed by the Commission under section 13;

(s) “public notice” means a notice published by the Commission 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;

(t) “Schedule” mean the Schedule to this Ordinance;

(u) “subsidy” means a subsidy as defined in section 4 and “subsidization” shall be construed accordingly; and

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

PART II COUNTERVAILING MEASURES

3. Levy of countervailing duty.— (1) Where the Commission determines in accordance with the provisions of this Ordinance that any exporting country pays or bestows, directly or indirectly, any subsidy upon the manufacture or production therein or the exportation therefrom of any investigated product including any subsidy on transportation of such product and such subsidy causes injury then, upon the importation of any such product into Pakistan, the Commission shall, by notification in the official Gazette, impose a countervailing duty thereon as provided for in this Ordinance.

(2) For the purposes of this Ordinance, a product shall be considered to be subsidised if it benefits from a countervailable subsidy as provided for in section 4 and 5.

(3) A subsidy may be granted by a government of the country of origin of an investigated product or by the government of an intermediate country from which the investigated product is exported to Pakistan.

(4) Notwithstanding anything contained in this Ordinance, where an investigated product is not directly imported from the country of origin but exported to Pakistan from an intermediate country, the provisions of this Ordinance shall be fully applicable and such transaction shall, where considered appropriate by the Commission, be regarded as having taken place between the country of origin of the investigated product and Pakistan.

PART III DEFINITION OF SUBSIDY, COUNTERVAILABLE AND NON-COUNTERVAILABLE SUBSIDIES

4. Circumstances in which subsidy shall be deemed to exist A subsidy shall be deemed to exist if—

(a) there shall be financial contribution by a government, where —

(i) the government practice involves direct transfer of funds including grants, loans and equity infusion, or potential direct transfer of funds or liabilities, or both;

(ii) government revenue that is otherwise due is foregone or not collected including fiscal incentives such as tax credits:

Provided that exemption of an exported product from duties or taxes borne by a like product when destined for domestic consumption, or remission of such duties or taxes in amounts not in excess of those which have accrued, shall not be deemed to be a subsidy provided that such exemption is granted in accordance with the provisions of the First, Second and Third Schedules;

(iii) the government provides goods or services other than general infrastructure or purchases goods; or

(iv) the government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions specified in sub-clauses (1), (ii) and (iii) which would normally be vested in the government and the practice in, no real sense, differs from practices normally followed by governments;

(b) there is any form of income or price support within the meaning of Article XVI of the General Agreement on Tariffs and Trade, 1994; and

(c) a benefit is thereby conferred.

5. Countervailable subsidies.— (1) A subsidy shall be subject to countervailing measures under this Ordinance only if the Commission determines that such subsidy is specific in accordance with the principles set out in sub-sections (2), (3), (4) and (5).

(2) In order to determine whether a subsidy is specific to an enterprise, industry or a group of enterprises or industries, hereinafter referred to as “certain enterprises”, within the jurisdiction of a granting authority, the Commission shall apply the following principles, namely+

(a) where the granting authority, or the legislation pursuant to which the granting authority operates, explicitly limits access to a subsidy to certain enterprises, such subsidy shall be specific;

(b) where the granting authority, or the legislation pursuant to which the granting authority operates, establishes objective criteria or conditions governing the eligibility for, and the amount of, a subsidy, specificity shall not exist, provided that the eligibility is automatic and that such criteria and conditions are strictly adhered to;

Explanation.— For the purposes of clause (b), objective criteria or conditions mean criteria or conditions which are neutral, which do not favour certain enterprises over other, and which are economic in nature and horizontal in application, such as, number of employees or size of enterprise. Such criteria or conditions must be clearly set out by law, regulation, or other official document, so as to be capable of verification; and

(c) if, notwithstanding any appearance of non-specificity resulting from the application of the principles laid down in sub-clauses (a) and (b), there are reasons to believe that the subsidy may in fact be specific, the following other factors may be considered by the Commission, namely-

- (i) use of a subsidy programme by a limited number of certain enterprises;
- (ii) predominant use by certain enterprises;
- (iii) granting of disproportionately large amounts of subsidy to certain enterprises; and
- (iv) manner in which discretion has been exercised by the granting authority in the decision to grant a subsidy;

Explanation. For the purposes of clause (c), information on the frequency with which applications for a subsidy are refused or approved and the reasons for such decisions shall, in particular, be considered.

(3) In applying the provisions of sub-clause (c) of sub-section (2), the Commission shall take into account the extent of diversification of economic activities within the jurisdiction of a granting authority and the length of time during which subsidy programme has been in operation.

(4) A subsidy which is limited to certain enterprises located within a designated geographical region within the jurisdiction of a granting authority shall be specific.

(5) The setting or changing of generally applicable tax rates by all levels of the government entitled to do so shall not be deemed to be a specific subsidy.

(6) Notwithstanding anything contained in sub-section (2), (3), (4) and (5), the following subsidies shall be deemed to be specific, namely—

(a) subsidies contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance, including those illustrated in the First Schedule:

Provided that subsidies shall be considered by the Commission to be contingent in fact upon export performance when the facts demonstrate that granting of a subsidy, without having been made legally contingent upon export performance, is in fact tied to actual or anticipated exportation or export earnings:

Provided further that the mere fact that a subsidy is accorded to enterprises which export shall not for that reason alone be considered by the Commission to be an export subsidy for the purposes of this sub-clause; and

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

(7) Any determination of specificity by the Commission under this section shall be substantiated on the basis of positive evidence.

6. Non-countervailable subsidies (1) The following subsidies shall not be subjected to countervailing measures under this Ordinance, namely-

(a) subsidies which are not specific as determined in accordance with the provisions of section 5;

(b) subsidies which are specific in accordance with the provisions of section 5 but which meet the conditions set out in sub-section (2), (4) or (6) as read with sub-section (3), (5) and (7); and

(c) the element of subsidy which may exist in any of the measures listed in the Fourth Schedule:

Provided that the provisions of this sub-clause shall cease to apply on the first day of January, 2004.

(2) Subsidies for research activities conducted by firms or by higher education or research establishments on a contract basis with firms shall not be subject to countervailing measures under this Ordinance, if the subsidies cover not more than seventy-five per cent of the costs of industrial

research or fifty per cent of the costs of pre-competitive development activity, provided that such subsidies are limited exclusively to—

(a) personnel costs such as researchers, technicians and other supporting staff employed exclusively in the research activity;

(b) costs of instruments, equipment, land and buildings used exclusively and permanently except, when disposed of on a commercial basis, for the research activity;

(c) costs of consultancy and equivalent services used exclusively for the research activity including bought-in research, technical knowledge, patents or otherwise;

(d) additional overhead costs incurred directly as a result of the research activity; and

(e) other running costs such as those of materials, supplies and the like incurred directly as a result of the research activity.

(3) For the purpose of sub-section (2) —

(a) allowable levels of non-countervailable subsidy shall be established by reference to the total eligible costs incurred over the duration of an individual project and in the case of programmes which span both industrial research and pre-competitive development activity, allowable level of non-countervailable subsidy shall not exceed a simple average of the allowable levels of non-countervailable subsidy applicable to the above two categories, calculated on the basis of all eligible costs as set forth in sub-clauses (a) to (e) of sub-section (2);

(b) the term “industrial research” means planned research or critical investigation aimed at discovery of new knowledge, with the objective that such knowledge may be useful in developing new products, processes, services, or in bringing about a significant improvement to existing products, processes or services; and

(c) the term “pre-competitive development activity” means translation of industrial research findings into a plan, blueprint or design for new, modified or improved products, processes or services, whether intended for sale or for use, including creation of a first prototype which would not be capable of commercial use and, may further include conceptual formulation and design of products, processes or services, alternatives and initial demonstration or pilot projects, provided that the same projects cannot be converted or used for industrial application or commercial exploitation but, shall exclude routine or periodic alterations to existing products, production lines, manufacturing processes, services, and other ongoing operations even though those alterations may represent improvements.

(4) Subsidies to disadvantaged regions within the territory of an exporting country given pursuant to a general framework of regional development, which would be non-specific if the criteria set out in section 5 were applied to each eligible region concerned, shall not be subject to countervailing measures under this Ordinance, provided that—

(a) each disadvantaged region is a clearly designated contiguous geographical area with a definable economic and administrative identity; and

(b) the region is regarded as disadvantaged on the basis of neutral and objective criteria, indicating that the region’s difficulties arise out of more than temporary circumstances; such criteria being clearly set out by law, regulation, or other official document, so as to be capable of verification.

Explanation.— The criteria mentioned in sub-clause (b) shall include a measurement of economic development which shall be based on at least one of the following factors, namely-

(i) either income per capita, or household income per capita, or Gross Domestic Product per capita, which must not be above eighty-five per cent of the average for the territory of an exporting country; or

(ii) unemployment rate, which must be at least one hundred and ten per cent of the average for the territory of an exporting country as measured over a

three-years period. Such measurement, however, may be a composite one and may include other factors.

(5) For the purposes of the sub-section (4) —

(a) a “general framework of regional development” means that regional subsidy programmes are part of an internally consistent and generally applicable regional development policy and that regional development subsidies are not granted in isolated geographical points having no, or virtually no, influence on the development of a region; and

(b) “neutral and objective criteria” means criteria which do not favour certain regions beyond what is appropriate for elimination or reduction of regional disparities within the framework of a regional development policy.

Explanation.— Regional subsidy programmes shall include ceilings on the amount of subsidy which can be granted to each subsidized project. Such ceilings must be differentiated according to the different levels of development of eligible regions and must be expressed in terms of investment costs or the cost of job creation. Within such ceilings, the distribution of subsidy shall be sufficiently broad and even to avoid predominant use of a subsidy by, or granting of disproportionately large amounts of subsidy to, certain enterprises.

