

# **ANTI-DUMPING REGULATIONS**

**2018**

## CHAPTER 1: GENERAL RULES

### 1. Article 1: Basis

These Regulations are enacted in light of Section 94 of the Trade Remedies Act, 2018.

### 2. Definitions

**“Committee”** means the committee established in terms of section 4 of the Trade Remedies Act;

**“association”** for purposes of determination of the export price shall include all parties included under the definition of “related parties” as well as-

- any person directly or indirectly owning, controlling or holding 5 per cent or more of the outstanding voting stock or shares of another party;
- persons who are associated in business with one another in that one is the sole agent, sole distributor or sole concessionaire and where it appears that the price is affected by such association;

**“days”**, unless otherwise indicated, mean calendar days;

**“de minimis”** in relation to dumping means a dumping margin which is less than 2 per cent ad valorem when expressed as a percentage of the ex-factory export price;

**“extension”** means the additional period provided by the Committee to an interested party showing good cause to respond to a request for information or clarification or to comment on a document and applies only to the party to which an extension was granted;

**“facts available”** means the information that is available to the Committee at the time of making a determination, whether preliminary or final, and which has been verified or is verifiable. Facts available may include, in any order –

(a) For normal value:

- (i) the prices of another seller or sellers in that market;
- (ii) the information contained in the application; or
- (iii) any other information at the Committee’s disposal.

(b) For export prices:

- (i) the information contained in the application;
- (ii) the information contained in the import statistics as provided by the Seychelles Customs; or
- (iii) any other information at the Committee’s disposal

provided the Committee has, where practicable, checked the information from other independent sources at its disposal;

**“good cause”** for an extension of the submission of information does not include merely citing insufficient time to complete a response;

**“investigation”**, unless otherwise specified, includes “review”;

**“investigation period”** means, depending on the context, one of the following:

- for purposes of the dumping investigation, the period for which it is assessed whether the exports from the country under investigation were made at less than the normal value;
- for purposes of the injury investigation, the period for which it is assessed whether the domestic industry experienced injury;

**“injury”** is injury that has a material effect on the domestic industry, but is less severe than serious injury, as defined in section 2 of the Trade Remedies Act;

**“material retardation of the establishment of an industry”** means that dumped imports are preventing an infant industry from fully establishing itself to the point of reaching commercial stability of production which would allow it to prosper in the absence of dumping;

**“negligible volume”** of dumped imports means that the volume of dumped imports from a country under investigation represents less than 3 per cent of the total imports of the subject product into Seychelles, unless imports from all countries each representing less than 3 per cent of total imports collectively account for more than 7 per cent of the total imports of the investigated product into Seychelles;

**“price disadvantage”** is the extent to which the price of the imported product is lower than the unsuppressed selling price of the like product produced by the Seychelles industry, as measured at the appropriate point of comparison;

**“price depression”** takes place where the Seychelles industry’s ex-factory selling price decreases during the investigation period;

**“price suppression”** takes place where the cost-to-price-ratio of the Seychelles industry increases, or where the Seychelles industry sells at a loss during the investigation period or part thereof;

**“price undercutting”** is the extent to which the price of the imported product is lower than the price of the like product produced by the Seychelles industry, as measured at the appropriate point of comparison;

**“related parties”** are parties deemed to be related for purposes of an anti-dumping investigation, and sales may be considered not to be at arm’s length, if –

- (a) one directly or indirectly owns, controls or holds five per cent or more of the equity shares of the other;
- (b) one has the power to directly or indirectly nominate or appoint a director to the management of the other;
- (c) one is an officer or director of the others business;

- (d) they are legally recognised partners in business;
- (e) one is employed by the other;
- (f) they are both directly or indirectly controlled by a third person;
- (g) together they directly or indirectly control a third person;
- (h) they appear to be related by virtue of their conduct;
- (i) they are blood relatives or are related by marriage, common-law partnership or adoption; or
- (j) if their relationship is otherwise of such a nature that trade between them cannot be regarded to be at arm's length;

**“threat of material injury”** means a threat that actual material injury is clearly foreseen and imminent and shall be based on facts and not merely on allegation, conjecture or remote possibility;

**“unsuppressed selling price”** is the price at which the Seychelles industry would have been able to sell the like product in question in the absence of dumping, and can be determined with reference to –

- (a) the expected or required return of the Seychelles industry for the like product; or
- (b) the profit margins of the industry for the like product before the entry of the dumped imports; or
- (c) the prices obtained for the like product by the industry directly before the entry of the dumped imports; or
- (d) any other reasonable basis;

**“WTO”** means the World Trade Organization.

### **3. Like product**

- (1) In determining whether the product has characteristics closely resembling those of the product under consideration the Committee may consider –
  - (a) the raw materials and other inputs used in producing the products;
  - (b) the production process;
  - (c) physical characteristics and appearance of the product;
  - (d) the end-use of the product;
  - (e) the substitutability of the product with the product under investigation;
  - (f) tariff classification; and
  - (g) any other factor proven to the satisfaction of the Committee to be relevant.

No one or several of these factors can necessarily give decisive guidance.

#### **4. Export price**

- (1) In investigations where the subject product consists of more than one distinct type, model or product group, the export price shall be separately determined for each such distinct type, model or product group.
- (2) In cases referred to in section 21 of the Act, where there is no export price or where it appears to the authorities concerned that the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the adjustments shall be made for all costs, including duties and taxes, incurred between importation and resale, differences in levels of trade and for profits accruing, so as to establish a reliable export price at the ex-works level.
- (3) The items for which adjustment shall be made include usual transport, insurance, handling, loading and ancillary costs; customs duties, including any anti-dumping, countervailing or safeguard duties, and other taxes payable in Seychelles or the exporting country by reason of the importation, exportation or sale of the goods; and a reasonable margin for selling, general and administrative costs and profits of the importer, regardless of whether such costs were borne by an importer or another party, either inside or outside of Seychelles.

#### **5. Normal value**

- (1) In investigations where the like product consists of more than one distinct type, model or product group, the normal value shall be separately determined for each such distinct type, model or product group.
- (2) Domestic sales or export sales to a third country may be considered to be not in the ordinary course of trade if the Committee determines that such sales—
  - (a) took place at prices below total costs, including cost of production and, selling, general, administrative and packaging costs, at the time such sales were made, provided such sales took place -
    - (i) in substantial quantities equalling at least 20 per cent by volume of total domestic sales during the investigation period;
    - (ii) over an extended period of time, which period shall normally be a year, but in no case less than 6 months; and
    - (iii) do not allow for the recovery of all costs within a reasonable period of time, bearing in mind that if prices which are below per unit costs at the time of sale are above weighted average per unit costs for the

period of investigation, such prices shall be considered to provide for recovery of costs within a reasonable period of time;

- (b) were made to a related party and prices are affected by the relationship;
- (c) do not reflect normal commercial quantities;
- (d) relate to samples or sales to employees and donations;
- (e) are sales to other companies under manufacturing agreements (tolling) or product exchanges (swaps); and
- (f) captive consumption and sales.

- (3) Transactions between related parties shall be considered in the ordinary course of trade if the weighted average sales price from an interested party to a related party, on a product type, model or product group basis, is not more than three per cent greater or smaller than the weighted average sales price from the exporter or producer to unrelated parties.
- (4) Domestic sales of the like product shall normally be considered a sufficient volume to determine a normal value if such sales constitute five per cent or more of the sales volume of the product to Seychelles. Sales representing less than 5 per cent of export sales to Seychelles may nevertheless be deemed sufficient where such sales are of sufficient magnitude to provide for a proper comparison.
- (5) For the purpose of sub-regulation 2, costs shall normally be calculated on the basis of records kept by the exporter or producer under investigation, provided that such records are in accordance with the generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the product under consideration.
- (6) The Committee shall consider all available evidence on the proper allocation of costs, including that which is made available by the exporter or producer in the course of the investigation provided that such allocations have been historically utilized by the exporter or producer, in particular in relation to establishing appropriate amortization and depreciation periods and allowances for capital expenditures and other development costs, and unless already reflected in the cost allocations under this sub-paragraph, costs shall be adjusted appropriately for those non-recurring items of cost which benefit future and/or current production, or for circumstances in which costs during the period of investigation are affected by start-up operations.
- (7) For the purpose of paragraph (5), the adjustment made for start-up operations shall reflect the costs at the end of the start-up period or, if that period extends beyond the period of investigation, the most recent costs which can reasonably be taken into account by the authorities during the investigation.
- (8) If the Committee constructs the normal value, as contemplated in section 22(2)(a) of the Trade Remedies Act, it may do so, in sequence, on the basis of:
  - (a) the cost of the producer or exporter concerned;
  - (b) the cost of another producer or producers in the same country;
  - (c) the information contained in the application; or
  - (d) any other reasonable basis.
- (9) When the Committee constructs a normal value the cost build-up shall include –
  - (a) the bill of materials;
  - (b) production or transformation costs;

