

TRADE REMEDIES ACT

(Act xxx of 2018)

ARRANGEMENT OF SECTIONS

Sections

PART I - PRELIMINARY

1. This Act may be cited as the Trade Remedies Act.
2. The object of the Act is to foster economic growth and development in order to raise incomes and promote investment and employment in Seychelles by establishing an efficient and effective system for the administration of international trade subject to this Act and any free trade agreement or other international trade agreement to which Seychelles is party.
3. In this Act, unless the context otherwise requires-

“**Committee**” means the Trade Remedies Committee established in terms of section 4 of this Act and which is responsible for anti-dumping, countervailing and safeguard investigations;

“**agricultural safeguard means**” a temporary measure imposed against specific agricultural products once the volume of imports has met a pre-determined threshold”;

“**anti-dumping duty**” means a duty imposed to offset the detrimental effects of imports found to be dumped;

“**CIF**” means cost insurance and freight, indicating the price of an imported product when it arrives at the Seychelles border inclusive of all costs up to that point;

“**confidential information**” means information that is-

- (a) by nature, confidential; or
- (b) otherwise recognised to be confidential;

“**countervailing duty**” means a duty imposed to offset the detrimental effects of imports found to be subsidised;

“**duties**” has the meaning conferred thereon in section 2 of the Customs Management Act (Act No. 22 of 2011);

“**domestic industry**” means the domestic producers as defined in section 13;

“**dumping**” means the introduction of goods into the commerce of Seychelles at an export price that is less than the normal value of those goods;

“**exporter**” means any person that exports a product from a third country to Seychelles, or another person that causes such exports to take place;

“**export price**”, subject to section 20, means

(a) for purposes of anti-dumping investigations, the price actually paid or payable for goods sold for export to Seychelles, net of all taxes, discounts and rebates actually granted and directly related to that sale;

(b) for purposes of countervailing and safeguard investigations, the CIF value of the imported products;

“**GATT 1994**” means the World Trade Organization General Agreement on Tariffs and Trade 1994;

“**government**”, for purposes of a countervailing investigation, includes government at national, regional and local level, as well as any other entity acting at the behest of government;

“**importer**” means any person that imports a product, or causes a product to be imported, into Seychelles;

“**information that is by nature confidential**” means trade, business or industrial information that-

(a) belongs to a person or the State;

(b) has a particular economic value; and

(c) is not generally available to or known by others, and the disclosure of which could-

(i) result in a significant adverse effect on the owner, or on the person that provided the information; or

(ii) give a significant competitive advantage to a competitor of the owner;

“**injury**” in anti-dumping and countervailing investigations means actual or present material injury, a threat of material injury or the material retardation of the establishment of a domestic industry, and in safeguard investigations means actual or present serious injury or a threat of serious injury to the domestic industry;

“**interested parties**” means-

(a) in anti-dumping and countervailing cases domestic producers and trade or business associations a majority of the members of which produce the like product, and in safeguard cases domestic producers and trade or business associations a majority of the members of which produce the like or directly competitive product, in Seychelles;

(b) the importer of a subject product, or a trade or business association a majority of the members of which are importers of such product;

(c) exporters or foreign producers of a subject product, or a trade or business association a majority of the members of which are producers or exporters of such product; and

(d) the government of the exporting country;

provided that in safeguard investigations, parties under (b) and (c) shall only be regarded to be interested parties if such party has declared its interest to participate in an investigation within

the prescribed time, and, with respect to (d), provided that the government has a substantial interest in the matter.

This list shall not preclude the Investigating Authority from allowing domestic or foreign parties other than those mentioned above to be included as interested parties.

“**investigation file**” means a file containing all information, both confidential and non-confidential, obtained by the Investigating Authority during an investigation, as well as any communication with the Committee;

“**Investigating Authority**” means the Authority established in terms of section 9 of this Act;

“**lesser duty**” means a duty lower than the margin of dumping or the margin of subsidy that would be sufficient to remove any injury caused by dumping or subsidised imports;

“**like product**”, for the purposes of anti-dumping and countervailing investigations, means a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration.