(6) Subsidies to promote adaptation of existing facilities to new environmental requirements imposed by either law or regulation, or both which, result in greater constraints and financial burden on firms shall not be subject to countervailing measures under this Ordinance, provided that subsidy-

(a) is a one-off non-recurring measure;

(b) is limited to twenty percent of the cost of adaptation;

(c) does not cover the cost of replacing and operating a subsidized investment which, must be fully borne by the entity;

d) is directly linked to and proportionate to an entity's planned reduction of nuisances and pollution, and does not cover any manufacturing cost savings which may be achieved;

and

(e) is available to all entities which can either adopt new equipment or production processes, or both.

(7) For the purpose of sub-section (6) the term “existing facilities” means facilities having been in operation for at least two years at the time when new environmental requirements are imposed.

PART IV
CALCULATION OF THE AMOUNT OF
COUNTERAVAILABLE SUBSIDY

7. Calculation of amount of countervailable subsidy. (1) The amount of countervailable subsidy, for the purposes of this Ordinance, shall be calculated by the Commission in terms of any benefit conferred on a recipient which is found to exist during an investigation period for subsidization which period, shall normally be the most recent accounting year of the beneficiary but may be any other period of at least six months prior to initiation of an investigation for which reliable financial and other relevant data are available.

(2) In determining the amount of countervailable subsidy the Commission shall apply the following principles to calculate any benefit conferred on the recipient as referred to in sub-section (1), namely—

(a) government provisions of equity capital shall not be considered to confer any benefit, unless an investment can be regarded as inconsistent with the usual investment practice including, for the provision of risk capital of private investors in the territory of an exporting country;

(b) a loan by a government shall not be considered to confer any benefit, unless there is a difference between the amount that a firm receiving the government loan pays on it and the amount that the firm would pay for a comparable commercial loan which the firm could actually obtain on the market, in which event the benefit shall be the difference between these two amounts;

(c) a loan guarantee by a government shall not be considered to confer any benefit, unless there is a difference between the amount that a firm receiving the guarantee pays on the loan guaranteed by the government and the amount that the firm would pay for a comparable commercial loan in the absence of the guarantee, in which case the benefit shall be the difference between these two amounts, adjusted for any difference in fees; and

(d) a provision of goods or services or purchase of goods by a government shall not be considered to confer any benefit, unless the provision is made for less than adequate remuneration or the purchase is made for more than adequate remuneration, and the adequacy of remuneration shall be determined in relation to prevailing market conditions for the product or service in question in the country of provision or purchase including price, quality, availability, marketability, transportation and other conditions of purchase or sale.

8. General provisions on calculation of countervailable subsidies.— (1) Subject to sub-section (2), the amount of countervailable subsidies shall be determined by the Commission in terms of subsidization per unit of an investigated product exported to Pakistan and in establishing such amount the following elements may be deducted from the total subsidy, namely—

(a) any fee or other costs necessarily incurred in order to qualify for or, to obtain a subsidy; and

(b) export taxes, duties or other charges levied on export of an investigated product to Pakistan specifically intended to offset a subsidy.

(2) Where an interested party claims a deduction under sub-section (1) such party shall prove to the Commission that the claim is justified.

(3) Where a subsidy is not granted by reference to the quantities manufactured, produced, exported or transported, the amount of countervailable subsidy shall be determined by allocating the value of the total subsidy, as appropriate, over the level of production, sales or exports of the products concerned during an investigation period for subsidization.

(4) Where a subsidy can be linked to acquisition or future acquisition of fixed assets, the amount of countervailable subsidy shall be calculated by spreading the subsidy across a period which reflects normal depreciation of such assets in the industry concerned, and the amount so calculated which is attributable to an investigation period, including that which derives from fixed asset acquired before such period, shall be allocated as provided for in sub-section (2):

Provided that where assets are non-depreciating, a subsidy shall be valued as an interest-free loan, and be treated in accordance with the provisions of sub-clause (b) of sub-section (2) of section 7.

(5) Where a subsidy cannot be linked to acquisition of fixed assets, the amount of any benefit received during an investigation period shall, in principle, be attributed to this period, and allocated as provided for in sub-section (2), unless special circumstances arise justifying attribution over a different period.

PART V DETERMINATION OF INJURY

9. Determination of injury. (1) A determination of injury by the Commission shall be based on positive evidence and shall involve an objective examination of—

(a) volume of any subsidised imports and their effect on prices in domestic market for like products; and

(b) consequent impact of subsidised imports on domestic industry

Explanation.— With regard to volume of any subsidised imports, consideration shall be given by the Commission to whether there has been a significant increase in subsidised imports, either in absolute terms or relative to production or consumption in Pakistan. With regard to effect of any subsidised imports on prices, consideration shall be given by the Commission to whether there has been significant price undercutting by the subsidised imports as compared with the price of a like product of domestic industry, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases which would otherwise

have occurred, to a significant degree, provided that no one or more of these factors shall be deemed to necessarily give decisive guidance.

(2) Where imports of a product from more than one country are simultaneously subject to an investigation, the effects of such imports may be cumulatively assessed by the Commission only if it determines that—

(a) the amount of countervailable subsidies established in relation to the imports from each country is negligible as defined in sub-section (3) of section 15 and that the volume of imports from each country is not negligible; and

(b) a cumulative assessment of the effects of the imports is appropriate in the light of conditions of competition between imported products and the conditions of competition between the imported products and a like domestic product.

(3) An examination by the Commission of an impact of subsidised imports on a domestic industry concerned may include an evaluation of all relevant economic factors and indices having a bearing on the state of the domestic industry including the fact that the domestic industry is still in the process of recovering from the effects of past subsidisation or dumping, the magnitude of the amount of countervailable subsidies, actual and potential decline in sales, profits, output, market share, productivity, return on investments, utilisation of capacity, factors affecting domestic prices, actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments and, in the case of agriculture, whether there has been an increased burden on Government support programmes.

(4) The Commission shall satisfy itself that subsidised imports are, through the effects of subsidies, as set forth in sub-sections (1) and (3), causing injury within the meaning of this Ordinance. The consideration of a causal relationship between subsidised imports and injury to domestic industry shall be based on an examination by the Commission of all relevant evidence before it.

(5) The Commission shall examine known factors other than subsidised imports which are injuring domestic industry to ensure that injury caused by such other factors is not attributed to subsidised imports. Such other factors may include factors such as the volume and prices of non-subsidised imports, contraction in demand or changes in patterns of consumption, restrictive trade practices of and competition between a third country and domestic producers, developments in technology and export performance and productivity of domestic industry.

(6) The effect of subsidised imports shall be assessed by the Commission in relation to the production by domestic industry of a like product when available data permits separate identification of that production on the basis of such criteria as the production process, producers' sales and profits:

Provided that where such separate identification of that production is not possible, the effects of subsidised imports shall be assessed by the Commission by examination of the production of the narrowest group or range of products including a like product, for which the necessary information can be provided.

(7) A determination of a threat of material injury by the Commission shall be based on facts and not merely on allegation, conjecture or remote possibility and any change in circumstances which would create a situation in which subsidy would cause injury must be foreseen and imminent.

(8) In making a determination regarding the existence of a threat of material injury, the Commission shall take into consideration factors such as—

(a) the nature of subsidy or subsidies in question and any trade effects likely to arise therefrom;

(b) any significant rate of increase of subsidised imports into a domestic market indicating the likelihood of substantially increased imports;

(c) sufficient freely disposable capacity of an exporter or an imminent substantial increase in such capacity indicating the likelihood of substantially increased subsidised exports into Pakistan, account being taken of the availability of other export markets to absorb any additional exports;

(d) whether imports are entering at prices that would, to a significant degree, depress prices or prevent price increases which otherwise would have occurred and would probably increase demand for further imports; and

(e) inventories of an investigated product.

Explanation.— None of the factors specified in sub-section (8) by itself shall be deemed to necessarily give decisive guidance but the totality of the factors considered by the Commission must lead to the conclusion that further subsidised exports are imminent and that, unless protective action is taken, material injury will occur

10. Further circumstances in which injury may be found to exist— (1) Where domestic industry in relation to a product in question has been divided into two or more competitive markets and the producers within each such market regarded as a separate industry in accordance with the second proviso to clause (i) 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 subsidised imports into such a separated market, and provided further that the subsidised imports are causing injury to the producers of all or almost all of the production within such market.

(2) Where injury is found to exist in the circumstances referred to in sub-section (1), the exporters or the government granting countervailable subsidies shall be given an opportunity to offer an undertaking in accordance with section 14 in respect of the region concerned or to cease exporting at subsidised prices to the region concerned prior to any countervailing measures being applied by the Commission under this Ordinance.

(3) In the circumstances referred to in sub-section (2), special account shall be taken by the

Commission of any interest of the region and if an adequate undertaking is not offered promptly or if the situations set out in sub-section (13) and (14) of section 14 apply, a

provisional or definitive countervailing duty may be imposed by the Commission in respect of domestic industry as a whole.

(4) The provisions of sub-section (6) of section 9 shall apply to this section.

PART VI

INVESTIGATION

11. Initiation of investigation.— (1) Save as provided for in sub-section (11), the Commission shall initiate an investigation to determine the existence, degree and effect of any alleged subsidy only upon receipt of a written application by or on behalf of domestic industry.