- (c) overheads;
  - (d) packaging;
  - (e) reasonable selling, general and administrative costs;
  - (f) any other costs deemed necessary by the Committee to compare the constructed normal value to the export price; and
  - (g) a reasonable profit.
- (10) The constructed normal value in sub-regulation 8 shall normally be constructed using the producer's own costs and profit, provided that such costs –
- (a) Reasonably reflect the actual and unsubsidised costs of the product;
  - (b) are Generally Accepted Accounting Practice (GAAP) consistent; and
  - (c) are historically based.
- (11) The selling, general and administrative costs contemplated in sub-regulation 8 shall be determined on the basis of –
- (a) actual data pertaining to production and sales in the ordinary course of trade of the like product by the exporter or producer under investigation; or
  - (b) in the absence of information in terms of paragraph (a) –
    - (i) the actual amounts incurred and realized by the exporter or producer in question in respect of production and sales in the domestic market of the country of origin of the same general category of products;
    - (ii) the weighted average of the actual amounts incurred and realized by other exporters or producers subject to investigation in respect of production and sales of the like product in the domestic market of the country of origin;
    - (iii) any other reasonable method, provided that the amount for profit so established shall not exceed the profit normally realized by other exporters or producers on sales of products of the same general category in the domestic market of the country of origin.
- (12) The reasonable profit margin that is included in the constructed normal value shall normally be determined –
- (a) with reference to the actual profit realised by the producer or exporter on sales of the product under investigation in the ordinary course of trade; or
  - (b) with reference to the actual profit realised by the producer or exporter in question in respect of sales in the domestic market of the country of origin of the same general category of products; or

- (c) with reference to the weighted average of the actual amounts incurred and realized by other exporters or producers subject to investigation in respect of production and sales of the like product in the domestic market of the country of origin; or
- (d) on any other reasonable basis;

provided that the profit so included shall normally be based on the actual profit realised on sales before extraordinary items, interest, tax and any other circumstances that may affect such profit margin.

- (13) Where the products are not shipped directly from the country of origin but are exported to Seychelles from an intermediate country, the price at which the products are sold from the country of origin or export for shipment to Seychelles may be compared with the comparable price in the country of export or of origin.
- (14) Where the foreign producer sells the product under investigation on its domestic market through a related party –
  - (a) the normal value shall be determined as the resale price to the first independent buyer, provided the necessary adjustments should still be made to derive the equivalent of a net ex-works price;
  - (b) where such product is not subsequently resold or not resold in the condition sold to that related party, the normal value shall be determined –
    - (i) with reference to sales to independent buyers only; or
    - (ii) where there are no such sales to independent buyers, on any other reasonable basis.
- (15) Where a party has domestic sales both through related and unrelated parties, the Committee may decide to use only those sales to unrelated parties, provided such sales to independent buyer meet the 5 per cent as set out in paragraph 3 above.
- (16) Exports may be deemed to originate in the country indicated –
  - (a) on the certificate of origin; or
  - (b) on the bills of entry; or
  - (c) in the import statistics provided by Seychelles Customs.

- (17) In cases where the number of exporters, producers or types of products involved is so large as to make such a determination impracticable, the Committee may limit its examination to the largest percentage of the volume of the exports from the country in question which can reasonably be investigated.
- (18) If the Committee decides to limit its investigations as contemplated in sub-regulation<sup>8</sup>, any selection should preferably only be made after consultation with the relevant exporters.
- (19) In cases where the Committee has limited its investigation as contemplated in sub-regulation<sup>8</sup>, the Committee shall nevertheless determine an individual margin of dumping for any exporter or foreign producer not initially selected who submits the necessary information in time for that information to be considered along with the information of exporters or producers selected, except where the number of exporters or producers is so large that individual examinations would be unduly burdensome to the Committee.

## **6. Fair comparison**

- (1) A fair comparison between the normal value and the export price contemplated in section 23 of the Act shall be made at the same level of trade, normally at the ex-factory level; between sales at the same level of trade, for instance at distributor, wholesale or retail level; and in respect of sales made at as nearly as possible the same time.
- (2) Where sales prices differ significantly during the period of investigation, the comparison shall be made between sub-periods, such as quarters or months.
- (3) Adjustments shall be made in each case, on its merit, for differences which affect price comparability at the time of setting prices, including, but not limited to –
  - (a) conditions and terms of trade;
  - (b) taxation;
  - (c) levels of trade or quantities;
  - (d) physical characteristics; and
  - (e) any other differences which are also demonstrated to affect price comparability.
- (4) The Committee shall indicate to the parties in question what information is necessary to ensure a fair comparison and shall not impose an unreasonable burden of proof on those parties.
- (5) Adjustments should be requested in interested parties' original response to the relevant questionnaires and must be –
  - (a) substantiated;

- (b) verifiable;
  - (c) directly related to the sale under consideration; and
  - (d) clearly demonstrated to have affected price comparability at the time of setting prices.
- (6) Any duplication when making adjustments shall be avoided, in particular in relation to discounts, rebates, quantities and level of trade.
- (7) When the specified conditions are met, the factors for which adjustments can be made are listed as follows:

(a) Physical characteristics

An adjustment shall be made for differences in the physical characteristics between the product exported to Seychelles and the like product sold in the domestic market of the exporting country. The amount of the adjustment shall correspond to a reasonable estimate of the cost of the difference.

(b) Import charges and indirect taxes

An adjustment shall be made to normal value for an amount corresponding to any import charges or indirect taxes borne by the like product and by materials physically incorporated therein, when intended for consumption in the exporting country and not collected or refunded in respect of the product exported to Seychelles.

(c) Discounts, rebates and quantities

An adjustment shall be made for differences in discounts and rebates, including those given for differences in quantities, if these are properly quantified and are directly linked to the sales under consideration. An adjustment may also be made for deferred discounts and rebates if the claim is based on consistent practice in prior periods, including compliance with the conditions required to qualify for the discount or rebates.

(d) Level of trade

(i) An adjustment for differences in levels of trade, including any differences which may arise in Original Equipment Manufacturer sales, shall be made where, in relation to the distribution chain in both markets, it is shown that the export price, including a constructed export price, is at a different level of trade from the normal value and the difference has affected price comparability which is demonstrated by consistent and distinct differences in functions and prices of the seller for the different levels of trade in the domestic market of

the exporting country. The amount of the adjustment shall be based on the market value of the difference.

(ii) However, in circumstances not envisaged under point (i), when an existing difference in level of trade cannot be quantified because of the absence of the relevant levels on the domestic market of the exporting country, or where certain functions are shown clearly to relate to levels of trade other than the one which is to be used in the comparison, the Committee may make an adjustment on the facts available at the time such decision is made.

(e) Transport, insurance, handling, loading and ancillary costs

An adjustment shall be made for differences in the directly related costs incurred for conveying the product under investigation or the like product from the premises of the exporter to an independent buyer, where such costs are included in the prices charged. Those costs shall include transport, insurance, handling, loading and ancillary costs and shall normally be made on such a basis as to compare the domestically sold and exported products at the ex-factory level, unless a comparison is made between the normal value based on export sales to a third country and the export price to Seychelles, in which case the comparison shall be made at FOB level at the same harbour of exportation if the information so allows.

(f) Packing

An adjustment shall be made for differences in the directly related packing costs for the product under investigation or the like product. This shall include both differences in packaging material costs and labour, including labour used to pack shipping containers.

(g) Credit

An adjustment shall be made for differences in the cost of any credit granted for the sales under consideration, provided that it is a factor taken into account in the determination of the prices charged.

(h) After-sales costs

An adjustment shall be made only for differences in the direct costs of providing warranties, guarantees, technical assistance and services, as provided for by law or in the sales contract. This adjustment shall not include any indirect costs.

(i) Commission

An adjustment shall be made for differences in Commissions paid in respect of the sales under consideration. The term 'commissions' shall be understood to include the mark-up received by a trader of the subject product or the like product if the functions of such a trader are similar to those of an agent working on a commission basis.

(j) Currency conversions

When the price comparison requires a conversion of currencies, such conversion shall be made using the rate of exchange on the date of sale, except when a sale of foreign currency on forward markets is directly linked to the export sale involved, in which case the rate of exchange in the forward sale shall be used. Normally, the date of sale shall be the date of invoice but the date of contract, purchase order or order confirmation may be used if these more appropriately establish the material terms of sale. Fluctuations in exchange rates shall be ignored and exporters shall be granted 60 days to reflect a sustained movement in exchange rates during the investigation period.

(k) Other factors

An adjustment may also be made for differences in other factors not provided for under sub-paragraphs (a) to (j) if it is demonstrated that they affected price comparability at the time prices were set, in particular that customers consistently pay different prices on the domestic market because of the difference in such factors.

The amount of an adjustment shall normally be calculated on the basis of pertinent data related to the period of dumping investigation.

## **7. Margin of dumping**

- (1) In cases where only one product is under investigation, the margin of dumping shall be determined as the amount by which the normal value exceeds the export price.
- (2) In investigations where the subject product consists of more than one distinct type, model or product group, the margin of dumping shall be separately determined for each such distinct type, model or product group and the weighted average margin of dumping shall be determined with reference to the total value of the dumping divided by the total value of the export price to Seychelles.
- (3) For the purposes of sub-regulation (2), where some types, models or product groups are dumped and others not, or where some transactions are dumped and others not, the weighted average margin of dumping shall nevertheless be determined on the basis of all types, models or product groups, and based on all transactions.
- (4) The margin of dumping shall be regarded as de minimis if it is less than two per cent when expressed as a percentage of the ex-factory export price.

