COUNTERVAILING 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 subsidisation means a subsidy margin which is less than one per cent ad valorem when expressed as a percentage of the ex-factory export price in relation to developed countries, or two per cent ad valorem when expressed as a percentage of the ex-factory export price in relation to developing countries;

"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 subsidisation:

  (i) the subsidies other producers in that market received;

  (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 subsidy investigation, the period for which it is assessed whether the exports from the country under investigation benefitted from subsidies;
- 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 subsidised 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 subsidised imports;

"**negligible volume**" of subsidised imports means that the volume of subsidised imports from a country under investigation represents less than 4 per cent of the total imports of the subject product into Seychelles, unless imports from all countries each representing less than 4 per cent of total imports collectively account for more than 9 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 a countervailing 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 subsidised imports, 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 subsidised imports; or

(c) the prices obtained for the like product by the industry directly before the entry of the subsidised imports; or

(d) any other reasonable basis;

"WTO" means the World Trade Organization.

3. Like product

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/or

(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) Regardless the fact that the subject product may consists of more than one distinct type, model or product group, the export price shall normally only be determined on the basis of the total value of exports, measured at the ex-factory level.

(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 under sub-regulation (2) include usual transport, insurance, handling, loading and ancillary costs; customs duties, including any anti-dumping, countervailing of 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. Financial contribution

The "financial contribution" referred to in section 35(1) of the Act means

(a) a government practice which involves a direct transfer of funds, such as grants, loans, and equity infusions, or the potential direct transfers of funds or liabilities, such as loan guarantees;

(b) government revenue that is otherwise due is foregone or not collected, such as fiscal incentives in the form of tax credits or tax holidays, but does not include the exemption of an exported product from duties or taxes borne by the like product when destined for domestic consumption, or the remission of such duties or taxes in amounts not in excess of those which have accrued, shall not be deemed to be a subsidy;

(c) the provision of goods or services by government other than general infrastructure, except where such provision takes place at market rates;

(d) the purchase of goods by government, where such provision takes place at prices higher than market rates; and

(e) where a government makes payments to a funding mechanism, or entrusts or directs a private body to carry out one or more of the type of functions illustrated above which would normally be vested in the government and the practice, in no real sense, differs from practices normally followed by governments.

6. Financial contribution

The "income or price support" referred to in section 35(2) of the Act means that government

(a) guarantees part or all of the income of an enterprise or group of enterprises; or

(b) provides or regulates a mechanism that guarantees minimum prices or increases the price an enterprise would have received for its goods without such intervention.

7. Benefit to the exporter

(1) No countervailing duty may be imposed unless it is found that the exporter received a benefit.

(2) Where a subsidy was paid on a product higher in the value chain than the subject product, the Committee shall determine the benefit that was passed on to the producer of the subject product and the margin of subsidisation shall be determined at the level of the subject product.

8. Specificity

(1) In order to determine whether a subsidy is specific to an enterprise or industry or group of enterprises or industries the following principles shall apply:

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

(b) Where the granting authority, or the legislation pursuant to which the granting authority operates, establishes objective criteria or conditions governing the eligibility for, and the amount of, a subsidy, specificity shall not exist, provided that the eligibility is automatic and that such criteria and conditions are strictly adhered to. The criteria or conditions must be clearly spelled out in law, regulation, or other official document, so as to be capable of verification. In this regard, in particular, information on the frequency with which applications for a subsidy are refused or approved and the reasons for such decisions shall be considered.

(c) If, notwithstanding any appearance of non-specificity resulting from the application of the principles laid down in subparagraphs (a) and (b), there are reasons to believe that the subsidy may in fact be specific, other factors may be considered. Such factors are: use of a subsidy programme by a limited number of certain enterprises, predominant use by certain enterprises, the granting of disproportionately large amounts of subsidy to certain enterprises, and the manner in which discretion has been exercised by the granting authority in the decision to grant a subsidy. In applying this subparagraph, account shall be taken of the extent of diversification of economic activities within the jurisdiction of the granting authority, as well as of the length of time during which the subsidy programme has been in operation.

(2) A subsidy which is limited to certain enterprises located within a designated geographical region within the jurisdiction of the granting authority shall be specific. It is understood that the setting or change of generally applicable tax rates by all levels of government entitled to do so shall not be deemed to be a specific subsidy for the purposes of these regulations.