(2) An application shall be submitted to the Commission with such fee as may be prescribed and shall include sufficient evidence of the existence of countervailable subsidies including, if possible, of their amount, and of injury within the meaning of this Ordinance and shall contain such information as is reasonably available to an applicant on the following, namely-

(a) identity of the applicant and a description of the volume and value of domestic production of a like product by the applicant;

Provided that where an application is made on behalf of domestic industry, the application shall identify the industry on behalf of which the application is made by a list of all known domestic producers of the like product or, association of domestic producers of the like product and, to the extent possible, a description of the volume and value of domestic production of the like product accounted for by such producers;

(b) a complete description of an allegedly subsidised product including its current customs tariff classification number as contained in the First Schedule to the Customs Act, 1969 (IV of 1969), the name of exporting country, identity of each known exporter or foreign producer, and a list of known persons importing the product in question;

(c) evidence with regard to the existence, amount, nature and countervailability of subsidy in question; and

(d) information on changes in volume of allegedly subsidised imports, the effect of those imports on prices of a like product in domestic market and the consequent impact of the imports on domestic industry as demonstrated by relevant factors and indices having a bearing on the state of domestic industry, such as those listed in the explanation to sub-section (1) of section 9, and in sub-section (3) of section 9.

(3) The Commission shall, to the extent possible, examine the accuracy and adequacy of the evidence provided in an application to determine whether it is compliant with the requirements of sub-section (2) and in order to determine whether there is sufficient evidence to justify initiation of an investigation.

(4) An investigation may be initiated by the Commission in order to determine whether or not the alleged subsidies are specific in accordance with the principles set out in section 5.

(5) An investigation may also be initiated by the Commission in respect of subsidies which are non-countervailable in accordance with the provisions of section 6 in order to determine whether or not the conditions set out therein have been met.

(6) If a subsidy is granted pursuant to a subsidy programme which has been notified in advance of its implementation to the WTO Committee on Subsidies and Countervailing Measures in accordance with Article 8 of the Agreement on Subsidies and in respect of which the said Committee has failed to determine that the relevant conditions laid down in Article 8 of the Agreement on Subsidies have not been met, an investigation shall not be initiated by the Commission in respect of a subsidy granted pursuant to such a programme, unless an infringement of Article 8 of the Agreement on Subsidies has been ascertained by the competent WTO Dispute Settlement Body or through arbitration as provided in Article 8(5) of the Agreement on Subsidies.

(7) An investigation may be initiated by the Commission in respect of measures of any type listed in the Fourth Schedule, to the extent that they contain an element of subsidy as defined in section 4, in order to determine whether the measures in question fully conform to the provisions of the Fourth Schedule.

(8) An investigation shall not be initiated by the Commission pursuant to sub-section (1) unless the Commission is satisfied, on the basis of an examination as to the degree of support for, or opposition to, an application expressed by domestic producers of a like product, that the application has been made by or on behalf of domestic industry.

(9) An application shall be considered to have been made by or on behalf of domestic industry if it is supported by those domestic producers whose collective output constitutes more than fifty percent of the total production of a like product produced by that portion of domestic industry expressing either support for or opposition to the application:

Provided that no investigation shall be initiated by the Commission when domestic producers expressly supporting an application account for less than twenty-five percent of the total production of a like product produced by domestic industry.

(10) The Commission shall, as soon as possible after receipt of a properly documented application in accordance with the requirements of section 11, and in any event before initiation of an investigation, give notice to an exporting country, which shall be invited for consultations with the aim of clarifying the situation as to matters referred to in sub-section (2) and arriving at a mutually agreed solution.

(11) 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 the existence of

countervailable subsidies and injury within the meaning of this Ordinance.

(12) The evidence both of subsidy and of injury shall be considered simultaneously by the Commission in the decision on whether or not to initiate an investigation and an

application shall be rejected where there is insufficient evidence of either countervailable subsidies or of injury to justify initiation of an investigation:

Provided that an investigation shall not be initiated against countries whose imports represent a market share of below one per cent unless such countries collectively account for three per cent or more of domestic consumption.

(13) An application may be withdrawn by an applicant prior to initiation of an investigation by the Commission, in which case it shall, subject to the provisions of sub-section (1) of section 15, be deemed not to have been made:

Provided that upon withdrawal of an application any fee paid by an applicant pursuant to sub-section (2) shall stand forfeited in favour of the Commission.

(14) Where, after consultation with an exporting country as provided for in sub-section (10), the Commission is satisfied that there is sufficient evidence to justify initiating an investigation, the Commission shall give notice of such decision by means of a public notice of initiation of an investigation, and the initiation of an investigation shall be effective on the date on which such notice is published.

(15) Where the Commission does not consider it appropriate to initiate an investigation it shall inform an applicant of its decision.

(16) The public notice of initiation of an investigation referred to in sub-section (14) shall announce initiation of an investigation, indicate the product and countries concerned, give a summary of the information received, provide that all relevant information is to be communicated to the Commission, state the periods within which any interested party may make itself known, present its views in writing and submit information if such views and information are to be taken into account during the investigation and shall also state the period within which interested parties may apply to be heard by the Commission in accordance with sub-section (4) of section 12.

(17) The Commission shall advise any exporters, importers and any association of importers or exporters known to it to be concerned, as well as an exporting country and an applicant, of initiation of an investigation and, subject to the requirements of section 29, provide the full text of an application to the known exporters and to the authorities of an exporting country, and make it available upon request to other interested parties involved:

Provided that, where the Commission determines that the number of exporters involved is particularly high, the full text of a written complaint may instead be provided by the Commission only to the authorities of an exporting country or to a relevant association.

(18) An investigation shall not hinder the procedures of customs clearance.

12. Principles governing investigation. (1) Following initiation of an investigation, the Commission shall commence an investigation and such investigation shall cover both subsidisation

and injury which, shall be investigated simultaneously

(2) For the purpose of a representative finding, an investigation period shall be selected by the Commission which, in the case of subsidisation shall, normally cover an

investigation period provided for in section 7 and information relating to a period subsequent to the investigation period shall not, normally be taken into account by the Commission.

(3) Parties receiving questionnaires from the Commission used in a countervailing duty investigation shall be given at least thirty days to reply and such time limit for exporters shall be counted from the date of receipt of the questionnaire which, for this purpose shall be deemed to have been received one week from the day on which it was sent to a respondent or transmitted to an appropriate diplomatic representative of an exporting country:

Provided that where a party shows due cause for an extension to the satisfaction of the Commission, an extension of not more than thirty days may be granted by the Commission at its discretion.

(4) Any interested party which has made itself known in accordance with sub-section (16) of section 11 shall be heard by the Commission if it has, within the period prescribed in a public notice of initiation of an investigation made a written request for hearing showing that it is an interested party likely to be affected by the result of an investigation and that there are particular reasons why it should be heard.

(5) Opportunities shall, on request, be provided for any importers, exporters and an applicant, which have made themselves known in accordance with sub-section (16) of section 11 and the government of an exporting country to meet those parties having adverse interests, so that opposing views may be presented and rebuttal arguments offered. Provision of such opportunities shall take account of the need to preserve confidentiality and of convenience to the parties. There shall be no obligation on any party to attend such meeting and failure to do so shall not be prejudicial to that party's case. Oral information provided under this sub-section shall only be taken into account by the Commission to the extent that the same is subsequently confirmed in writing and provided to the Commission.

(6) Without prejudice to the provisions of section 42, an applicant, the government of an exporting country, importers and exporters and their representative associations, which have made themselves known in accordance with sub-section (16) of section 11, may, upon written request, inspect all information made available to the Commission by any party to an investigation, as distinct from internal documents prepared by the Commission, which is relevant to presentation of their cases and is not confidential within the meaning of section 29, and that it is used in an investigation. Such parties may respond to such information and their comments shall be taken into consideration wherever they are sufficiently substantiated in a response.

(7) Save as provided for in section 28, any information which is supplied by interested parties and upon which findings are based shall, to the extent possible, be examined for accuracy by the Commission.

(8) An investigation shall, whenever possible, be concluded within one year and in no event later

than eighteen months from its initiation, in accordance with the findings made pursuant to section 14 for undertakings or the findings made pursuant to section 16 for definitive action.

(9) Throughout an investigation, the Commission shall afford an exporting country a reasonable opportunity to continue consultations with a view to clarifying the factual situation and arriving at a mutually agreed solution:

Provided that the Commission may continue an investigation during such consultations.

(10) The Commission shall allow industrial users of an investigated product in Pakistan, and representative consumer organisations in cases where the investigated product is commonly sold at retail level in Pakistan to provide to the Commission, in writing, no later than two months after initiation of an investigation, information concerning matters relevant to the investigation regarding subsidisation dumping and injury

PART VII PROVISIONAL COUNTERVAILING MEASURES

13. Provisional countervailing duties.— (1) Provisional countervailing duty shall be imposed by the Commission if—

- (a) an investigation has been initiated by the Commission in accordance with section 11;
- (b) a public notice of initiation of an investigation has been given and interested parties have been given adequate opportunities to submit information and make comments in

accordance with sub-section (16) of section 11; and

- (c) a provisional affirmative determination has been made by the Commission that a subsidy exists and that there is consequent injury to domestic industry.

(2) A provisional countervailing duty shall be imposed no earlier than sixty days from initiation of an investigation but no later than nine months from initiation of the investigation and shall be in an amount equal to the total amount of countervailable subsidies as provisionally established by the Commission.

(3) A provisional countervailing duty shall be in the form of cash deposit equal to the amount of the provisionally calculated amount of subsidisation:

Provided that the release of a product concerned for free circulation in Pakistan shall be subject to provisions of such cash deposit.

(4) A provisional countervailing duty shall be imposed for a period not exceeding four months.

PART VIII
UNDERTAKINGS AND TERMINATION WITHOUT
MEASURES

14. Undertakings. (1) An investigation may be terminated by the Commission without imposition of provisional or definitive countervailing duties upon receipt of a satisfactory voluntary undertaking under which —

(a) an exporting country agrees to eliminate or limit subsidy or take other measures concerning its effects; or

(b) any exporter undertakes to revise its prices or to cease exports in question as long as such exports benefit from countervailable subsidies, so that the Commission is satisfied that the injurious effect of the subsidies is eliminated.