“**like or directly competitive product**”, for purposes of a safeguard investigation, means a product which is identical, i.e. alike in all respects to the product under consideration, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the product under consideration; or in the absence thereof, another product that competes directly with the subject product;

“**margin of dumping**” means the difference between the normal value and the export price of a product after all adjustments have been made to both values;

“**margin of subsidy**” means the totality of all subsidies determined on a per-unit basis and divided by the invoiced CIF export price;

“**Minister**” means the Minister responsible for Trade;

“**particular market situation**” may be deemed to exist in an anti-dumping investigation, among others, when prices are artificially low; when there is significant barter trade; when as a result of government intervention production costs are not representative of actual costs; when the product sold in the exporting country is a by-product or a waste product in that country, yet constitutes a primary product in Seychelles; or when there are non-commercial processing arrangements;

“**period of investigation**” for the calculation of the margin of dumping or the margin of subsidisation normally should be 12 months, and in any case no less than 6 months, ending as close to the date of initiation as is practicable, and this period should coincide in a particular investigation with the period of data collection for investigating sales below cost as well as be included in the period of investigation for injury;

“**period of investigation**” for the determination of injury shall normally be 36 months, ending as close to the date of initiation as is practicable;

“**producers**” shall include manufacturers and growers;

“**provisional measure**”, whether related to anti-dumping, countervailing or safeguard, relates to a payment imposed at the request of the Committee to protect the domestic industry against further injury while the investigation is being conducted;

“**public body**” includes a person or body that acts on behalf of the government of, or another public body within, an exporting country;

“**public file**” means a file containing all information in an investigation that has not been ruled to be confidential and which is numbered the same as the investigation file, and to which interested parties and the public may obtain access;

“**quota**” means a volume-based safeguard measure imposed to regulate the volume of imports of the subject product that may enter Seychelles in any given period;

“**regulation**” means a regulation made under this Act;

“**safeguard measure**” means a temporary measure imposed against a surge of imports as a result of an unforeseen development and obligations, including concessions, Seychelles has undertaken in the WTO, and causing serious injury or a threat thereof to the domestic industry producing the like or directly competitive product to allow the industry to adapt to fair international trade and may consist of a safeguard duty, a quota or a tariff quota;

“**serious injury**” means the significant overall impairment of the domestic industry;

“**subject product**” means the product that is under investigation;

“**subsidy**” means any financial contribution by a government or any public body within the territory of the exporting country subject to a countervailing investigation or any form of price income or price support in the sense of Article XVI of GATT 1994, provided that a benefit is conferred thereby;

“**tariff quota**” means a safeguard measure providing for a quota within which a determined customs duty shall apply, with a different customs duty applying to goods imported outside of such quota;

“**undertaking**” means a voluntary undertaking by

(a) an exporter in an anti-dumping investigation to eliminate the margin of dumping or the injury caused by such dumping; or

(b) an exporter or the government of the exporting country in a countervailing investigation to eliminate the margin of subsidy or the injury caused by subsidised exports;

“**trade remedies**” means the contingent remedies of anti-dumping, countervailing or safeguard measures available to protect the domestic industry against international trade causing injury to the domestic industry;

“**Tribunal**” means the Tribunal established in terms of section 44 of the Fair Trading Commission Act, Act 17 of 2009;

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

PART II –AUTHORITIES

General

4. (1) The Committee shall be responsible for
 - (a) conducting formal hearings;
 - (b) decisions to initiate an investigation or reject a properly documented application;
 - (c) preliminary determinations;
 - (d) final determinations in the form of recommendations to the Minister;
 - (e) requesting the Commissioner for Customs to impose a provisional measure, including the level and duration of such measure;
 - (f) decisions regarding the definitive collection of provisional measures;
 - (g) decisions regarding the retrospective application of measures; and
 - (h) the amount, if any, to be refunded to the applicant in a refund application.
- (2) The Tribunal shall be responsible for any reviews of Committee decisions not to initiate an investigation and any final decisions whether to impose measures or terminate an investigation.
- (3) In its assessment of the facts of the matter, the Tribunal shall determine whether
 - (a) the establishment of the facts was proper;
 - (b) the evaluation of those facts was unbiased and objective; and
 - (c) the correct procedures were applied in terms of this Act and its regulations.
- (4) If the establishment of the facts was proper and the evaluation was unbiased and objective, even though the Tribunal might have reached a different conclusion, the evaluation shall not be overturned.
- (5) Other than the Minister’s final decision, the functions of the Committee set out in sub-section (1), and the functions of the Tribunal set out in sub-sections (2) and (3), the Investigating Authority shall be responsible for all functions relating to trade remedy investigations and reviews, including but not limited to –
 - (a) the evaluation of any complaint and application;
 - (b) interaction with all interested parties, including regarding any deficiencies;