## **8. Domestic industry**

Notwithstanding the provisions of section 15 of the Act, where a producer that is related to an importer or an exporter or that itself is an importer of the subject product supports an application, such producer shall be regarded as part of the domestic industry.

## 9. Injury

- (1) A determination of injury shall be based on positive evidence and involve an objective examination of both (a) the volume of the dumped imports and the effect of the dumped imports on prices in the domestic market for like products and (b) the consequent impact of these imports on the domestic producers of such products.
- (2) With regard to the volume of the dumped imports, the Committee shall consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in Seychelles.
- (3) With regard to the effect of the dumped imports on prices, the Committee shall consider whether there has been significant price undercutting by the dumped imports as compared with the price of a like product of Seychelles, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.
- (4) The examination of the impact of the dumped or subsidised imports on the domestic industry concerned shall include an evaluation of at least the following economic factors and indices having a bearing on the state of the industry, as prescribed by regulation.
  - (a) actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilization of capacity;
  - (b) factors affecting domestic prices;
  - (c) the magnitude of the margin of dumping;
  - (d) actual and potential negative effects on cash flow, inventories, employment, wages, growth, and ability to raise capital or investments.

No one or several of these factors can necessarily give decisive guidance.

- (5) The information in paragraph (1) shall be considered regardless whether the injury inquiry relates to actual and present material injury, a threat of material injury or the material retardation of the establishment of an industry, and where a specific factor is not relevant, this shall be specifically addressed.
- (6) The effect of the dumped imports shall be assessed in relation to the domestic production of the like product when available data permit the separate identification of that production on the basis of such criteria as the production process, producers' sales and profits. If such separate identification of that production is not possible, the effects of the dumped imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided.
- (7) A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the dumping would cause injury must be clearly foreseen and imminent. In making a determination regarding the existence of a threat of material injury, the authorities should consider, inter alia, such factors as:
  - (a) a significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importation;
  - (b) sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased dumped exports to the importing Member's market, taking into account the availability of other export markets to absorb any additional exports;
  - (c) whether imports are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports; and
  - (d) inventories of the product being investigated.

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

- (8) No investigation shall be initiated on the basis of the material retardation of the establishment of an industry unless the industry or proposed industry has supplied the Committee with a comprehensive business plan indicating the establishment of such industry in the absence of dumping.
- (9) A determination of material retardation of the establishment of an industry shall be based on facts and not merely on allegation, conjecture or remote possibility. Factors that may play a role in determining whether an industry is unestablished and whether its establishment is materially retarded, may include inter alia
  - (a) the amount of investment made to establish the industry;
  - (b) the extent to which the industry has been set up or is still being set up;
  - (c) the period of time since the domestic industry began production, if any;
  - (d) whether the production has been steady or start- and- stop;
  - (e) the size of domestic production compared to the size of the domestic market as a whole;
  - (f) whether the domestic industry has reached its break-even point; and
  - (g) whether the activities are truly a new industry or merely a new product line of an established firm.

No one or several of these factors will necessarily be determinative.

- (10) The determination of whether a new industry is being established or whether it is merely an additional production line within an existing industry shall be based on whether it produces a like product, as defined in the Trade Remedies Act, or whether it produces a new product.
- (11) With respect to cases where injury is threatened by dumped imports, or where there is material retardation of the establishment of an industry, the application of anti-dumping measures shall be considered and decided with special care.

## **10. Causality**

- (1) It must be demonstrated that the dumped imports are, through the effects of dumping, causing injury.
- (2) The demonstration of a causal relationship between the dumped imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the Investigating Authority and the Committee.
- (3) In considering whether there is a causal link between the dumping and the industry's injury the Committee shall consider all relevant factors, including, but not limited to:
  - (a) the change in the volume of dumped imports, whether absolute or relative to the production or consumption in the Seychelles market;

- (b) the price undercutting experienced by the Seychelles industry vis-à-vis the imported products;
  - (c) the market share of the dumped imports; and
  - (d) the magnitude of the margin of dumping.
  - (e)
- (4) The Investigating Authority and the Committee shall also examine any known factors other than the subsidized imports which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the subsidized imports, which may include inter alia
- (a) the volumes and prices of undumped imports of the product in question;
  - (b) contraction in demand or changes in the patterns of consumption;
  - (c) trade restrictive practices of and competition between the foreign and domestic producers;
  - (d) developments in technology; and
  - (e) the export performance and productivity of the domestic industry.

## **11. Application of facts available**

- (1) Along with the questionnaires sent out to known interested parties immediately after initiation of an investigation, the Investigating Authority shall specify in detail the information required from any interested party, and the manner in which that information should be structured by the interested party in its response.
- (2) The Investigating Authority will notify each known interested party that if information is not supplied within a reasonable time, the Investigating Authority and the Committee will be free to make determinations on the basis of the facts available, including those contained in the application for the initiation of the investigation by the domestic industry.
- (3) The Investigating Authority may request that an interested party provide its response in a particular format and may reject information not made available in this format, unless presenting the response as requested would result in an unreasonable extra burden on the interested party.
- (4) In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary and final decisions, affirmative or negative, may be made on the basis of the facts available.
- (5) All information which is verifiable, which is appropriately submitted so that it can be used in the investigation without undue difficulties, which is supplied in a timely fashion, and, where applicable, which is supplied in the computer language requested by the Investigating Authority, should be taken into account when determinations are made.
- (6) Even though information provided by an interested party may not be ideal in all respects, this should not justify the Investigating Authority and the Committee from disregarding it, provided the interested party has acted to the best of its ability.
- (7) Where some information is not provided, this may affect the Investigating Authority's ability to verify other information and in such instances missing or incomplete information in one area may affect the acceptance and consideration of information in another area.
- (8) If evidence or information is not accepted, the supplying party should be informed forthwith of the reasons therefore, and should have an opportunity to provide further explanations within a reasonable period, due account being taken of the time-limits of the investigation.
- (9) Where the Investigating Authority deems the reasons for not supplying the information as not being satisfactory, the reasons for the rejection of such evidence or information should be given in any published determinations.

- (10) If the Investigating Authority and the Committee have to base their findings, including those with respect to normal value, on information from a secondary source, including the information supplied in the application for the initiation of the investigation, they should do so with special circumspection, and in such cases, the authorities should, where practicable, check the information from other independent sources at their disposal, such as published price lists, official import statistics and customs returns, and from the information obtained from other interested parties during the investigation.
- (11) Where an interested party does not cooperate, or does not cooperate fully, and thus relevant information is being withheld from the authorities, this situation could lead to a result which is less favourable to the party than if the party did cooperate fully.

## **12. Verification of information**

- (1) Except in the circumstances provided for under sub-regulation (12), the Investigating Authority shall satisfy itself as to the accuracy of information submitted in an anti-dumping investigation and may carry out on-the-spot or desk-top verifications of such information, as the circumstances dictate.
- (2) Upon initiation of an investigation, the authorities of the exporting country and the known interested parties should be informed of the intention to carry out verifications.
- (3) The Committee may conduct such verifications at the Seychelles producers and at cooperating importers, exporters and foreign producers as it may deem necessary.
- (4) In order to verify information provided or to obtain further details, the Investigating Authority may carry out verification visits in the territory of the exporting country, provided it obtains the agreement of the firms concerned and notify the representatives of the government of the exporting country in question, and unless that country objects to the verification visit.
- (5) The Investigating Authority may conduct verification visits to verify information provided or to obtain further details from any party in Seychelles that submitted information in any trade remedy investigation.
- (6) It should be standard practice to obtain explicit agreement of the firms concerned in the exporting country before an in situ verification is undertaken at such foreign firms.
- (7) As soon as the agreement of the firms concerned has been obtained, the Investigating Authority should notify the authorities of the exporting country of the names and addresses of the firms to be visited and the dates agreed.

- (8) Sufficient advance notice should be given to the firms in question before the visit is made.
- (9) Sufficient time as envisaged in sub-regulation (8) would normally be 14 days in the case of a foreign firm and 7 days in the case of a firm in Seychelles.
- (10) It should be standard practice prior to the visit to advise the firms concerned of the general nature of the information to be verified and of any further information which needs to be provided, though this should not preclude requests to be made on the spot for further details to be provided in the light of information obtained.
- (11) Enquiries or questions put by the authorities or firms of the exporting countries and essential to a successful on-the-spot verification should, whenever possible, be answered before the visit is made.
- (12) If in exceptional circumstances it is intended to include non-governmental experts in the investigating team, the participating interested parties and the authorities of the exporting countries should be so informed, and such non-governmental experts should be subject to effective sanctions for breach of confidentiality requirements.
- (13) In the event that a domestic producer, an importer, exporter or foreign producer refuses to receive a verification visit by the Investigating Authority, refuses the Investigating Authority access to relevant information or acts so as to significantly impede the investigation, the Investigating Authority and the Committee may disregard the information submitted by that party.
- (14) Where a party -
  - (a) fails to supply relevant substantiating evidence required by investigating officers during a verification;
  - (b) fails to explain any calculations contained in its submissions; or
  - (c) otherwise fails to cooperate during the verification process;the Investigating Authority may terminate the verification and may disregard any or all information submitted by the party in question. The Investigating Authority may nevertheless consider information that was properly submitted and verified.