(2) Price increases under such undertakings shall not be higher than those which are necessary to offset the amount of countervailable subsidies and shall be less than the amount of countervailable subsidies if such increases would be adequate to remove injury to domestic industry.

(3) Undertakings may be suggested by the Commission but no country or exporter shall be obliged to enter into such an undertaking and the fact that countries or exporters do not offer such undertakings, or do not accept an invitation to do so, shall in no way prejudice the outcome of an investigation by the Commission:

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

(4) Undertakings shall not be sought or accepted by the Commission from countries or exporters unless a provisional affirmative determination of subsidisation and injury caused by such subsidisation has been made by the Commission.

(5) Save in exceptional circumstances, undertakings may not be offered later than the end of the period during which representations may be made pursuant to sub-section (7) of section 30.

(6) The decision to accept an 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.

(7) An exporting country or exporter concerned may be provided with the reasons for which it is proposed to reject an offer of an undertaking and may be given an opportunity to make comments thereon and the reasons for rejection shall be set out in a definitive decision by the Commission.

(8) Parties which offer an undertaking shall be required to provide a non-confidential version of such undertaking so that it may be made available to interested parties to an investigation.

(9) If an undertaking is accepted by the Commission, it shall nevertheless complete an investigation if it receives a request from an exporting country or exporter in writing to continue such investigation or where the Commission so decides on its own accord.

(10) In the event the Commission makes a negative determination of subsidisation and injury pursuant to an investigation continued under sub-section (9), an undertaking in question shall automatically lapse except in cases where the Commission determines that such a determination is due in large part to the existence of such undertaking in which case the Commission may require that such undertaking be maintained for a reasonable period of time to be determined by the Commission.

(11) In the event the Commission makes an affirmative determination of subsidisation and injury pursuant to an investigation continued pursuant to sub-section (9), an undertaking in question shall continue consistent with the provisions of this Ordinance.

(12) The Commission may require any country 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 such information.

(13) Failure to provide any information requested by the Commission pursuant to sub-section (12) shall be deemed to be a violation of an undertaking in question.

(14) Where undertakings are accepted from certain exporters during the course of an investigation, they shall, for the purpose of sections 19, 20, 21 and 23 be deemed to take effect from the date on which the investigation is concluded for an exporting country.

(15) If an undertaking is violated or deemed to be violated, the Commission may, subject to the provisions of this Ordinance, take expeditious actions, which may include immediate application of provisional measures using the best information available. In such cases, a definitive countervailing duty may be levied in accordance with the provisions of this Ordinance on products entered for domestic 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 undertaking.

15. Termination of investigation without measures.— (1) Where an application is withdrawn, an investigation shall be terminated by the Commission:

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

(2) Where, the Commission determines in accordance with the provisions of sub-sections (3), (4), (5), (6) and (7), that the amount of countervailable subsidies is negligible or, where the volume of subsidised imports, whether actual or potential, or injury is negligible then it shall immediately terminate an investigation.

(3) The amount of countervailable subsidies shall be considered to be negligible if such amount is less than one per cent ad valorem, except that —

(a) in the case of investigations concerning imports from developing countries the negligible subsidy threshold shall be two per cent ad valorem; and

(b) for those developing countries which are referred to in the Fifth Schedule and other developing countries which are members of the WTO and which have completely eliminated export subsidies, the negligible subsidy threshold shall be three per cent ad valorem.

(4) Where the application of sub-section (3) depends on elimination of export subsidies, it shall apply from the date on which elimination of export subsidies is notified to the WTO Committee on Subsidies and Countervailing Measures pursuant to the Agreement on Subsidies, and for so long as export subsidies are not granted by a developing country concerned:

Provided that this provision shall expire on the first day of January, 2003:

Provided further that it is only an investigation that shall be terminated where the amount of countervailable subsidies is below the relevant level for individual exporters who shall remain subject to investigation by the Commission under this Ordinance and may be re-investigated in any subsequent review carried out for a country concerned pursuant to sections 19 and 20.

(5) Injury shall normally be regarded as negligible where the market share of any imports is less than the amounts set out in the proviso to sub-section (12) of section 11.

(6) In the case of an investigation concerning imports from developing countries, the volume of subsidised imports shall be considered negligible if it represents less than four per cent of the total imports of a like product in Pakistan, unless imports from developing countries whose individual shares of total imports represent less than four per cent collectively account for more than nine per cent of the total imports of a like product in Pakistan.

(7) In the case of an investigation concerning imports from countries other than developing countries, the volume of subsidised imports shall be considered negligible if it represents less than three per cent of the total imports of a like product in Pakistan, unless imports from such countries under investigation which individually account for less than three per cent of the total imports of a like product in Pakistan collectively account for more than seven per cent of imports of the like product in Pakistan.

PART IX

DEFINITIVE COUNTERVAILING DUTIES

16. Imposition of definitive countervailing duties.— (1) Where the Commission has established the existence of countervailable subsidies and injury caused thereby, a definitive countervailing duty shall be imposed by the Commission, unless the subsidy in question is withdrawn or it has been demonstrated to the satisfaction of the Commission that the subsidies no longer confer any benefit on any exporters involved.

(2) A definitive countervailing duty shall be an amount equal to the amount of countervailable subsidies from which any exporters have been found to benefit, as established by the Commission in accordance with the provisions of this Ordinance.

(3) A definitive countervailing duty shall be imposed in an appropriate amount in each case, on a non-discriminatory basis, on imports of a product from all sources found to benefit from countervailable subsidies and causing injury except as to imports from those sources from which undertakings under section 14 have been accepted by the Commission.

(4) When the Commission has limited its examination in accordance with section 27, any definitive countervailing duty applied to imports from exporters or producers which have made themselves known in accordance with section 27 but were not included in an examination shall not exceed the weighted average amount of countervailable subsidies established for parties in a sample.

(5) For the purposes of sub-section (4), the Commission shall disregard any negligible amounts of countervailable subsidies and amounts of countervailable subsidies established in the circumstances referred to in section 28.

(6) Individual duties shall be applied to imports from any exporter or producer for which an individual amount of subsidisation has been calculated as provided for in section 27.

PART X RETROACTIVITY

17. Retroactivity— (1) Save as otherwise provided in this section, provisional and definitive countervailing duties shall only be applied to products which enter Pakistan for consumption after the time when the requirements set out in sub-section (1) of section 13 and sub-section (1) of section 16, as the case may be, have been fulfilled.

(2) 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 subsidised imports would, in the absence of provisional measures, have led to a determination of injury, definitive countervailing duties shall be levied by the Commission retroactively for the period for which provisional duty, if any, have been applied.

(3) If a definitive countervailing duty imposed by the Commission pursuant to sub-section (2) is higher than a provisional countervailing duty, the difference shall not be collected:

Provided that where a definitive countervailing duty is lower than a provisional countervailing duty, the duty difference shall be refunded by the Commission in an expeditious manner

(4) Save as provided for in sub-section (3), where the Commission makes a determination of threat of injury or material retardation but, no injury has yet occurred, a definitive countervailing duty shall be imposed by the Commission only from the date of the determination of threat of injury or material retardation and any cash deposit provided during

the period of application of provisional countervailing duty shall be refunded by the Commission in an expeditious manner.

(5) Where the Commission makes a negative final determination any cash deposit provided during the period of application of provisional countervailing duties shall be refunded by the Commission in an expeditious manner

(6) A definitive countervailing duty shall be imposed by the Commission on products, which were imported for consumption not more than ninety days prior to the date of application of provisional countervailing duty if, the Commission determines, for an investigated product in question, that injury which is difficult to repair, is caused by massive imports in a relatively short period of a product benefiting from a countervailable subsidy and the Commission deems it necessary to impose such duty in order to preclude the recurrence of such injury.

PART XI

DURATION, REVIEWS AND REFUNDS, AND GENERAL PROVISIONS

18. Duration of definitive countervailing duty.— Subject to the provisions of this Ordinance, a definitive countervailing duty imposed pursuant to this Ordinance shall remain in force only as long as, and to the extent that, it is necessary to counteract countervailable subsidies which are causing injury.

19. Expiry reviews.— (1) A definitive countervailing duty shall expire after five years from its imposition or five years from the date of the most recent review which has covered both subsidisation and injury, unless it is determined in a review that the expiry would be likely to lead to a continuation or recurrence of subsidisation and injury. Such an expiry review may be initiated, on an initiative of the Commission or, upon a request made by or on behalf of domestic producers, and the measure in question shall remain in force pending the outcome of such review.

(2) An expiry review shall be initiated by the Commission upon request made by or on behalf of domestic producers where such request contains sufficient evidence that the expiry of a measure in question would be likely to result in a continuation or recurrence of subsidisation and injury

Explanation— Such a likelihood may, for example, be indicated by evidence of continued subsidisation and injury or evidence that the removal of injury is partly or solely due to the existence of measures or evidence that the circumstances of exporters, or market conditions, are such that they would indicate the likelihood of further injurious subsidisation.

(3) In carrying out investigations under this section, the Commission shall provide any exporters, importers, an exporting country and domestic producers with the opportunity to amplify, rebut or comment on the matters set out in a review request, and conclusions shall be reached by the Commission with due account taken of all relevant and duly documented evidence presented in relation to the question as to whether the expiry of measures would be likely, or unlikely, to lead to the continuation or recurrence of subsidisation and injury.

(4) The Commission shall notify an impending expiry by a public notice which shall be published at an appropriate time, as determined by the Commission, in the final year of the period of application of a measure in question and a public notice announcing the actual expiry of a measure under this section shall also be published by the Commission.