- (c) technical meetings with interested parties;
 - (d) determining the adequacy and accuracy of any information, including where appropriate through on-the-spot or desk top verifications;
 - (e) the drafting of technical reports to the Committee;
 - (f) the drafting of the essential facts report; and
 - (g) the drafting of all public reports and notices, including notifications to the relevant WTO Committees.
5. The Committee and the Investigating Authority may make use of the services of a non-governmental expert, whether a citizen of Seychelles or otherwise, to assist it in its investigations, on condition that
- (1) the known interested parties must be informed of the use of the expert;
 - (2) the non-governmental expert may not have a clash of interest in the matter; and
 - (3) such expert is subject to the same confidentiality requirements as investigating officers and Members of the Committee.

Trade Remedies Committee

6. (1) A Trade Remedies Committee is hereby established, and-
- (a) has jurisdiction throughout Seychelles;
 - (b) is a juristic person; and
 - (c) must exercise its functions in accordance with this Act and any other relevant law.
- (2) The Committee must be impartial and must perform its functions without fear, favour or prejudice.
- (3) The Committee consists of
- (a) the Principal Secretary responsible for Trade who shall be the chairperson;
 - (b) a representative from the Ministry of Agriculture;
 - (c) a representative from Seychelles Customs;
 - (d) a representative from the Fair Trading Commission;
 - (e) a representative from the Seychelles Chamber of Commerce and Industry; and
 - (f) three further members drawn from government, academics and civil society.
- (4) The Minister shall appoint, following recommendations from the Committee, the additional members to the Committee, based on their knowledge and expertise in

international trade, law, economics, accounting, commerce, agriculture, industry or public affairs.

(5) To be eligible for appointment and to continue to hold office as a Member of the Committee, a person must be ordinarily resident in Seychelles.

(6) A person may not be a Member of the Committee if that person-

- (a) is an office-bearer of any party, movement, organisation or body of a partisan political nature;
- (b) is an unrehabilitated insolvent;
- (c) has been found mentally unfit by an order of a competent court; or
- (d) has been convicted of an offence and sentenced to imprisonment without the option of a fine.

7. (1) A Member of the Committee must not-

- (a) engage in any activity that may undermine the integrity of the Committee;
- (b) participate in any investigation, hearing or decision concerning a matter in respect of which that person has a financial interest or any similar personal interest;
- (c) make private use of, or profit from, any confidential information obtained as a result of performing that person's official functions in the Committee; or
- (d) divulge any information referred to in paragraph (c) to any third party, except as required as part of that person's official functions within the Committee.

(2) If, at any time, it appears to a Member of the Committee that a matter before the Committee concerns the financial or personal interest of that member, as prescribed, that Member must-

- (a) immediately and fully disclose the interest to the Chairperson, or in the case of the chairperson, to the Deputy Chairperson; and
- (b) withdraw from any further involvement in that matter.

8. (1) The Chairperson must convene the first meeting of the Committee and preside at that meeting.

(2) A quorum shall be present at any meeting where at least four of its members are present.

(3) If the Chairperson is not present, the Members present at the meeting must nominate a member to preside at that meeting.

(4) The decision of a majority of the Members present and voting on a matter is the decision of the Committee on that matter.

(5) In the case of an equality of votes, the person presiding at the meeting may cast a deciding vote in addition to his or her deliberative vote.

(6) The Committee may make rules of order for its proceedings, but any such rules of order must be consistent with this Act.

Investigation Authority

9. The Director General responsible for Trade shall be the head of the Investigating Authority.
10. The Investigating Authority shall, when required, co-opt from within the Ministry, and, if required, from other Ministries, Departments or Agencies, to conduct its investigations.
11. The provisions of section 7 shall apply *mutatis mutandis* to staff of the Investigating Authority.