(3) All subsidies contingent in law or in fact, whether solely or as one of several other conditions, upon export performance, including those listed in sub-regulation (5), and any subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods, shall be specific.

(4) A subsidy shall be regarded as contingent in fact if the facts demonstrate that the granting of a subsidy, without having been made legally contingent upon export performance, is in fact tied to actual or anticipated exportation or export earnings, however, the mere fact that a subsidy is granted to enterprises which export shall not for that reason alone be considered to be an export subsidy within the meaning of this provision.

(5) The following paragraphs provide a non-exhaustive list of export subsidies:

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

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

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

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

competitive products or services for use in the production of goods for domestic consumption, if such terms or conditions are more favourable than those commercially available on world markets to their exporters, and where the term "commercially available" means that the choice between domestic and imported products is unrestricted and depends only on commercial considerations;

(e) the full or partial exemption remission, or deferral specifically related to exports, of direct taxes (i.e. taxes on wages, profits, interests, rents, royalties, and all other forms of income, and taxes on the ownership of real property) or social welfare charges paid or payable by industrial or commercial enterprises, unless appropriate interest charges are collected on any such deferrals;

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

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

(h) the exemption, remission or deferral of prior-stage cumulative indirect taxes on goods or services used in the production of exported products in excess of the exemption, remission or deferral of like prior-stage cumulative indirect taxes (i.e. sales, excise, turnover, value added, franchise, stamp, transfer, inventory and equipment taxes, border taxes and all taxes other than direct taxes and import charges) on goods or services used in the production of like products when sold for domestic consumption; provided, however, that prior-stage cumulative indirect taxes may be exempted, remitted or deferred on exported products even when not exempted, remitted or deferred on like products when sold for domestic consumption, if the prior-stage cumulative indirect taxes are levied on inputs that are consumed in the production of the exported product while making normal allowance for waste;

(i) the remission or drawback of import charges (i.e. tariffs, duties, and other fiscal charges that are levied on imports) in excess of those levied on imported inputs that are consumed in the production of the exported product while making normal allowance for waste; provided, however, that in particular cases a firm may use a quantity of home market inputs equal to, and having the same quality and characteristics as, the imported inputs as a substitute for them in order to benefit from

this provision if the import and the corresponding export operations both occur within a reasonable time period, not to exceed two years;

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

(k) the grant by government of export credits at rates below those which they actually have to pay for the funds so employed or would have to pay if they borrowed on international capital markets in order to obtain funds of the same maturity and other credit terms and denominated in the same currency as the export credit, or the payment by government of all or part of the costs incurred by exporters or financial institutions in obtaining credits, insofar as they are used to secure a material advantage in the field of export credit terms.

(6) For purposes of these regulations, Paragraph (h) does not apply to value-added tax systems and border-tax adjustment in lieu thereof, and the problem of the excessive remission of value-added taxes is exclusively covered by paragraph (g).

9. Margin of subsidisation

(1) The margin of subsidy shall be determined on the basis of the benefit received by the recipient, provided that the benefit shall be determined with reference to the subject product.

(2) Any method for the determination of a subsidy amount shall be consistent with the following:

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

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

(c) a loan guarantee by a government shall not be considered as conferring a benefit, unless there is a difference between the amount that the firm receiving the guarantee pays on a loan guaranteed by the government

and the amount that the firm would pay on a comparable commercial loan absent the government guarantee, and in this case the benefit shall be the difference between these two amounts adjusted for any differences in fees; and

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

(3) The amount of subsidy shall be determined in respect of each subsidy programme and then be added together to determine the overall margin of subsidisation.

(4) There shall be no de minimis margin in respect of any individual subsidy programme.

(5) Without prejudice to Article 21, an individual margin of subsidy shall normally be determined for each known foreign producer or exporter of the product under investigation.

(6) For the purpose of determining the individual margin of subsidy and of applying countervailing duties, different legal entities may be treated as a single foreign producer or exporter when it is demonstrated that the structural and trade relationship between such entities or with a third entity is sufficiently close. Any determination to treat various legal entities as a single one shall be based on facts and an explanation shall be included in the published reports.

10. 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.