20. Interim reviews.— (1) The need for continued imposition of measures under this Ordinance may also be reviewed, where warranted on an initiative of the Commission or, provided that a period of at least twenty-four months has elapsed since the imposition of definitive countervailing duty, upon a request by any exporter, importer or by domestic producers or an exporting country which contains sufficient evidence substantiating the need for such an interim review.

(2) An interim review under sub-section (1) shall be initiated by the Commission where a request contains sufficient evidence that the continued imposition of a measure is no longer necessary to offset countervailable subsidy or that injury would be unlikely to continue or recur if a measure were removed or varied, or that an existing measure is not, or is no longer, sufficient to counteract countervailable subsidy which is causing injury:

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 the review shall be initiated following the receipt by the Commission of such questionnaire duly filled in.

(3) In carrying out investigations pursuant to this section, the Commission may, in addition to other factors considered relevant by it, consider whether the circumstances with regard to subsidisation and injury have changed significantly, or whether existing measures are achieving the intended results in removing an injury previously established under section 9.

21. Accelerated reviews. (1) Any exporter whose exports are subject to a definitive countervailing duty but who was not individually investigated during an original investigation for reasons other than a refusal to co-operate with the Commission, shall be entitled, upon request, to an accelerated review in order that the Commission may promptly establish an individual countervailing duty rate for that exporter provided that such review shall be initiated after domestic producers have been given an opportunity to comment.

(2) The Commission may require an applicant requesting a review under sub-section (1) to fill in an additional questionnaire provided by it before such review is initiated in which case a review under sub-section (1) shall be initiated following the receipt by the Commission of such questionnaire duly filled in.

22. Refunds.— (1) Notwithstanding anything contained in section 19, an importer may apply to the Commission for refund of duties collected where it is shown that the amount of countervailable subsidies, on the basis of which duties were paid, has been either eliminated or reduced to a level which is below the level of the duty in force.

(2) An importer may submit an application for refund of countervailing duties collected within any twelve months period to the Commission no later than sixty days from the end of such period.

(3) An application for refund shall be considered to be duly supported by evidence only where it contains precise information on the amount of refund of countervailing duties claimed and all customs documentation relating to the calculation and payment of such amount and includes evidence, for a representative period, of the amount of countervailable subsidies for any exporter or producer to which the duty applies:

Provided that, where the importer is not associated with any exporter or producer concerned and such information is not immediately available, or where any exporter or producer is unwilling to release it to an importer, the application for refund shall contain a statement from the exporter or producer that the amount of countervailable subsidies has been reduced or eliminated, as specified in this section, and that the relevant supporting evidence will be provided to the Commission:

Provided further that where such evidence is not forthcoming from any exporter or producer within a reasonable period of time, as determined by the Commission, the application shall be rejected by the Commission.

(4) The Commission shall determine whether and to what extent an application should be granted, or it may decide at any time to initiate an interim review, whereupon any information and findings from such review, carried out in accordance with the provisions applicable for such review, shall be used to determine whether and to what extent a refund is justified.

(5) A refund of countervailing duties under this section shall normally take place within twelve months, and in no circumstances more than eighteen months after the date on which a request for a refund, duly supported by evidence, has been made by an importer of a product subject to countervailing duty.

23. General provisions on reviews and refund.— (1) The provisions of sections 11 and 12, excluding those relating to time limits, shall *mutatis mutandis* apply to any review carried out pursuant to sections 19, 20 and 21.

(2) Any review pursuant to sections 19, 20 or 21 shall be carried out by the Commission expeditiously and shall normally be concluded within twelve months of the date of initiation of the review.

(3) Where a review pursuant to section 20 is in progress at the end of the period of application of a measure as defined in section 19, the measure shall also be investigated under the provisions of section 19.

(4) In any review or refund investigation carried out pursuant to sections 19 to 22, the Commission shall, provided that circumstances have not changed, apply the same methodology as in an investigation which led to the duty, with due account being taken of sections 7, 8 and 27.

24. Circumvention.— (1) Countervailing duties imposed pursuant to this Ordinance may be

extended by the Commission to imports from third countries of like products, or parts thereof, if the Commission determines that circumvention of the measures in force is taking place.

(2) For the purposes of sub-section (1), circumvention shall mean a change in the pattern of trade between third countries and Pakistan which stems from a practice, process or work for which there is insufficient cause or economic justification other than an imposition of a duty, and where there is evidence that the remedial effects of a duty are being undermined in terms of either the prices or quantities of like products, or both, and that either the imported like product or parts thereof, or both, still benefit from subsidy.

25. General provisions.— (1) Countervailing duties, 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 countervailing shall take the form of cash deposits equal to the amount of a provisionally calculated amount of subsidisation.

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

(c) be collected in the same manner as customs-duties under the Customs Act, 1969 (LV of 1969).

(2) No product shall be subject to both anti-dumping duties under the Anti-Dumping Duties Ordinance, 2000 (LXV of 2000), and countervailing duties under this Ordinance for the purpose of dealing with one and the same situation arising from dumping or from export subsidisation.

(3) The decisions regarding imposition of provisional or definitive countervailing duties, and notices regarding acceptance of undertakings or terminating an investigation, shall be published by the Commission in a public notice which shall contain, in particular, and with due regard to the protection of confidential information in accordance with section 29, the names of exporters, if possible, or of the countries involved, a description of the product and a summary of the facts and considerations relevant to subsidy and injury determinations and in each case, a copy of the said notice shall be sent to the known interested parties.

(4) The provisions of sub-section (3) shall apply, mutatis mutandis, to reviews under this Ordinance.

(5) The Commission shall establish and maintain a non-lapseable personal ledger account in its name for the purpose of this Ordinance and all duties and fees payable under and collected pursuant to this Ordinance shall be held in such account.

(6) The account established under sub-section (5) shall be maintained and operated in such manner as may be prescribed.

PART XII

VERIFICATION VISITS, SAMPLING, NON-COOPERATION, CONFIDENTIALITY AND DISCLOSURE

26. Verification visits (1) The Commission may, where it considers it appropriate, carry out visits to examine the records of importers, exporters, traders, agents, producers, trade associations and organisations, to verify information provided on subsidisation and injury:

Provided that in the absence of a proper and timely reply a verification visit may not be carried out.

(2) The Commission may carry out investigations in third countries as required, provided that—

- (a) it obtains consent of an entity concerned;
- (b) it gives notice to a country in question; and
- (c) the country in question does not object to an investigation.

(3) As soon as consent of an entity concerned has been obtained the Commission shall give notice to an exporting country of the name and address of the entity to be visited and the dates agreed.

(4) An entity concerned shall be advised of the nature of information to be verified during verification visits and of any further information which needs to be provided during such visits:

Provided that this shall not preclude the Commission from requiring further information or verification.

27. Sampling. (1) Where the Commission determines that the number of complainants, exporters or importers, types of product or transactions is large, the Commission may limit an investigation to —

- (a) a reasonable number of parties, products or transactions by using samples which are statistically valid on the basis of information available at the time of selection; or
- (b) to the largest representative volume of any production, sales or exports which can reasonably be investigated within the time available.

(2) The selection of parties, types of products or transactions made under this section shall rest with the Commission:

Provided that preference shall be given by the Commission to choosing a sample in consultation with, and with the consent of, the parties concerned:

Provided further that such parties make themselves known and make sufficient information available to the Commission, within three weeks of initiation of an investigation, to enable a representative sample to be chosen.

(3) In cases where the examination has been limited in accordance with this section, an individual amount of countervailable subsidisation shall, nevertheless, be calculated by the Commission for any exporter or producer not initially selected who submits the necessary information within the time limits provided for in this Ordinance except where the Commission determines that the number of exporters or producers is so large that individual examinations would be unduly burdensome and would prevent completion of an investigation within the applicable time limits.

(4) Where the Commission has decided to undertake a sample as provided for in this section and there is a degree of non-cooperation by some or all of the parties selected which is likely to materially affect the outcome of an investigation, a new sample may be selected by the Commission:

Provided that if a material degree of non-cooperation persists or there is insufficient time to select a new sample, the relevant provisions of section 28 shall apply.

28. Non-cooperation.— (1) Where any interested party refuses access to, or otherwise does not provide, necessary information within the time limits provided in this Ordinance, or significantly impedes an investigation, provisional or final determinations, whether affirmative or negative, may be made by the Commission on the basis of the facts available.

(2) Where the Commission establishes that any interested party has supplied false or misleading information, such information shall be disregarded and use may be made by the Commission of the facts available.

(3) Where any information submitted by an interested party is not ideal in all respects it shall nevertheless not be disregarded by the Commission:

Provided that the Commission is satisfied that any deficiencies are not such as to cause undue difficulty in arriving at a reasonably accurate finding and that the information is appropriately submitted in good time and is verifiable, and that the party has acted to the best of its ability.

(4) If evidence or information is not accepted by the Commission, a supplying party shall be informed forthwith of the reasons therefor and shall be granted an opportunity to provide further explanations within such time limit as the Commission may specify

(5) If determinations, including those regarding the amount of countervailable subsidies, are based on the provisions of sub-section (1) including any information supplied in an application it shall, where practicable and with due regard to the time limits of an investigation, be checked by the Commission by reference to information from other independent sources which may be available including published price lists, official import statistics and customs returns, or information obtained from other interested parties during the investigation.

(6) If an interested party does not co-operate, or co-operates only partially so that relevant information is thereby withheld, the result may be less favourable to the party than if it had co-operated.