- (15) Following an exporter or foreign producer verification the Investigating Authority shall make a verification report available to the company in question indicating all information verified. Such verification report shall normally be made available within 14 days from conclusion of the specific verification visit.
- (16) The party to which a verification report pertains shall have 7 days to comments on
  - (a) the completeness of the verification report; and
  - (b) the information to be contained in the non-confidential verification report.
- (17) The Investigating Authority will place a copy of the non-confidential verification report on the public file within 7 days of receiving the comments referred to in paragraph (16).
- (18) The Investigating Authority shall provide interested parties with a reasonable opportunity to comment on the verification report. The Investigating Authority may grant an extension upon good cause shown.

### **13. Confidentiality**

- (1) If a person makes a claim in terms of section 63 of the Act, the Investigation Authority must-
  - (a) in the case of information claimed to be confidential by nature, determine whether the information satisfies the requirements of the definition of “information that is by nature confidential” set out in section 2 of the Act; or
  - (b) in the case of other information, determine whether the information should be recognised as confidential.
- (2) A person making a claim in terms of sub-regulation (1) must support that claim with-
  - (a) a written statement in the prescribed form-
    - (i) explaining, in the case of information that is confidential by its nature, how the information satisfies the requirements set out in the definition of “information that is by nature confidential” in section 2 of the Act; or
    - (ii) motivating, in the case of other information, why that information should be recognised as confidential; and
  - (b) either-
    - (i) a written abstract of the information in a non-confidential form; or
    - (ii) a statement setting out the reasons why it is not possible to comply with subparagraph (i).

- (3) If, upon considering a claim in terms of sub-regulation (1)(a), the Investigation Authority determines that the information is not, by nature, confidential-
  - (a) it must invite the claimant to submit a further motivation for the information to be recognised as otherwise confidential; and
  - (b) if the claimant submits such a motivation within the prescribed time, the Investigation Authority must reconsider the claim.
- (4) Upon making a final determination in terms of sub-regulation (1) or (2), the Investigation Authority -
  - (a) must notify the claimant in writing of its determination; and
  - (b) shall, if it has determined that the information is not, by nature, confidential or should not be recognised as being otherwise confidential, return the information to the claimant and advise it that the information will not be considered in determining the merits of the investigation.
- (5) A claimant affected by a determination of the Investigation Authority in terms of sub-regulation (3) may appeal against that determination to the Tribunal.
- (6) Interested parties providing confidential information in any correspondence shall furnish non-confidential summaries thereof. These summaries shall –
  - (a) indicate in each instance where confidential information has been omitted;
  - (b) indicate in each instance the reasons for confidentiality; and
  - (c) be in sufficient detail to permit other interested parties a reasonable understanding of the substance of the information submitted in confidence.
- (7) The requirement to provide non-confidential versions of information submitted in confidence shall not apply to any applications or correspondence prior to initiation of an investigation, except as it relates to the final properly documented application accepted for initiation of an investigation.
- (8) Confidential information shall normally be summarised in a non-confidential version by the use of indices, the use of ranges, or a general description of the information submitted in confidence.
- (9) In exceptional circumstances, where information does not permit summarisation reasons shall be provided why the information cannot be summarised.
- (10) Unless indicated otherwise, the non-confidential version shall be submitted within the time limit set forth for the submission of the confidential information.
- (11) The following list indicates “information that is by nature confidential” as per section 2 of the Trade Remedies Act:
  - (a) management accounts;
  - (b) financial accounts of a private company;

- (c) actual and individual sales prices;
- (d) actual costs, including cost of production and importation costs;
- (e) actual production and sales volumes;
- (f) information, the release of which could have serious consequences for the person that provided such information; and
- (g) information that would be of significant competitive advantage to a competitor;

provided that the party submitting such information indicates it to be confidential.

- (12) Where an application is submitted by an industry consisting of two or more producers each submitting information, a non-confidential submission shall be submitted in respect of both the consolidated application and each party's information.
- (13) Where three or more parties make a joint application, the industry figures shall not be regarded as confidential.
- (14) All correspondence not clearly indicated to be confidential shall be treated as non-confidential.
- (15) The Investigation Authority shall disregard any information indicated to be confidential that is not accepted as confidential by it under paragraph (3) or that is not accompanied by a proper non-confidential version.
- (16) Where the Investigation Authority decides to disregard the information, such information shall be returned to the party that submitted it. Within a time-limit set by the Investigation Authority that party may:
  - (a) amend the non-confidential version in accordance with the requirements set forth in this regulation;
  - (b) desist from submitting the information concerned;
  - (c) authorise the inclusion of the information concerned into the non-confidential file; or
  - (d) demonstrate to the Investigation Authority's satisfaction, from appropriate sources, that the information is correct.

- (17) Where information is returned to an interested party as provided for under sub-regulation(16) of this article, such information shall be redacted from both the investigation and the public files.
- (18) Except as provided in section 65(2) of the Act, the Investigating Authority and the Committee shall maintain full confidentiality of information obtained while performing and after leaving the official duties and will not disclose the information, and no information submitted in confidence shall be disclosed without specific permission of the party submitting it.
- (19) The provisions of this Article shall not preclude the disclosure of
- (a) general information by the Investigating Authority, and in particular of the reasons on which decisions taken pursuant to the Act are based; or
  - (b) the evidence relied on by the Investigating Authority and the Committee insofar as is necessary to explain those reasons in decisions or review proceedings;

provided that such disclosure shall take into account the legitimate interests of the parties concerned that their business secrets should not be divulged.

#### **14. Representation**

- (1) Should any of the interested parties wish to be represented by an outside party, the interested party must provide the Committee with a letter of appointment of its representative, detailing the identity of the representative and the scope and duration of the representation.
- (2) Should any interested party wish to terminate a representation indicated in sub-regulation (1), such party must provide the Committee with a letter to this effect, indicating the effective date of such termination.
- (3) Other than with reference to the information in sub-regulation (2), once an interested party has appointed a representative all communication between the Committee and the interested party will take place through the appointed representative.

## **15. Application and merit assessment**

- (1) An anti-dumping investigation shall only be initiated upon acceptance of a written application by or on behalf of the Seychelles industry, except as provided for in sub-regulation (9).
- (2) An interim, new shipper or anti-circumvention review shall be initiated upon a written application by or on behalf of an interested party, except as provided for in sub-regulation(10).
- (3) The application shall be made on the official application questionnaire developed by the Committee for the purposes of anti-dumping investigations.
- (4) In determining whether an application submitted by a party constitutes a properly documented application the Investigating Authority shall determine whether the application includes such information as is reasonably available to the applicant relating to the prescribed information.
- (5) The Investigating Authority will return all applications that are not properly completed to the applicant.
- (6) The Investigating Authority shall examine the accuracy and adequacy of the evidence provided in the application to determine whether there is sufficient evidence to justify the initiation of an investigation within 30 days from receipt of the properly documented application.
- (7) Where an application is deficient, the Investigating Authority shall inform the applicant of the deficiencies and require to applicant to address such deficiencies.
- (8) The 30-dayperiod referred to in sub-regulation (5) above shall start afresh on submission of the updated application.
- (9) The Investigating Authority may require an applicant to provide additional information in respect of any application.
- (10) Where the Committee decides to initiate an investigation without having received a written application from the relevant interested party, as provided for in section 69(3) of the Act, it shall make a non-confidential version of the information it relied upon available to all known interested parties.
- (11) The Committee may initiate a review mentioned in sub-regulation (2) without having received a written application from the relevant interested party only if it has sufficient evidence of, or of a significant change in circumstances relating to, dumping, material injury or causal link to justify the initiation of such investigation and shall make a non-confidential version of the information available to all known interested parties.

(12) An application under sub-regulation (1) shall include prima facie evidence of (a) dumping, (b) injury, and (c) a causal link between the dumped imports and the alleged injury, and simple assertion, unsubstantiated by relevant evidence, cannot be considered sufficient to meet the requirements of this sub-regulation.

(13) The application shall contain such information as is reasonably available to the applicant on the following:

- (a) the identity of the applicant and a description of the volume and value of the domestic production of the like product by the applicant; where a written application is made on behalf of the domestic industry, the application shall identify the industry on behalf of which the application is made by a list of all known domestic producers or associations 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 the allegedly dumped product, as well as of the domestic like and foreign like products, including a listing of similarities and differences between the products;
- (c) the names of each country of origin or export in question, the identity of each known exporter or foreign producer and a list of known persons importing the product in question;
- (d) information on prices at which the foreign like product is sold when destined for consumption in the domestic markets of each country of origin or export or, where appropriate, information on the prices at which the product is sold from a country of origin or export to a third country or countries, or on the constructed value of the product; and information on export prices or, where appropriate, on the prices at which the product is first resold to an independent buyer in Seychelles;
- (e) information on export prices to Seychelles; and
- (f) information on the evolution of the volume of the allegedly dumped imports, the effect of these imports on prices of the like product in the domestic market and the consequent impact of the imports on the domestic industry, as demonstrated by relevant factors and indices having a bearing on the state of the domestic industry, such as those listed in regulation 9(4).