11. Injury

(1) A determination of injury shall be based on positive evidence and involve an objective examination of both (a) the volume of the subsidised imports and the effect of the subsidised 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 subsidised imports, the Committee shall consider whether there has been a significant increase in subsidised imports, either in absolute terms or relative to production or consumption in Seychelles.

(3) With regard to the effect of the subsidised imports on prices, the Committee shall consider whether there has been significant price undercutting by the subsidised 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 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:

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

(d) in investigations relating to agricultural products, whether there has been an increased burden on government support programmes.

No one or several of these factors can necessarily give decisive guidance.[1]

[1] Note difference from ADR.

(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 subsidised 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 subsidised 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 subsidised imports would cause injury must be clearly foreseen and imminent. In making a determination regarding the existence of a threat of material injury, the Committee should consider, inter alia, such factors as:

(a) nature of the subsidy or subsidies in question and the trade effects likely to arise therefrom;[2]

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

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

(d) 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

(e) 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 subsidised exports are imminent and that, unless protective action is taken, material injury would occur.

[2] Note difference from ADR.

(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 subsidised imports.

(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) to which extent 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 subsidised imports, or where there is material retardation of the establishment of an industry, the application of countervailing measures shall be considered and decided with special care.

12. Causality

(1) It must be demonstrated that the subsidised imports are, through the effects of subsidies, causing injury.

(2) The demonstration of a causal relationship between the subsidised 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 subsidised imports and the industry's injury the Committee shall consider all relevant factors, including, but not limited to:

(a) the change in the volume of subsidised 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 subsidised imports;

(d) the magnitude of the margin of subsidisation; and

(e) the price of non-subsidised imports available in the market.

(4) The Investigating Authority and the Committee shall also examine any known factors other than the subsidised 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 subsidised imports, which may include inter alia

(a) the volumes and prices of non-subsidised 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.

13. 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 satisfactorily, 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.

14. 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 a countervailing 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 Investigating Authority 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) In the event that a domestic producer, an importer, exporter or foreign producer or foreign government 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.

(13) 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.

(14) Following an exporter, foreign producer or foreign government verification the Investigating Authority shall make a verification report available to the party in question indicating all information verified. Such verification report shall normally be made available within 14 days from conclusion of the specific verification visit.

(15) 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.

(16) 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 (15).

(17) 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.

15. 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 section;

(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.

16. 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.

17. Application and merit assessment

(1) A countervailing 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 countervailing 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 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.

(6) Where an application is deficient, the Investigating Authority shall inform the applicant of the deficiencies and require to applicant to address such deficiencies.

(7) The 30 day-period referred to in sub-regulation (5) above shall start afresh on submission of the updated application.

(8) The Investigating Authority may require an applicant to provide additional information in respect of any application.

(9) 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.

(10) 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, subsidised imports, 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.

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

(12) 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 subsidised 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 the nature, amount and extent of all alleged subsidy programmes in the exporting country;

(e) information on export prices to Seychelles; and

(f) information on the evolution of the volume of the allegedly subsidised 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 paragraph (4) of regulation 11.

(13) For the purpose of sub-regulation (12)(d), the relevant legislation establishing the subsidy, notifications to the WTO, findings by other investigating authorities, international publications, newspaper or magazine articles or any other reasonable proof of such subsidy programmes shall be considered.

(14) The Investigating Authority shall review the accuracy and adequacy of the evidence provided in the application to determine whether the evidence is sufficient to justify the initiation of an investigation.

(15) 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 11 indicates a prima facie case of injury.

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

(17) As soon as a decision is taken to initiate an investigation, the Committee 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 Committee and interested parties;

(c) non-confidential versions of all other information obtained by the Committee; and

(d) an indication of all information received in confidence.

(18) Committee 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.

(19) 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.

(20) 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.

(21) Prior to initiation, the Committee shall invite the government of the exporting country for consultations with a view to obtain clarity on the alleged subsidies and to derive at a mutually agreed solution aimed at the termination or limitation of the subsidy programmes so as not to cause injury to the Seychelles industry.[3]

(22) Without prejudice to the obligation to afford reasonable opportunity for consultation, the consultations referred to in sub-regulation (17) shall not prevent the Committee from proceeding expeditiously with regard to the initiation of an investigation, reaching preliminary or final determinations or from requesting provisional or recommending final countervailing duties.