29. 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) 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, or where the Commission determines such information to be of a confidential nature for any other reason; or

(b) provided on a confidential basis by parties to an investigation, shall, upon good cause shown, be treated as 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 an 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 the 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 requests 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 a non-confidential summary thereof. Such summary may take the form of ranges or indexation of figures provided in a 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 any information submitted in confidence:

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

(6) In exceptional circumstances, parties may indicate that information for which confidentiality is sought is not susceptible of summary, in which case a statement of the reasons why summarisation is not possible shall be provided:

Provided that where the Commission concludes that a non-confidential summary provided fails to satisfy the requirements of sub-section (5), it may determine that the request for keeping an information confidential is not warranted.

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

(8) Save for sub-section (10), 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) Information received pursuant to this Ordinance shall be used only for the purpose for which it was requested.

(10) The provisions of sub-section (8) shall not preclude the supply of information called for by the Appellate Tribunal pursuant to section 33:

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

30. Disclosure. (1) Any applicant, importer and exporter and their representative association and an exporting country may request disclosure by the Commission of the details underlying the essential facts and considerations on the basis of which provisional countervailing duties have been imposed:

Provided that requests for such disclosure shall be made in writing immediately following imposition of provisional countervailing duties and in any event no later than fifteen days thereof and a disclosure by the Commission shall be made in writing as soon as possible thereafter

(2) The parties specified in sub-section (1) may request for a final disclosure by the Commission of the essential facts and considerations on the basis of which it is intended to recommend imposition of definitive countervailing duties, or termination of an investigation or proceedings without imposition of duties, particular attention being paid to disclosure of any facts or considerations which are different from those used for any provisional countervailing duties.

(3) Requests for final disclosure shall be addressed to the Commission in writing and be received, in cases where provisional countervailing duty has been applied, not later than one month after imposition of that duty.

(4) Where a provisional countervailing duty has not been imposed, parties shall be provided with an opportunity to request final disclosure within such time limits as may be determined by the Commission.

(5) Final disclosure shall be given in writing and shall be made, with due regard to the protection of confidential information pursuant to section 29, as soon as possible and, normally, not later than one month prior to a definitive determination.

(6) Where the Commission is not in a position to disclose certain facts or considerations at that time, these shall be disclosed as soon as possible thereafter. Disclosure shall not prejudice any subsequent decision which may be taken by the Commission but where such decision is based on any different facts and considerations these shall be disclosed as soon as possible.

(7) Representations which are made after a final disclosure is given, shall be taken into consideration only if received within such period as may be determined by the Commission in each case, which shall be at least ten days, due consideration being given to the urgency of the matter.

31. Relationships between countervailing duty measures and multilateral remedies.— Where an investigated product is made subject to any countermeasures imposed following recourse to the dispute settlement procedures provided for in the Agreement on Subsidies and such measures are appropriate to remove the injury caused by any countervailable subsidies, any countervailing duty imposed with regard to such product under this Ordinance shall immediately be terminated by the Commission.

PART XIII

APPEAL TO THE APPELLATE TRIBUNAL

32. Appeal to the Appellate Tribunal.— (1) Without prejudice to the provisions of section 64 of

the Anti-Dumping Ordinance, 2000 (LXV_of 2000), the Appellate Tribunal shall also exercise jurisdiction under sub-section (2).

(2) Any interested party may prefer an appeal to the Appellate Tribunal against—

(i) an affirmative or negative final determination by the Commission; and

(ii) any final determination pursuant to a review.

(3) Every appeal under sub-section (2) shall be filed within forty-five days from the date of publication in newspapers of a public notice of any affirmative or 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.

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

(5) In examining an appeal, the Appellate Tribunal shall as regards assessment of the 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 a determination appealed against, whether the establishment of the 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 the facts was proper and its evaluation was unbiased and objective, it shall confirm an impugned determination of the Commission provided that the Appellate Tribunal is satisfied that in reaching the impugned determination, the Commission complied with the relevant provisions of this Ordinance.

(6) 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 (3), except in extraordinary circumstances and on grounds to be recorded. The Appellate Tribunal shall hear the appeal from day to day.

(7) 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.

(8) 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.

(9) 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.

(10) 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:

Provided further that the party likely to be adversely affected by such clarification shall also be given a notice by the Appellate Tribunal:

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

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

33. Power of the Appellate Tribunal to call for and examine record.— The Appellate Tribunal may call for and examine any 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 or propriety of an impugned determination of the Commission.

PART XVI MISCELLANEOUS

34. Power to make rules.— (1) The Federal Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Ordinance.

(2) In particular and without prejudice to the generality of the foregoing power, such rules may provide for the manner in which any investigation may be conducted, the manner in which an investigated product may be identified, the factors to which regard shall be had in any such investigation, the manner of assessment, levy and collection of any countervailing duty, whether preliminary or definitive, and for all matters connected with an investigation.

35. 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).

36. Failure to disclose correct information offence. Any person who knowingly and wilfully provides false, misleading or 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.

37. Cognizance of offences.— (1) Notwithstanding anything contained in the Code of Criminal procedure, 1898(Act V of 1898), no court other than a court of session shall have jurisdiction to try any person charged with an offence under section 36.

(2) No court of session shall take cognizance of an offence under this Ordinance except upon a complaint in written made by the Commission or an officer authorised by it, and signed by any two members of the Commission.

38. 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.

39. Public file to be maintained for interested party and access thereto.— (1) The Commission shall establish and maintain a file relating to each investigation or review pursuant to this Ordinance and subject to the requirement to protect confidential information under section 29, the Commission shall place in such file-

(a) all public notices relating to an investigation or review;

(b) all materials, including questionnaires, responses to questionnaires, and written communications submitted to the Commission;

(c) all other information developed or obtained by the Commission; and

(d) any other documents the Commission deems appropriate for disclosure to an interested party.

(2) The file to be maintained under sub-section (1) shall be available to any interested party for review and copying at the offices of the Commission, during such time as the Commission may specify, throughout the course of an investigation or review and any appeal under section 32.

40. Official file to be maintained by the Commission.— (1) The Commission shall establish and maintain an official file relating to each investigation or review pursuant to this Ordinance and shall place in such file —

(a) all materials, papers and documents, confidential or otherwise, including questionnaires, responses to questionnaires, and written communications submitted to or by the Commission in connection with an investigation or review;

(b) all documents relating to or setting out any calculations made by the Commission in connection with an investigation or review;

(c) all internal correspondence or memoranda of the Commission relating to or in connection with an investigation or review that are relevant to the calculation of dumping margin or determination of injury including, any

correspondence with or between any other Ministry, Division, department, agency or instrumentality of the Federal Government or any Provisional Government;

(d) any other information developed, obtained or relied on by the Commission in connection with an investigation or review; and

(e) any other document or information that the Commission deems appropriate for placing in the official file.

(2) The file to be maintained under sub-section (1) shall only be for the internal use of the Commission and for the Appellate Tribunal in connection with an appeal under section 32.

41. 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 sub-section (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.

42. 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 in respect of anything which is in good faith done or intended to be done under this Ordinance or rules made thereunder.

43. Removal of difficulties— The Federal Government may for the purpose of removing any difficulties in relation to any matters under this Ordinance, make such orders 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 two years from the commencement of this Ordinance.

44. Ordinance to 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(VI of 1990) and the Customs Act, 1969(LV_ of 1969).

THE FIRST SCHEDULE

[See section 5(6) (a)]

ILLUSTRATIVE LIST OF EXPORT SUBSIDIES

1. In this Schedule, unless there is anything repugnant in the subject or context

(a) “commercially available” means that the choice between domestic and imported products is unrestricted and depends only on commercial considerations;

(b) “direct taxes” means taxes on wages, profits, interests, rents, royalties, and all other forms of income, and taxes on the ownership of real property;

(c) “cumulative indirect taxes” means indirect taxes which are multi-staged taxes levied where there is no mechanism for subsequent crediting of the tax if goods or services subject to tax at one stage of production are used in a succeeding state of production;

(d) “import charges” means tariffs, duties, and other fiscal charges that are levied on imports;

(e) “indirect taxes” means sales, excise, turnover, value added, franchise, stamp, transfer, inventory and equipment taxes, border taxes and all taxes other than direct taxes and

import charges;

(f) “prior-stage indirect taxes” means those indirect taxes levied on goods or services used directly or indirectly in making a product;

(g) “remission” of taxes includes the refund or rebate of taxes; and

(h) “remission or drawback” includes the full or partial exemption or deferral of import charges:

Provided that deferral may not amount to an export subsidy where, for example, appropriate interest charges are collected.

2. The following is an illustrative list of export subsidies, namely

(a) any provision by a government of direct subsidies to a firm or an industry contingent upon export performance;

(b) currency retention schemes or any similar practices which involve a bonus on exports;

(c) internal transport and freight charges on export shipments, provided or mandated by a government, on terms more favourable than for domestic shipments;

(d) any provision by a government or its agencies either directly or indirectly through government-mandated schemes, of imported or domestic products or services for use in the production of exported goods, on terms or conditions more favourable than for provision of like or directly competitive products or services for use in the production

of goods for domestic consumption, if, in the case of products, such terms or conditions are more favourable than those commercially available on world markets to their exporters;

(e) any full or partial exemption, remission, or deferral specifically related to exports, of direct taxes or social welfare charges paid or payable by industrial or commercial enterprises;

(f) any allowance of special deductions directly related to exports or export performance, over and above those granted in respect of production for domestic consumption, in calculation of the base on which direct taxes are charged;

(g) any exemption or remission, in respect of the production and distribution of exported products, of indirect taxes in excess of those levied in respect of production and distribution of like products when sold for domestic consumption;