(14) For the purpose of sub-regulation(12)(d) an invoice indicating the price, quotes for domestic sales of the like product, price lists, international publications or any other reasonable proof of such domestic price shall be considered.

(15) If a price as indicated in sub-regulation(12)(d) is not available at the same level of trade as for export purposes, the application shall indicate reasonable adjustments to allow the Committee to compare the submitted normal value and the submitted export price.

(16) If the domestic selling price as contemplated in sub-regulation(12)(d) is not reasonably available to the applicant, the applicant shall state its efforts to obtain such price. If the applicant is unsuccessful after having undertaken reasonable efforts to obtain such domestic price, the applicant may submit information in respect of normal value -

- (a) by constructing such value; or
- (b) with reference to the export price from the exporting country or country of origin to any third country.

(17) Where the applicant supplies a constructed cost in terms of sub-regulation(16)(a), such constructed cost shall separately indicate –

- (a) direct costs;
- (b) indirect costs;
- (c) selling, general and administrative costs; and
- (d) profit;

and shall be more detailed where possible. Without placing an undue burden on the applicant, direct and indirect costs should be substantiated with relevant publications or other information. Selling, general and administrative expenses and profit may be based on reasonable assumptions.

(18) For purposes of sub-regulation (15)(b) the applicant may supply the export price of the country under consideration as contained in the export statistics of that country or any other reasonable proof of export prices from that country to a third country to substantiate a normal value.

(19) In determining injury to a Seychelles industry the Committee shall consider whether the information submitted in this regard and relating to the factors listed in regulation<sup>9</sup> indicates a prima facie case of injury.

(20) As soon as a decision is taken to initiate an investigation, the Investigating Authority shall open an investigation file and a copy of all documents and correspondence shall be included on this file.

(21) As soon as a decision is taken to initiate an investigation, the Investigating Authority shall open a public file containing

- (a) all non-confidential information submitted by all interested parties from the properly documented application onwards;
- (b) non-confidential copies of all correspondence between the Investigating Authority or the Committee and interested parties;
- (c) non-confidential versions of all other information obtained by the Investigating Authority and the Committee; and
- (d) an indication of all information received in confidence.

(22) An investigation shall not be initiated pursuant to sub-regulation (1) unless the Committee has determined, on the basis of an examination of the degree of support for, or opposition to, the application expressed by domestic producers of the like product, that the application has been made by or on behalf of the domestic industry, as required by section 18 of the Act.

(23) Other than as provided for in section 60(2)(a) of the Act, the Committee shall avoid, unless a decision has been made to initiate an investigation, any publicising of the application for the initiation of an investigation.

(24) In the event that the Committee makes a negative merit assessment it shall inform the applicant concerned accordingly and supply it with a full set of reasons for its decision.

(25) An anti-dumping investigation or review shall not hinder the procedures of customs clearance.

## **16. Initiation of an investigation**

(1) An investigation shall formally be initiated through publication in the Official Gazette.

(2) The initiation notice shall contain the basis of the alleged dumping, material injury and causality, and shall also indicate at least the following:

- (a) the identity of the applicant;
- (b) a detailed description of the product under investigation, including the tariff subheading applicable to the product;
- (c) the countries under investigation;
- (d) the basis of the allegation of dumping;
- (e) a summary of the factors on which the allegation of injury is based;
- (f) the address to which representations by interested parties should be directed; and
- (g) the time frame for responses by interested parties.

- (3) All dates in the investigation shall be counted from the date the notice is published in the Official Gazette.
- (4) All known interested parties in an anti-dumping investigation shall be given notice of the information which the Investigating Authority requires.
- (5) All known interested parties will normally be supplied with a copy of the initiation notice and a copy of the non-confidential application.
- (6) For the purposes of sub-regulation (4), where the number of exporters, foreign producers or importers involved is high, the full non-confidential text of the written application may, in the case of exporters and foreign producers, be provided only to the authorities of the exporting country, or to the relevant trade association.
- (7) Where the Committee decides to sample exporters or foreign producers, such parties must respond to the sampling questionnaire within 15 days from the date such questionnaire has been sent to the parties to indicate whether they would be willing to participate in the sample and a failure to respond within this period shall be deemed a negative response.
- (8) The Committee may provide opportunities for upstream producers of raw materials, industrial users of the product under investigation, and for representative consumer organizations in cases where the product is commonly sold at the retail level, to provide information which is relevant to the investigation regarding dumping, injury and causality.
- (9) All interested parties receiving questionnaires used in an anti-dumping investigation shall be given at least 30 days for reply from date of receipt of the questionnaire.
- (10) Questionnaires shall be deemed to have been received 7 days after dispatch from the Committee.
- (11) The deadline for submission by parties not directly informed of the investigation by the Committee will be 40 days from the date of the initiation of such investigation in the Official Gazette.
- (12) Due consideration should be given to any request for an extension of the response period and, upon good cause shown, such an extension should be granted whenever practicable, for a period normally not exceeding 14 days.
- (13) All submissions shall be made in both hard copy and in electronic format, unless the Investigating Authority has agreed otherwise in writing, and failure to comply with this provision may result in the submission being regarded as deficient.
- (14) Upon prior arrangement, the public file shall be open for inspection by interested parties and any other person during normal office hours.

## **17. Technical meetings**

- (1) Any interested party may request technical meetings during any stage of an investigation or review to discuss technical issues relating to dumping, injury or causality, provided the party indicates reasons for not relying on written submissions only.
- (2) Unless good cause exists for not granting such a technical meeting, the requested technical meeting should take place within no more than 14 days from the request.
- (3) The Investigating Authority may refuse a technical meeting if granting such meeting will unduly delay the finalisation of a preliminary or final determination.
- (4) No request for a technical meeting will be considered more than 7 days, and no technical meeting will take place more than 20 days, after the Investigating Authority's essential facts report has been made available.
- (5) Parties requesting a technical meeting shall provide the Investigating Authority with an agenda for, and a summary, including a non-confidential summary, of the information to be discussed at the technical meeting at the time of the request.
- (6) All information presented during a technical meeting must be reduced to writing within 7 days after the meeting by the party making such presentation, failing which the Investigating Authority and the Committee shall disregard that information. Where applicable, the submission shall be accompanied by a non-confidential version.

## **18. Hearings**

- (1) Any interested party may request an oral hearing with the Committee during the preliminary and final investigation phases of an investigation, provided the party indicates reasons for not relying on written submissions only.
- (2) The Committee may refuse an oral hearing if granting such hearing will unduly delay the finalisation of a preliminary or final determination.
- (3) No request for an oral hearing will be considered more than 60 days after the publication of the Committee's preliminary finding.
- (4) Where no preliminary decision is made, an oral hearing may be requested not more than 180 days from the date of initiation of the investigation, or within 7 days after the essential facts report has been issued, whichever is the earlier.
- (5) Parties requesting an oral hearing shall provide the Committee with an agenda, including a non-confidential version, of the information to be discussed at the oral hearing at the time of the request.
- (6) Notwithstanding sub-regulation (1), the Committee may decide to hold a hearing without having received an application from any interested party, and shall give all known interested parties at least 14 days' notice of the date of such hearing.

- (7) All information presented during an oral hearing shall be reduced to writing within 7 days after the oral hearing, failing which such information shall not be taken into consideration in the Committee's decisions, and a non-confidential version will be placed on the public file.
- (8) Parties shall inform the Committee at least 3 working days before an oral hearing of the identity of their representatives who will attend the oral hearing.
- (9) Any party may request an opportunity to meet those parties with adverse interests, so that opposing views may be presented and rebuttal arguments offered. Provision of such opportunities must take account of the need to preserve confidentiality and of the convenience to the parties. There shall be no obligation on any party to attend such a meeting, and failure to do so shall not be prejudicial to that party's case.
- (10) Where a meeting contemplated in sub-regulation (9) is requested, all interested parties that have cooperated during the investigation shall be invited to attend the meeting. All parties so invited shall be granted 7 days to indicate whether they will attend the meeting and to provide the Committee with the identity of their representatives who will attend.
- (11) All information presented during such meeting shall be reduced to writing within 7 days after the meeting, failing which such information shall not be taken into consideration in the Committee's decisions, and a non-confidential version will be placed on the public file.
- (12) Nothing shall prevent the Committee to treat a request under sub-regulation (1) as a request under sub-regulation (9).
- (13) The Committee may decide to host a hearing contemplated in sub-regulation (9) without receiving any application in this regard.

## **19. Sampling**

(1) In cases where the Investigating Authority considers applying section 58 of the Act with respect to sampling, the selection of parties or products shall rest with the Investigating Authority, though preference shall be given to choosing a sample in consultation with, and with the consent of, the parties concerned, provided that such parties make themselves known and make sufficient information available, within the time limit indicated in regulation 16(6), to enable a representative sample to be chosen.