(23) 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.

(24) A countervailing investigation or review shall not hinder the procedures of customs clearance.

18. 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 subsidised imports, 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;

[3] Note difference from ADR.

(d) a list of the alleged subsidy programmes;[4]

(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.

[4] Note difference from ADR.

(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 a countervailing 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 particularly high, copy of the initiation notice and of the 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 subsidised imports, injury and causality.

(9) All interested parties receiving questionnaires used in a countervailing 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 Committee 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.

19. Technical meetings

(1) Any interested party may request technical meetings during any stage of an investigation or review to discuss technical issues relating to subsidisation, 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.

20. 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.

21. 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 subsidy 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 margin of subsidisation 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 subsidy margins and subsidy margins established on the basis of facts available.

22. Preliminary determination

(1) The Committee may make a preliminary decision with a view to impose a provisional countervailing 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 to it 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 officers make 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 subsidised imports, injury and causal link has been made, the Committee may request Seychelles Customs to impose a provisional countervailing 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 subsidisation, injury and causal link, and the level of the provisional countervailing 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 subsidy 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.

23. 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 – subsidisation, 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 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.

24. 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 subsidisation 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 subsidised imports, 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 countervailing duty, the Minister may request the Commissioner of Customs to impose such definitive countervailing 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 subsidisation 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 subsidisation established and a full explanation of the reasons for the methodology used in the determination of the margin of subsidisation;

(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 countervailing measure determined.

25. Countervailing measures

(1) Countervailing measures under the Act and these Regulations may be applied to subsidised imports introduced into the commerce of Seychelles for the purpose of eliminating the consequent impact of subsidised imports 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 countervailing measure may be applied unless the Committee has taken an affirmative preliminary determination that a subsidy exists, that there is injury to a domestic industry caused by subsidised imports, and such measures necessary to prevent further injury being caused during the investigation.

(3) Any provisional countervailing measure will be equal to the margin of subsidisation preliminary determined.

(4) No provisional countervailing measure may be applied within less than 60 days from the initiation of an investigation.

(5) A provisional countervailing measure may be imposed for a period not exceeding 4 months and may not be extended.[5]

(6) No definitive countervailing measure may exceed the margin of subsidisation determined, and the Committee shall consider whether a definitive duty lower than the margin of subsidisation will be sufficient to remove injury to the domestic industry.

(7) 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 subsidised product.

(8) When a definitive countervailing measure is imposed in respect of any product, such countervailing 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 subsidised and causing injury, except as to imports from those sources from which price undertakings under the terms of these Regulations have been accepted.

(9) 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.

(10) If the definitive countervailing duty is higher than the provisional duty 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 preliminary duty 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.

[5] Note difference from ADR.

(11) Where a final determination is negative, any provisional countervailing duties 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.

(12) A definitive countervailing measure may be levied on products which were entered for consumption not more than 90 days prior to the date of application of provisional duties, when the Committee determines for the subsidised product in question that:

(a) there is a history of subsidised imports which caused injury or that the importer was, or should have been, aware that the exporter exports subsidised goods and that such subsidised imports would cause injury;

(b) the injury is caused by massive imports of a subsidised product in a relatively short time which in light of the timing and the volume of the subsidised 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 countervailing duty to be applied; and

(c) provided that the importers concerned have been given an opportunity to comment.

(13) No duties shall be levied retroactively pursuant to sub-regulation (10) on products entered for consumption prior to the date of initiation of the investigation.

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

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

(16) 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 subsidisation found to exist or when they are not submitted within the time limit set forth.

(17) If an undertaking is accepted, the investigation into subsidised imports and injury shall normally be completed.

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

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

(20) 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.

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

(22) 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.

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

(24) In case of material breach of an undertaking, the Committee may request the Seychelles Customs to immediately impose provisional countervailing duties 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.

(25) 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.

(26) 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.

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

(28) Other than as provided in regulation xxx25.9, a countervailing measure may remain in place for a period not exceeding 5 years from the date the final measure is published in the Official Gazette.

(29) Provisional countervailing duties 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 subsidised imports would, in the absence of the provisional duties, have led to a determination of actual injury.

(30) For the purpose of protecting the public interest, countervailing 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.

(31) 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.