(h) any exemption, remission or deferral of prior-stage cumulative indirect taxes on goods or services used in the production of exported products in excess of any exemption, remission or deferral of like prior-stage cumulative indirect taxes on goods or services used in the production of like products when sold for domestic consumption; provided, however, that prior-stage cumulative indirect taxes may be exempted, remitted or deferred on exported products even when not exempted, remitted or deferred on like products when sold for domestic consumption, if any prior-stage cumulative indirect taxes are levied on inputs that are consumed in the production of an exported product making normal allowance for waste. This clause shall be interpreted in accordance with the guidelines on consumption of inputs in a production process contained in the Second Schedule. For the avoidance of doubt, the provisions of this clause shall not apply to value-added tax systems and border-tax adjustment in lieu thereof and the provisions of clause (g) shall exclusively cover issues relating to excessive remission of value-added taxes;

(i) any remission or drawback of import charges in excess of those levied on imported inputs that are consumed in the production of an exported product, making normal allowance for waste; provided, however, that in particular cases a firm may use a quantity of home market inputs equal to, and having the same quality and characteristics as, the imported inputs as a substitute for them in order to benefit from this provision if the import and the corresponding export operations both occur within a reasonable time period, not to exceed two years. This clause shall be interpreted in accordance with the guidelines on consumption of inputs in the production process contained in the Second Schedule and the guidelines in the determination of substitution drawback systems as export subsidies contained in the Third Schedule;

(j) any provision by a government or, special institutions controlled by a government, of export credit guarantee or insurance programmes, of insurance or guarantee programmes against increases in the cost of exported products or of exchange risk programmes, at premium rates which are inadequate to cover long-term operating costs and losses of the programmes;

(k) any grant by a government or special institutions controlled by or acting under the authority of a government, or both, of export credits at rates below those which they

actually have to pay for the funds so employed or, would have to pay if they borrowed on international capital markets in order to obtain funds of the same maturity and other credit terms and denominated in the same currency as an export credit or, the payment by them of all or part of the costs incurred by exporters or financial institutions in obtaining credits, insofar as they are used to secure a material advantage in the field of export credit terms. Provided, however, that if a country which is a member of the WTO is a party to an international undertaking on official export credits to which at least twelve original such members are parties as of the first day of January, 1979, or, a successor undertaking which has been adopted by those original members, or if in practice a country which is member of the WTO applies the interest rates provisions of the relevant undertaking, an export credit practice which is in conformity with those provisions shall not be considered an export subsidy; and

(J) any other charge on a public account constituting an export subsidy in the sense of Article XVI of the General Agreement on Tariffs and Trade, 1994.

THE SECOND SCHEDULE

(See the First Schedule)

GUIDELINES ON CONSUMPTION OF INPUTS IN THE PRODUCTION PROCESS

1. For the purposes of this Schedule “inputs consumed in the production process” means inputs physically incorporated, energy, fuels and oil used in a production process and catalysts which are consumed in the course of their use to obtain an exported product.
2. Indirect tax rebate schemes can allow for exemption, remission or deferral of prior-stage cumulative indirect taxes levied on inputs that are consumed in the production of an exported product making normal allowance for waste. Similarly drawback schemes can allow for the remission or drawback of import charges levied on inputs that are consumed in the production of an exported product making normal allowance for waste.
3. The illustrative list of export subsidies in the First Schedule makes reference to the term “inputs that are consumed in the production of the exported product” in clauses (h) and (1) of para 2 thereof. Pursuant to clause (h) of para 2 of the First Schedule, indirect tax rebate schemes can constitute an export subsidy to the extent that they result in exemption, remission or deferral of prior-stage cumulative indirect taxes in excess of the amount of such taxes actually levied on inputs that are consumed in the production of an exported product. Pursuant to clause (i) of para 2 of the First Schedule, drawback schemes can constitute an export subsidy to the extent that they result in a remission or drawback of import charges in excess of those actually levied on inputs that are consumed in the production of an exported product. Both the said clauses stipulate that normal allowance for waste must be made in findings regarding consumption of inputs in the production of an exported product. Clause (i) of para 2 of the First Schedule also provides for substitution, where appropriate.

4. In examining whether inputs are consumed in the production of an exported product, as part of a countervailing duty investigation pursuant to this Ordinance, the Commission should normally proceed on the following basis, namely—

(a) where it is alleged that an indirect tax rebate scheme, or a drawback scheme, conveys a subsidy by reason of over-rebate or excess drawback of indirect taxes or import charges on inputs consumed in the production of an investigated product, the Commission shall normally first determine whether the government of an exporting country has in place and applies a system or procedure to confirm which inputs are consumed in the production of an exported product and in what amounts. Where such a system or procedure is determined to be applied, the Commission shall normally then examine the system or procedure to see whether it is reasonable and effective for the purpose intended, and based on generally accepted commercial practices in the country of export. The Commission may deem it necessary to carry out, in accordance with section 26, certain practical tests in order to verify information or to satisfy itself that the system or procedure is being effectively applied;

(b) where there is no such system or procedure, or where it is not reasonable, or where it is instituted and considered reasonable but is found not to be applied or not to be applied effectively, a further examination by an exporting country based on the actual inputs involved will normally need to be carried out in the context of determining whether an excess payment occurred. If the Commission deems it necessary, a further examination may be carried out in accordance with clause (a) of this para;

(c) the Commission must normally treat inputs as physically incorporated if such inputs are used in the production process and are physically present in a product exported, and an input need not be present in a final product in the same form in which it entered the production process;

(d) in determining the amount of a particular input that is consumed in the production of an exported product, a “normal allowance for waste” must normally be taken into account by the Commission, and such waste must normally be treated as consumed in the production of an exported product. The term “waste” refers to that portion of a given input which does not serve an independent function in the production process, is not consumed in the production of an exported product, for reasons such as inefficiencies, and is not recovered, used or sold by the same manufacturer; and

(e) the Commission’s determination of whether the claimed allowance for waste is “normal” shall normally take into account the production process, the average experience of an industry in the country of export, and other technical factors, as appropriate. The Commission shall bear in mind that an important question is whether the authorities in an exporting country have reasonably calculated the amount of waste, when such an amount is intended to be included in a tax or duty rebate or remission.

THE THIRD SCHEDULE

(See the First Schedule and Second Schedule)

GUIDELINES IN THE DETERMINATION OF SUBSTITUTION DRAWBACK SYSTEMS AS EXPORT SUBSIDIES

1. Drawback systems can allow for refund or drawback of import charges on inputs which are consumed in a production process of another product and where export of this latter product contains domestic inputs having the same quality and characteristics as those submitted for imported inputs. Pursuant to clause (i) of para 2 of the First Schedule, substitution drawback systems can constitute an export subsidy to the extent that they result in an excess drawback of import charges levied initially on imported inputs for which drawback is being claimed.

2. In examining any substitution drawback system as part of a an investigation the Commission shall normally proceed on the following basis, namely:—

(a) clause (i) of para 2 of the First Schedule stipulates that home market inputs may be substituted for imported inputs in the production of a product for export provided such inputs are equal in quantity to, and have same quality and characteristics as, imported inputs being substituted. The existence of a verification system or procedure is important because it enables the government of an exporting country to ensure and demonstrate that the quantity of inputs for which drawback is claimed does not exceed the quantity of similar products exported, in whatever form, and that there is no drawback of import charges in excess of those originally levied on imported inputs in question;

(b) where it is alleged that a substitution drawback system conveys a subsidy, the Commission shall normally first proceed to determine whether the government of an exporting country has in place and applies a verification system or procedure. Where such a system or procedure is determined to be applied, the Commission shall normally then examine the verification procedures to see whether they are reasonable and effective for the purpose intended, and based on generally accepted commercial practices in the country of export. To the extent that any procedures are determined to meet this test and are effectively applied, no subsidy will be presumed to exist. It may be deemed necessary by the Commission to carry out, in accordance with section 26, certain practical tests in order to verify information or to satisfy itself that verification procedures are being effectively applied;

(c) where there are no verification procedures, or where they are not reasonable, or where such procedures are instituted and considered reasonable but are found not be actually applied or not be applied effectively, there may be a subsidy. In such cases, further examination by an exporting country based on actual transactions involved would need to be carried out to determine whether an excess payment occurred. If the

Commission deems it necessary, a further examination may be carried out in accordance with clause (b); and

(d) the existence of a substitution drawback provision under which exporters are allowed to select particular import shipments on which drawback is claimed shall not of itself be considered by the Commission to convey a subsidy.

3. An excess drawback of import charges within the meaning of clause (i) of para 2 of the First Schedule, would be deemed to exist where a government paid interest on any monies refunded under its drawback schemes, to the extent of an interest actually paid or payable.

THE FOURTH SCHEDULE

[See sections 6(1)(c) and 11(7)]

Explanation— This Schedule has been set out on the basis of Annex 2 to the Agreement on Agriculture included in Annex (1A) to the Final Act of the Results of the Multilateral Trade Negotiations of the Uruguay Round. Any terms or expressions which are not explained herein or which are not self-explanatory are to be interpreted in the context of that Agreement.

DOMESTIC SUPPORT: THE BASIS OF EXEMPTION FROM THE REDUCTION COMMITMENTS

1. Any domestic support measures for which exemption from the reduction commitments is claimed shall meet the fundamental requirement that they have no, or at the most minimal, trade-distorting effects or effects on production. Accordingly, all measures for which exemption is claimed shall, in addition to a policy specific criteria and conditions set out below, conform to the following basic criteria, namely:—

(a) the support in question shall be provided through a publicly-funded government programme including government revenue foregone, not involving transfers from consumers; and

(b) the support in question shall not have the effect of providing price support to producers.
Government Service Programmes

2. General services.— Any policies in this category involve expenditures or, revenue foregone, in relation to programmes which provide services or benefits to agriculture or a rural community. They shall not involve direct payments to producers or processors. Such programmes, which include but are not restricted to the following list, shall meet the general criteria stipulated in para 1 and policy-specific conditions where set out below, namely:—

- (a) research, including general research, research in connection with environmental programmes, and research programmes relating to particular products;
- (b) pest and disease control, including general and product-specific pest and disease control measures, such as early-warning systems, quarantine and eradication;
- (c) raining services, including both general and specific training facilities;
- (d) xtension and advisory services, including the provision of means to facilitate transfer of information and results of research to producers and consumers;
- (e) inspection services, including general inspection services and an inspection of particular products for health, safety, grading or standardisation purposes;
- (f) marketing and promotion services, including market information, advice and promotion relating to particular products but excluding expenditure for unspecified purposes that could be used by sellers to reduce their selling price or confer a direct economic benefit to purchasers; and
- (g) nfrastructural services, including, electricity reticulation, roads and other means of transport, market and port facilities, water supply facilities, dams and drainage schemes, and infrastructural works associated with environmental programmes. In all cases the expenditure shall be directed to the provision or construction of capital works only, and shall exclude subsidised provision of on-farm facilities other than for reticulation of generally available public utilities. It shall not include subsidies to inputs or operating costs, or preferential user charges.