(2) In cases where the examination has been limited in accordance with this regulation, an individual dumping margin shall be calculated for any exporter or foreign producer not initially selected who submits the necessary information within the time limits provided for in this regulation, except where the number of exporters or foreign producers is so large that individual examinations would be unduly burdensome and would prevent completion of the investigation in good time.

(3) The capacity and resources of the Investigating Authority shall be considered in determining both the size of the sample and whether voluntary submissions may be considered.

(4) All exporters or foreign producers that indicated a willingness to participate in the sampling, but were not included in the sample, shall be allocated the weighted average dumping margin determined in respect of those exporters or foreign producers that were included in the sample.

(5) For the purpose of sub-regulation (4), the Committee shall disregard any zero and de minimis dumping margins and dumping margins established on the basis of facts available.

## **20. Preliminary determination**

(1) The Committee may make a preliminary decision with a view to impose a provisional anti-dumping measure in cases where it appears that further material injury may be caused, or that a threat of material injury may manifest in actual material injury, during the course of the investigation where no provisional measure is imposed.

(2) For the preliminary decision, the Committee shall take into consideration all information that has been supplied within the prescribed timeframes, regardless whether that information has been verified or not.

(3) Where an exporter's or foreign producer's information is incomplete or otherwise deficient by the time the Investigating Authority makes the technical submission to the Committee, such party's information may be disregarded for purposes of the preliminary decision.

- (4) Where a preliminary finding of dumping, injury and causal link has been made, the Committee may request the Commissioner for Customs to impose a provisional anti-dumping measure in terms of section 268(1) of the Customs Management Act.
- (5) Public notice shall be given in the Official Gazette of any preliminary determination.
- (6) The notice referred to in sub-regulation (5) shall include a brief summary of the product, the determinations on dumping, injury and causal link, the level of the provisional anti-dumping measure, if any, as well as the time frame for interested parties to comment on the decision.
- (7) A detailed preliminary report shall be published and shall be provided to each cooperating interested party within 7 days after the preliminary determination notice has been published and to all other interested parties upon request.
- (8) The preliminary report shall set forth in sufficient detail the findings and conclusions reached on all issues of fact and law considered material by the Committee, bearing in mind the requirements of confidentiality.
- (9) The Investigating Authority shall provide each cooperating exporter or foreign producer with a disclosure setting out the margin of dumping calculations for that party at the same time the report is provided to that party.
- (10) For non-sampled parties, the disclosure under paragraph(9) shall be subject to the requirements of the confidentiality of other parties.
- (11) All interested parties will receive 14 days to comment on the preliminary report and, where applicable, on the preliminary disclosure.
- (12) The Investigating Authority may upon good cause shown grant interested parties an extension to comment on the report, the disclosure or both.

## **21. Essential facts**

- (1) The Investigating Authority shall, before a final decision is made, inform all interested parties of the essential facts under consideration which form the basis for the decision whether to apply definitive measures, regardless of whether such facts support or detract from a decision to impose such measures.
- (2) The essential facts refer to the specific facts that underlie the Committee's final findings and conclusions in respect of the three essential elements – dumping, injury and causation – that must be present for application of definitive measures, and the disclosure shall be such as to permit an interested party to understand the basis for the decision whether or not to apply definitive measures.
- (3) All interested parties will receive at least 14 days to comment on the completeness and correctness of the essential facts being considered by the Committee in its final decision.

(4) The Investigating Authority may grant interested parties an extension for the submission of comments on good cause shown.

## **22. Final determination**

(1) The Committee shall take all relevant information, including comments on the essential facts, into consideration in its final determination.

(2) If the Committee makes a negative decision regarding dumping at a level higher than the de minimis margin, injury or causality, it shall immediately terminate the investigation through publication in the Official Gazette.

(3) If the Committee makes an affirmative finding of injurious dumping, it shall recommend to the Minister that a definitive anti-dumping or countervailing duty be imposed, along with a recommendation regarding whether the lesser duty should apply, or whether a price undertaking should be accepted.

(4) The Minister shall take a final decision based on the information before the Committee within 21 days from the date of the recommendation.

(5) Where the Minister has decided to impose a definitive anti-dumping duty, the Minister may request the Commissioner of Customs to impose such definitive anti-dumping duty to the extent indicated in such request.

(6) The final decision shall be published in the Official Gazette and shall indicate at least the following:

- (a) the identity of the applicant;
- (b) a detailed description of the product under investigation, including the tariff subheading applicable to the product;
- (c) the countries under investigation;
- (d) the margin of dumping for each exporter; and
- (e) a summary of the factors on which the findings of injury and causality are based.

(7) The Committee shall publish a final report setting out all issues of law and fact considered in its final determination, including-

- (a) the names of the suppliers, or when this is impracticable, the supplying countries involved;
- (b) a description of the product which is sufficient for customs purposes;
- (c) the margins of dumping established and a full explanation of the reasons for the methodology used in the establishment and comparison of the export price and the normal value;
- (d) considerations relevant to the injury determination;

- (e) considerations relevant to the causality determination;
- (f) the main reasons leading to the determination; and
- (g) the basis for the level of anti-dumping measure determined.

### **23. Anti-dumping measures**

- (1) Anti-dumping measures under the Act and these Regulations may be applied to dumped imports introduced into the commerce of Seychelles for the purpose of eliminating the consequent impact of dumping that causes material injury or a threat thereof to the domestic industry producing the like product, or materially retards the establishment of such an industry.
- (2) No provisional anti-dumping measure may be applied unless the Committee has taken an affirmative preliminary determination that dumping exists, that there is injury to a domestic industry caused by dumped imports, and such measures necessary to prevent further injury being caused during the investigation.
- (3) Any provisional anti-dumping measure will be equal to the margin of dumping preliminary determined.
- (4) No provisional anti-dumping measure may be applied within less than 60 days from the initiation of an investigation.
- (5) A provisional anti-dumping measure may be imposed for a period not exceeding 6 months.
- (6) The validity of provisional measures may be extended to a period not exceeding nine months on request of interested exporters that represent a major proportion of the alleged dumped imports from any investigated country.
- (7) No definitive anti-dumping measure may exceed the margin of dumping determined, and the Committee shall consider whether a definitive duty lower than the margin of dumping will be sufficient to remove injury to the domestic industry.
- (8) In determining the margin of injury, the Committee shall normally determine the price disadvantage experienced by the domestic industry vis-à-vis prices of the dumped product.
- (9) When a definitive anti-dumping duty is imposed in respect of any product, such anti-dumping duty shall be collected in the appropriate amounts in each case, on a non-discriminatory basis on imports of the subject product from all sources found to be dumped and causing injury, except as to imports from those sources from which price undertakings under the terms of these Regulations have been accepted.
- (10) No product shall be subject to both anti-dumping and countervailing duties for the purpose of dealing with one and the same situation arising from dumping and from export subsidies.
- (11) If the definitive anti-dumping duty is higher than the provisional measure paid or payable, or the amount estimated for the purpose of the security, the difference shall not be collected. If the definitive duty is lower than the measure paid or payable, or the amount estimated for the purpose of the security, the difference shall be reimbursed or the duty recalculated, as the case may be.

(12) Where a final determination is negative, any provisional anti-dumping measures paid during the period of the application of provisional measures shall be refunded and any security provided released in an expeditious manner. No interest shall be payable.

(13) A definitive anti-dumping duty may be levied on products which were entered for consumption not more than 90 days prior to the date of application of provisional measures, when the Committee determines for the dumped product in question that:

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

(14) No duties shall be levied retroactively pursuant to sub-regulation (13) on products entered for consumption prior to the date of initiation of the investigation.

(15) After the Committee has made a preliminary determination, any exporter or foreign producer may offer a price undertaking in terms of which it offers to increase its price to eliminate the margin of dumping or to a level sufficient to remove any injury caused by the dumping.

(16) The Committee shall take into consideration the comments of the domestic industry in its determination whether to accept any price undertakings.

(17) Undertakings offered need not be accepted if their acceptance is considered impractical, such as where the number of actual or potential exporters is too great, or for other reasons, including reasons of general policy or administrative burden. Undertakings shall be rejected where they would not eliminate the injurious effect of the dumping found to exist or when they are not submitted within the time limit set forth.

(18) If an undertaking is accepted, the investigation of dumping and injury shall normally be completed.

(19) In such a case, the undertaking shall automatically lapse if a negative final determination of dumping, injury or causal relationship is made.

(20) In the event that an affirmative determination of dumping, injury and causal link is made, any undertaking shall be implemented consistent with its terms and the provisions of these regulations.

(21) The Investigating Authority may require any exporter or foreign producer from which an undertaking has been accepted to periodically provide information relevant to the fulfilment of such undertaking, and to permit verification of pertinent data. Non-compliance with such requirements shall be construed as a breach of the undertaking.

(22) Any interested party or body of the executive power of Seychelles may submit information showing prima facie evidence of a breach of an undertaking.

(23) The subsequent assessment of whether or not a breach of an undertaking has occurred shall normally be concluded within 4 months, but in no case later than 6 months, following a duly substantiated request.

(24) The Committee may request the assistance of bodies of the executive power of Seychelles in the monitoring of undertakings.