(32) The Committee shall monitor any suspension of countervailing duties on a regular basis, based on information requested from relevant interested parties.

(33) 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.

26. 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 countervailing 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 countervailing 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.

27. Sunset reviews

(1) The Committee shall publish a notice in the newspaper between 4 and 6 months prior to the lapse of a countervailing 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 a countervailing measure whether it would request a sunset review to maintain the existing countervailing measure.

(3) An application for a sunset review shall contain sufficient prima facie evidence that the expiry of the definitive countervailing 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 subsidised imports.

(5) The application shall be lodged with the Committee no later than 2 months prior to expiry of the countervailing 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 (28) of regulation 25, failing which no sunset review may be conducted.

(9) Notwithstanding the provisions of regulation 23(27), the countervailing 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 countervailing 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 subsidised imports; or

(b) the proceeding and the review shall be terminated without extending the countervailing measures if:

- it finds there is no likelihood of the continuation or recurrence of either injury or subsidised imports 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 countervailing 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.

28. New shipper reviews

(1) Any exporter whose exports are subject to a definitive countervailing duty, may request a new shipper review if it can show that it

(a) did not export the investigated product during the original subsidies investigation period; and

(b) is not related to any exporter or foreign producer that exported during that period and that is subject to the countervailing 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 countervailing duties with regard to imports from the applicant and introduce a preliminary countervailing duty 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 preliminary countervailing duty/assessment of imports may remain in place until finalisation of the review.

(5) If it is demonstrated that the applicant is or will be exporting at subsidised prices, definitive countervailing duties shall be levied retroactively from the date of initiation of the new shipper review.

(6) Notwithstanding the definition of "interested party" in regulation 2, 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 countervailing 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.

29. 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 countervailing 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 countervailing 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 countervailing measure is no longer necessary to offset subsidised exports, or is higher than the actual subsidy margin;

(b) the level of the countervailing measure is insufficient to address injury caused by the subsidised 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 subsidisation 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 countervailing measure.

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

30. 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 countervailing 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 subsidised imports.

(2) When circumvention of the measure in force is taking place, the countervailing 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 countervailing duty.

(3) [6]Except as provided for in sub-regulation (4), 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).

(4) Where the Committee has sufficient information on the factors set out in sub-regulation (1), it may initiate such review ex officio.

(5) The Committee may request the imposition of a provisional countervailing duty in addition to the existing countervailing 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 countervailing measure in place.

(6) A provisional countervailing duty may remain in place as provided for in Regulations 23(4) and 23(5).

(7) Where an affirmative final determination of circumvention is made, the new definitive countervailing duty may be applied retrospectively to the date the provisional countervailing duty was imposed.

(8) 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 countervailing duty, the new definitive countervailing duty may be applied retrospectively to a date 90 days prior to the imposition of the provisional countervailing duty, but not to a date prior to initiation of the review.

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

[6] Note difference from ADR.

(a) extend the application of the residual countervailing 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 countervailing duty to cover a wider product scope, that may also include parts and components or modified products; or[7]

(c) terminate the anti-circumvention review where it is found that the circumventing practices have not been sufficiently demonstrated.

(10) Where a review is terminated, the existing countervailing duty shall remain in force.

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

31. Refund investigations

(1) An importer may request reimbursement of countervailing duties collected where it can show that the subsidy 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 a countervailing 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 countervailing duties claimed, including the relevant calculations;

(b) all customs documentation relating to the calculation and payment of such amount; and

(c) the subsidy 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 subsidy margin has been reduced or eliminated, as specified in this section, 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 margin of subsidisation applicable to the exporter or foreign producer during the period examined exceeds the level of the countervailing duty with respect to which the refund is requested;

[7] Note difference from ADR.

(b) a partial refund is justified based on the difference between the amount of countervailing duties paid by the importer and the actual subsidy 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 export at subsidised prices 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 countervailing duty, an importer may request that countervailing 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.

32. Notifications

(1) The Committee shall prepare all notifications that must be submitted to the WTO Committee on Subsidies and Countervailing Measures relating to the matters covered by the Law 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 questions oral or written questions presented by other WTO Members regarding any Seychelles WTO countervailing notifications.

33. 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 Law 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 countervailing 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 Subsidies and Countervailing Measures Agreement, 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 Law and these Regulations as appropriate.