3. Public stockholding for food security purposes.— (1) Any expenditure or, revenue foregone, in relation to accumulation and holding of stocks of products which form an integral part of a food security programme identified in national legislation. This may include government aid to private storage of products as part of such a programme.

(2) The volume and accumulation of such stocks shall correspond to predetermined targets related solely to food security. The process of stock accumulation and disposal shall be financially transparent. Food purchases by a government shall be made at current market prices and sales from food security stocks shall be made at no less than the current domestic market price for a product and quality in question.

4. Domestic food aid.—igibility to receive the food aid shall be subject to clearly-defined criteria related to nutritional objectives. Such aid shall be in the form of direct

provision of food to those concerned or the provision of means to allow eligible recipients to buy food either at market or at subsidised prices. Food purchases by a government shall be made at current market prices and the financing and administration of the aid shall be transparent.

5. Direct payments to producers. Support provided through direct payments or, revenue foregone, including payments in kind, to producers for which exemption from reduction commitments as claimed shall meet the basic criteria stipulated in para 1, plus specific criteria applying to individual types of direct payment as set out in paras 6 to 13. Where exemption from reduction is claimed for any existing or new type of direct payment other than those specified in paras 6 to 13, it shall conform to criteria stipulated in sub-paras (2) to (5) of para 6, in addition to the general criteria set out in para 1.

6. Decoupled income support.— (1) Eligibility for such payments shall be determined by clearly-defined criteria such as income, status as a producer or landowner, factor use or production level in a defined and fixed base period.

(2) The amount of such payments in any given year shall not be related to, or based on, the type or volume of production including, livestock units undertaken by a producer in any year after the base period.

(3) The amount of such payments in any given year shall not be related to, or based on, the prices, whether domestic or international, applying to any production undertaken in any year after the base period.

(4) The amount of such payments in any given year shall not be related to, or based on, the factors of production employed in any year after the base period.

(5) No production shall be required in order to receive such payments.

7. Government financial participation in income insurance and income safety-net programmes.— (1) Eligibility for such payments shall be determined by an income loss, taking into account only income derived from agriculture, which exceeds thirty per cent of average gross income or the equivalent in net income terms, excluding any payments from the same or similar schemes, in the preceding three-year period or a three-year average based on the preceding five-year period, excluding the highest and the lowest entry. Any producer meeting this condition shall be eligible to receive the payments.

(2) The amount of such payments shall compensate for less than seventy per cent of the producer's income loss in the year the producer becomes eligible to receive this assistance.

(3) The amount of any such payments shall relate solely to income, it shall not relate to the type or volume of production including, livestock units, undertaken by the producer, or to the prices, whether domestic or international, applying to such production, or to the factors of production employed.

(4) Where a producer receives in the same year payments pursuant to this para and pursuant to para 8 (relief from natural disasters), the total of such payments shall be less than one hundred per cent of the producer's total loss.

8. Payments, made either directly or by way of a government financial participation in crop insurance schemes, for relief from natural disasters.— (1) Eligibility for such payments shall arise only following a formal recognition by government authorities that a natural or like disaster including, disease outbreaks, pest infestations, nuclear accidents, and war on the territory of the Member concerned, has occurred or is occurring, and shall be determined by a production loss which exceeds thirty per cent of the average of production in the preceding three-year period or a three-year average based on the preceding five-year period, excluding the highest and the lowest entry.

(2) Payments made following a disaster shall be applied only in respect of losses of income, livestock including, payments in connection with veterinary treatment of animals, land or other production factors due to a natural disaster in question.

(3) Payments shall compensate for not more than the total cost of replacing such losses and shall not require or specify the type or quantity of future production.

(4) Payments made during a disaster shall not exceed the level required to prevent or alleviate further loss as defined in sub-para (2).

(5) Where a producer receives in the same year payments pursuant to this para and pursuant to para 7 (income insurance and income safety-net programmes), the total of such payments shall be less than one hundred per cent of the producer's total loss.

9. Structural adjustment assistance provided through producer retirement programmes.—

(1) Eligibility for such payments shall be determined by reference to clearly defined criteria in programmes designed to facilitate the retirement of persons engaged in marketable agricultural production, or their movement to non-agricultural activities.

(2) Payments shall be conditional upon the total and permanent retirement of the recipients from marketable agricultural production.

10. Structural adjustment assistance provided through resource retirement programmes.—

(1) Eligibility for such payments shall be determined by reference to clearly defined criteria in programmes designed to remove land or other resources, including livestock, from marketable agricultural production.

(2) Payments shall be conditional upon the retirement of land from marketable agricultural production for a minimum of three years, and in the case of livestock on its slaughter or definitive permanent disposal.

(3) Payments shall not require or specify any alternative use for such land or other resources which involves the production of marketable agricultural products.

(4) Payments shall not be related to either type or quantity of production or to the prices, whether domestic or international, applying to production undertaken using land or other resources remaining in production.

11. Structural adjustment assistance provided through investment aids.— (1) Eligibility for such payments shall be determined by reference to clearly-defined criteria in government programmes designed to assist the financial or physical restructuring of a producer's operations in response to objectively demonstrated structural disadvantages. Eligibility for such programmes may also be based on a clearly defined government programme for re-privatisation of agricultural land.

(2) The amount of such payments in any given year shall not be related to, or based on, the type or volume of production including, livestock units, undertaken by a producer in any year after the base period other than as provided for under sub-para (5).

(3) The amount of such payments in any given year shall not be related to, or based on, the prices, whether domestic or international, applying to any production undertaken in any year after the base period.

(4) The payments shall be given only for such period of time necessary for realisation of an investment in respect of which they are provided.

(5) The payments shall not mandate or in any way designate the agricultural products to be produced by the recipients except to require them not to produce a particular product.

(6) The payments shall be limited to the amount required to compensate for structural disadvantage.

12. Payments under environmental programmes.— (1) Eligibility for such payments shall be determined as part of a clearly-defined government environmental or conservation programme and be dependent on the fulfilment of specific conditions under the government programme, including conditions related to production methods or inputs.

(2) The amount of payment shall be limited to the extra costs or loss of income involved in complying with the government programme.

13. Payments under regional assistance programmes.— (1) Eligibility for such payments shall be limited to producers in disadvantaged regions. Each such region must be a clearly designated contiguous geographical area with a definable economic and administrative identity, considered as disadvantaged on the basis of neutral and objective criteria clearly spelt out in a law or regulation and indicating that the region's difficulties arise out of more than temporary circumstances.

(2) The amount of such payments in any given year shall not be related to, or based on, the type or volume of production including, livestock units, undertaken by the producer in any year after the base period other than to reduce that production.

(3) The amount of such payments in any given year shall not be related to, or based on, the prices, whether domestic or international, applying to any production undertaken in any year after the base period.

(4) Payments shall be available only to producers in eligible regions, but generally available to all producers within such regions.

(5) Where related to production factors, payments shall be made at a degressive rate above a threshold level of the factor concerned.

(6) The payments shall be limited to the extra costs or loss of income involved in undertaking agricultural production in a specified area.

14. For the purpose of para 3, governmental stockholding programmes for food security purposes in developing countries whose operation is transparent and conducted in accordance with officially published objective criteria or guidelines shall be considered to be in conformity with the provisions of this para, including programmes under which stocks of foodstuffs for food security purposes are acquired and released at administered prices, provided that the difference between the acquisition price and the external reference price is accounted for in the Aggregate Measure of Support.

15. For the purposes of paras 3 and 4, the provision of foodstuffs at subsidised prices with the objective of meeting food requirements of urban and rural poor in developing countries on a regular basis at reasonable prices shall be considered to be in conformity with the provisions of this para.

FIFTH SCHEDULE

[See section 15(3)(b)]

The developing countries referred to in clause (b) of sub-section (3) of section 15 are as under, namely: —

(a) least-developed countries designated as such by the United Nations which are members of the WTO; and

(b) each of the following developing countries which are members of the WTO shall be subject to the provisions which are applicable to developing countries pursuant to clause (b) of sub-section (3) of section 15 until Gross National Product per capita, as determined on the basis of the most recent data available from the International Bank for Reconstruction and Development, has reached United States Dollars One Thousand per annum, namely:—

(i) Bolivia;

(ii) Cameroon;

- (iii) Congo;
- (iv) Cote d' Ivoire;
- (v) Dominican Republic;
- (vi) Egypt;
- (vii) Ghana;
- (viii) Guatemala;
- (ix) Guyana;
- (x) India;
- (xi) Indonesia;
- (xii) Kenya;
- (xiii) Morocco;
- (xiv) Nicaragua;
- (xv) Nigeria;
- (xvi) Pakistan;
- (xvii) Philippines;
- (xviii) Senegal;
- (xix) Sri Lanka; and
- (xx) Zimbabwe