(25) In case of material breach of an undertaking, the Committee may request the Seychelles Customs to immediately impose provisional countervailing measures based on the facts information available and the Minister may, based on a recommendation by the Committee based on the facts available, request the Commissioner for Customs impose to definitive countervailing duties for the remainder of a five-year period counted from the date the price undertaking was implemented.

(26) Without prejudice to the right to take expeditious actions, the Committee shall inform the exporter or the foreign producer if the Committee considers that there has been a material violation of the undertaking, and shall provide the party concerned an opportunity to comment.

(27) Any interested party that submitted an undertaking may withdraw such undertaking by making a written submission to the Committee at any stage prior to the acceptance or during the application thereof.

(28) The Committee may recommend to the Minister to withdraw the acceptance of an undertaking when there are justified reasons for it.

(29) Other than as provided in paragraph (9) of regulation 25, an anti-dumping measure may remain in place for a period not exceeding 5 years from the date the final measure is published in the Official Gazette.

(30) Provisional anti-dumping measures may only be collected definitively where

- (a) a final determination of actual and present material injury is made; or
- (b) it is found in the case of a final determination of a threat of material injury, that the effect of the dumped imports would, in the absence of the provisional measures, have led to a determination of actual injury.

(31) For the purpose of protecting the public interest, anti-dumping measures imposed pursuant to the Act and these Regulations may be suspended by a decision of the Minister, on recommendation of the Committee, for a period of up to 12 months.

(32) Measures may only be suspended where:

- (a) market conditions have temporarily changed to an extent that injury would be unlikely to resume as a result of the suspension, or where the domestic industry is temporarily unable to supply the like product; and
- (b) the domestic industry has been given an opportunity to comment and these comments have been taken into account.

(33) The Committee shall monitor any suspension of anti-dumping duties on a regular basis, based on information requested from relevant interested parties.

(34) Acting on a proposal from the Committee, the Minister may, at any time, reinstate the measures for the remainder of the period if the reason for suspension is no longer applicable.

#### **24. Procedural reviews: General**

(1) Other than for refund applications, the government of the exporting country shall be notified of the review as soon as a properly documented review application has been received.

(2) Except where otherwise specified, the provisions of the Trade Remedies Act and these Regulations with regard to procedures and conduct of investigations, including rights of parties as well as assessment of evidence and reasoning of determinations, shall apply *mutatis mutandis* to reviews.

(3) Notwithstanding the definition of “interested party” in regulation 2, the Committee shall determine the interested parties in each review.

(4) All review applications shall be submitted in the standard forms approved by the Committee.

(5) Ex officio initiations of reviews are only permitted where specifically indicated in this Chapter.

(6) Industry standing does not apply to reviews.

(7) Except as provided for in regulation 26.2, reviews and refund investigations shall be initiated within 30 days from receipt of a properly documented application.

(8) The notice of initiation shall be published in the Official Gazette without delay after the decision to initiate a review or refund investigation.

(9) In case of rejection of an application, the Committee shall, within 30 days of receipt of the application, inform the applicant in writing of its reasons for rejecting the application.

(10) In reviews and refund investigations the Committee shall, provided that circumstances have not changed, apply the same methodology as in the investigation which led to the definitive anti-dumping measure.

(11) Unless otherwise specified, reviews and refund investigations shall consist of a single investigation phase and no preliminary decision will be made.

(12) Unless otherwise specified, in reviews and refund and anti-circumvention investigations interested parties shall receive 21 days to comment on the essential facts report.

(13) Other than in new shipper reviews, the definitive anti-dumping measures shall remain in force pending the outcome of the review or refund investigation.

(14) If a sunset review is initiated while a changed circumstances review is on-going in the same proceeding, the sunset review shall normally be concluded at the same time as the changed circumstances review.

(15) The Investigating Authority shall prepare a technical report for the Committee's consideration on the basis of the essential facts report and taking into consideration the comments received from interested parties.

(16) The Investigating Authority shall submit the technical report to the Committee no later than 60 days before the end of the time limit for concluding the review or refund investigation.

(17) Where warranted, the Minister, on recommendation by the Committee, may decide that measures shall be:

- (a) repealed or maintained pursuant to sunset reviews;
- (b) repealed, maintained or amended pursuant to new shipper and changed circumstances reviews; or
- (c) maintained or extended pursuant to anti-circumvention reviews.

(18) In case of refund investigations, the Minister, on recommendation of the Committee, may decide to grant, partially or totally, the requested refund, or to reject any refund application.

(19) Unless otherwise specified, reviews and refund investigations shall be concluded within 12 months of the date of initiation.

(20) If a review is not completed within the above deadlines, the measures concerned shall:

- (a) expire, in
  - sunset reviews;
  - sunset and changed circumstances reviews carried out concurrently;
  - changed circumstances reviews initiated on the basis of an application by importers, exporters or foreign producers; and

- new shipper reviews; and
- (b) remain unchanged, in
  - changed circumstances reviews initiated on the basis of an application by the domestic industry; and
  - anti-circumvention investigations.

## 25. Sunset reviews

- (1) The Committee shall publish a notice in the newspaper between 4 and 6 months prior to the lapse of an anti-dumping measure informing interested parties of the imminent lapse of the measure.
- (2) The domestic industry shall indicate at least 3 months prior to the lapse of an anti-dumping measure whether it would request a sunset review to maintain the existing anti-dumping measure.
- (3) An application for a sunset review shall contain sufficient prima facie evidence that the expiry of the definitive anti-dumping measures would be likely to lead to continuation or recurrence of injury.
- (4) There shall be no obligation on the domestic industry to submit any information in relation to the continuation or recurrence of dumping.
- (5) The application shall be lodged with the Committee no later than 2 months prior to expiry of the anti-dumping measure concerned, unless the Committee has granted an extension in writing.
- (6) Where the evidence available is insufficient, the Committee may reject the application or may request the applicant to submit additional information.
- (7) The Committee may initiate a sunset review ex officio if it has at its disposal sufficient prima facie evidence on the continuation or recurrence of injury in the event that the measure lapsed.
- (8) A sunset review shall be initiated prior to the lapse of the measure, as provided for in paragraph (29) of regulation 23, failing which no sunset review may be conducted.
- (9) Notwithstanding the provisions of paragraph (29) of regulation 23, the anti-dumping measure shall remain in force pending the outcome of the review.
- (10) All interested parties from the original investigation as well as any additional interested parties identified in the application shall be directly notified of the initiation of a sunset review.
- (11) All interested parties may request technical meetings and an oral hearing no more than 10 days, and no such meetings or hearings shall normally take place more than 30 days, after receipt of the essential facts.
- (12) Acting on the Committee's recommendation, the Minister may determine that:
  - (a) the definitive anti-dumping measures should be extended for a period of time which may not exceed 5 years from the date the original duty would have lapsed, if it finds a likelihood of the continuation or recurrence of both injury and dumping; or

(b) the proceeding and the review shall be terminated without extending the anti-dumping measures if:

- it finds there is no likelihood of the continuation or recurrence of either injury or dumping or both;
- the application has been withdrawn and there are no public interest reasons to justify the completion of the review; or
- the domestic industry has not submitted the information required to assess the likelihood of continuation or recurrence of injury.

(13) Where a decision is taken not to extend the anti-dumping measure, the measure shall be withdrawn with retrospective effect to the date it would have lapsed if the sunset review had not been initiated.

(14) Nothing in these regulations shall prevent any interested party from requesting a changed circumstances review to be conducted concurrently with a sunset review.

(15) Any request and application for such concurrent reviews shall be made within the deadlines provided for in sub-regulations (2) and (5) of this regulation.

## 26. New shipper reviews

- (1) Any exporter whose exports are subject to a definitive anti-dumping duty, may request a new shipper review if it can show that it
  - (a) did not export the investigated product during the original dumping investigation period; and
  - (b) is not related to any exporter or foreign producer that exported during that period and that is subject to the anti-dumping measure.
- (2) Bearing in mind the requirements of sub-regulation(3), a new shipper review shall be initiated within 3 months from the receipt of a properly documented application.
- (3) The Committee's decision initiating a new shipper review shall suspend the collection of the anti-dumping duties with regard to imports from the applicant and introduce a provisional anti-dumping measure at an equivalent level/lead to registration of any subsequent imports by Customs with a view to determine the final duty assessment once the review has been finalised.
- (4) The provisional anti-dumping measure/assessment of imports may remain in place until finalisation of the review.
- (5) If it is demonstrated that the applicant is dumping, definitive anti-dumping duties shall be levied retroactively from the date of initiation of the new shipper review.
- (6) Notwithstanding the definition of "interested party" in regulation2, for purposes of a new shipper review interested parties will include:
  - (a) the government of the exporting country;
  - (b) the exporter or foreign producer that requested the initiation of the review;
  - (c) importers of the product covered by the review and that were supplied, or are to be supplied, by the applicant;
  - (d) the domestic industry; and
  - (e) any other party admitted as interested parties by the Committee.
- (7) Acting on a technical report by the Investigating Authority, the Committee shall decide whether to maintain, repeal or amend the anti-dumping duty or to accept a price undertaking.
- (8) The Minister will make a final determination based on the recommendation by the Committee.
- (9) New shipper reviews shall normally be concluded within 180 days from the date of initiation.
- (10) Where justified, the review may be extended for an additional period of 60 days, provided such justification is adequately explained in the Committee's final report.

## **27. Changed circumstances reviews**

- (1) A changed circumstances review may be initiated and conducted in order to determine whether there is a change in the circumstances that led to the imposition of a definitive anti-dumping measure.
- (2) The change of circumstances shall be significant and lasting and shall not constitute mere oscillations or fluctuations inherent to the market, nor shall it include an exporter's or foreign producer's willingness to cooperate in such a review after it had failed to cooperate in the investigation.
- (3) Changed circumstances reviews shall be initiated provided that a period of at least 1 year has elapsed since the application or the last review of a definitive anti-dumping measure.
- (4) Exceptionally, upon good cause shown, a review may be initiated if the period mentioned in sub-regulation(3)has not yet elapsed.
- (5) The application shall be submitted in writing by an interested party and contain sufficient evidence that:
  - (a) the anti-dumping measure is no longer necessary to offset dumping, or is higher than the actual dumping margin;
  - (b) the level of the anti-dumping measure is insufficient to address injury caused by the dumped imports; or
  - (c) the injury would be unlikely to continue or recur if the measure was removed or varied.
- (6) Where the evidence available is insufficient, the Committee shall reject the application.
- (7) This review may be initiated ex officio if the Committee has at its disposal sufficient prima facie evidence on any of the matters indicated in sub-regulation(5).
- (8) In carrying out changed circumstances reviews the Committee shall consider whether the circumstances with regard to dumping and injury have changed significantly, and whether existing measures are achieving the intended results in removing the injury previously determined.
- (9) Acting on a technical report by the Investigating Authority, the Committee shall decide whether to maintain, repeal or amend the anti-dumping measure.
- (10) The Minister will make a final determination based on the recommendation by the Committee.

## **28. Anti-circumvention reviews**

- (1) Circumvention shall be defined as a change in the pattern of trade between third countries and Seychelles or between individual companies in the country subject to measures and Seychelles, which stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the anti-dumping duty, and where there is evidence of injury or that the remedial effects of the duty are being undermined in terms of the prices or quantities of the like product and that the subject product or parts thereof still benefit from the dumping.
- (2) When circumvention of the measure in force is taking place, the anti-dumping duty may be extended to:
  - (a) imports of the subject product assembled in, or parts thereof from, third countries, whether slightly modified or not; and
  - (b) imports of the slightly modified product or parts thereof from the country subject to the anti-dumping duty.
- (3) Anti-dumping duties may be increased where the export price is decreased subsequent to the initiation of an anti-dumping investigation or the imposition of anti-dumping duties to absorb the anti-dumping measure, unless the exporter can prove that the normal value decreased in line with the decrease in the export price.
- (4) Except as provided for in sub-regulation(5), anti-circumvention reviews shall only be initiated upon submission of a properly documented application containing sufficient evidence regarding the factors set out in sub-regulation (1).
- (5) Where the Committee has sufficient information on the factors set out in sub-regulation (1), it may initiate such review ex officio.
- (6) The Committee may request the imposition of a provisional anti-dumping measure addition to the existing anti-dumping duty not less than 60 days after initiation of the review, provided it has made a preliminary determination that circumvention is taking place and that such circumvention is undermining the effects of the anti-dumping measure in place.
- (7) A provisional anti-dumping measure may remain in place as provided for in paragraphs (5) and (6) of regulation23.
- (8) Where an affirmative final determination of circumvention is made, the new definitive anti-dumping duty may be applied retrospectively to the date the provisional anti-dumping measure was imposed.
- (9) In exceptional circumstances, where it is shown that significant imports took place after the start of the circumvention, but before the imposition of the provisional anti-dumping measure, the new definitive anti-dumping duty may be applied retrospectively to a date 90 days prior to the imposition of the provisional anti-dumping measure, but not to a date prior to initiation of the review.

(10) Acting on a technical report by the investigating officers, the Committee shall make a determination whether to

- (a) extend the application of the residual anti-dumping duty rate, as set forth in the pertinent Committee decision, to the investigated imports when it is determined that circumvention occurs;
- (b) extend the application of the specific exporter's anti-dumping duty to cover a wider product scope, that may also include parts and components or modified products;
- (c) increase the anti-dumping duty where it is found that absorption of the duty took place; or
- (d) terminate the anti-circumvention review where it is found that the circumventing practices have not been sufficiently demonstrated.

(11) Where a review is terminated, the existing anti-dumping duty shall remain in force.

(12) The Minister will make a final determination based on the recommendation by the Committee.

## **29. Refund investigations**

(1) An importer may request reimbursement of anti-dumping duties collected where it can show that the dumping margin, 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) The lesser duty rule shall not be applied in refund investigations.

(3) No application for a refund may be submitted less than 12 months after imposition of an anti-dumping duty or less than 6 months after conclusion of the last refund investigation.

(4) An application for refund shall be considered to be duly supported by evidence only where it contains precise information on

- (a) the amount of refund of anti-dumping duties claimed, including the relevant calculations;
- (b) all customs documentation relating to the calculation and payment of such amount; and
- (c) the dumping margin for the exporter or foreign producer to which the duty applies for the period covered by the refund application.

(5) In cases where the importer is not associated with the exporter or foreign producer concerned and the information under sub-regulation (4) is not immediately available, or where the exporter or foreign producer is unwilling to release such information to the importer, the application shall contain a statement from the exporter or producer that the dumping margin has been reduced or eliminated, as specified in this regulation, and that the relevant supporting evidence will be provided direct to the Committee.

(6) Where an exporter does not provide the information indicated in sub-regulation (5) within the deadline stated by the Committee, no refund investigation shall be initiated.

(7) For purposes of refund investigations, interested parties shall include:

- (a) the relevant foreign government;
- (b) the importer that requests the refund;
- (c) the exporters or foreign producers that produced or exported the product subject to the refund application;
- (d) the domestic industry; and
- (e) any other party admitted as interested parties by the Committee.

(8) The Committee shall inform the domestic producers of the refund investigation and provide them with a copy of the initiation notice and the non-confidential version of the refund application within 2 working days after initiation of the review.

(9) The domestic industry will be allowed 14 days after receipt of the initiation notice to comment on the application.

(10) The Committee shall base its decision on the technical report by the Investigating Authority.

(11) Based on the Committee's recommendation, the Minister shall make a final determination that:

- (a) no refund should be made, where:
  - information required to assess whether and to what extent a refund is justified is incomplete or is not provided timely; or
  - the dumping margin applicable to the exporter or foreign producer during the period examined exceeds the level of the anti-dumping duty with respect to which the refund is requested;

- (b) a partial refund is justified based on the difference between the amount of anti-dumping duties paid by the importer and the actual dumping margin determined to exist for the exporter or foreign producer during the period examined; or
- (c) a full refund is justified when it is determined that the exporter or foreign producer did not dump during the period examined.

(12) Refund investigations shall normally be concluded within 180 days from the date of initiation. Upon justification, the investigation may be extended by an additional period of 60 days.

(13) Where the Minister, following a changed circumstances review, decreases or withdraws the existing anti-dumping duty, an importer may request that anti-dumping duties be refunded in line with the Minister's findings without having to lodge the information referred to in sub-regulation (4).

(14) The payment of any refund should normally be made by Seychelles Customs within 90 days of the Minister's decision.

### **30. Notifications**

(1) The Committee shall prepare all notifications that must be submitted to the WTO Anti-Dumping Practices Committee relating to the matters covered by the Act and these Regulations. The notifications shall be prepared in the applicable standard formats published by the WTO.

(2) The Committee shall cooperate with the competent authority in order to prepare replies to oral or written questions presented by other WTO Members regarding any Seychelles WTO anti-dumping notifications.

### **31. Implementation of WTO dispute settlement reports**

(1) The Committee and the Minister shall take appropriate actions of prospective nature in order to bring a measure taken under the Trade Remedies Act and these Regulations into conformity with the recommendations and rulings contained in a report adopted by the WTO Dispute Settlement Body in respect with any anti-dumping dispute that Seychelles was party to.

(2) In any case in which the WTO Dispute Settlement Body adopts a finding that a decision, practice or legislation in Seychelles is inconsistent with Article VI of the General Agreement on Tariffs and Trade (GATT) 1994 or with the WTO Agreement on Implementation of Article VI of GATT, that decision, practice or legislation may not be amended, rescinded, or otherwise modified in the implementation of such report unless and until—

- (a) the Committee has reviewed the implications and determined possible amendments to bring the measure into conformity with Seychelles' obligations under the WTO;
- (b) the Committee has provided an opportunity for public comment, including by the domestic industry, by publishing in the Official Gazette the proposed modification and the explanation for the modification; and
- (c) the Committee has submitted to the Minister a report describing the proposed modification, the reasons for the proposed amendment and an indication of how such amendments meet the requirements of the WTO ruling.

(3) The Committee and the Minister shall take cognisance of reports adopted by the WTO Dispute Settlement Body and, where applicable, shall propose amendments to the Trade Remedies Act and these Regulations as appropriate.