PART III - GENERAL

General

12. Any anti-dumping, countervailing or safeguard measure shall be applied only under the circumstances provided for and pursuant to investigations initiated and conducted in accordance with the provisions of this Act.

Domestic industry

13. Domestic industry means the domestic producers as a whole of the like products, in the case of anti-dumping or countervailing investigations, or of the like or directly competitive products, in the case of safeguard investigations, or those of them whose collective output of the products constitutes a major proportion of the total domestic production of those products.
14. When producers are related to the exporters or importers or are themselves importers of the allegedly dumped product, the term “domestic industry” may be interpreted as referring to the rest of the producers.
15. For the purpose of section 14, producers shall be deemed to be related to exporters or importers only if (a) one of them directly or indirectly controls the other; or (b) both of them are directly or indirectly controlled by a third person; or (c) together they directly or indirectly control a third person; or (d) they are blood relatives; provided that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers.
16. An application shall be regarded as brought by or on behalf of the Seychelles industry if –
 - (a) at least 25 per cent of the Seychelles producers by domestic production volume support the application; and

- (b) of those producers that express an opinion on the application, at least 50 per cent by domestic production volume support such application.
17. In the case of industries involving an exceptionally large number of producers, the Committee may determine support and opposition by reference to the largest number of producers that can be reasonably included in the investigation or by using statistically valid sampling techniques based on the information available to the Committee at the time of its finding.
18. If a domestic producer withdraws the application or its support thereof after the investigation has been initiated, the Committee may -
- (a) terminate the investigation; or
- (b) disregard the withdrawal of support and continue with its investigation as if all requirements in sections 16 and 17 have been met.

PART IV - DUMPING

General

19. No anti-dumping measure may be imposed where-
- (a) the margin of dumping is less than 2 per cent of the ex-factory export price; or
- (b) the volume of dumped imports from a country is less than 3 per cent of the total volume of imports of the like product into Seychelles, unless countries which individually account for less than 3 per cent of such imports collectively account for more than 7 per cent of imports of the like product into Seychelles.

Export price

20. In anti-dumping investigations where there is no export price or where it appears to the Committee that the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported products are first resold to an independent buyer, or if the products are not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as the Committee may determine.

Normal value

21. In anti-dumping investigations, normal value is-
- (1) the comparable price paid or payable in the ordinary course of trade for like goods intended for consumption in the exporting country or country of origin; or

(2) when there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country; when, because of the particular market situation or the low volume of the sales in the domestic market of the exporting country, such sales do not permit a proper comparison; or in the absence of information on a price contemplated in subsection (1), either-

- (a) the constructed cost of production of the like product in the country of origin when destined for domestic consumption, plus a reasonable addition for selling, general and administrative costs and for profit; or
- (b) the comparable price of the like product when exported to an appropriate third country, as long as that price is representative.

Fair comparison

- 22. The Committee must, in determining the margin of dumping of goods, make reasonable allowance for differences in conditions and terms of sale, differences in taxation and other differences affecting price comparability to ensure a fair comparison between the normal value and the export price.

Margin of dumping

- 23. The comparison between the normal value and the export price shall normally be made either on a weighted average to weighted average basis or on a transaction-by-transaction basis should the circumstances require such comparison.
- 24. A normal value established on a weighted average basis may be compared to prices of individual export transactions if the Committee finds a pattern of export prices which differ significantly among different purchasers, regions or time periods.
- 25. In cases where the Committee has determined the margin of dumping as contemplated in section 24, it shall indicate reasons for its decision in all subsequent reports.
- 26. Without prejudice to section 56, an individual margin of dumping shall normally be determined for each known foreign producer or exporter of the product under investigation.
- 27. For the purpose of determining the individual margin of dumping and of applying anti-dumping duties, different legal entities may be treated as a single economic entity when it is demonstrated that the structural and trade relationship between such entities or with a third entity is sufficiently close, and 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.
- 28. Where the Investigating Authority has limited its examination in accordance with section 56, any anti-dumping duty applied to imports from exporters or producers not included in

the examination shall not exceed the weighted average margin of dumping established with respect to the selected exporters or producers, provided that the Investigating Authority shall disregard for the purpose of this section any zero and de minimis margins and margins established under the circumstances referred to in section 57.

29. The Investigating Authority shall apply individual duties or normal values to imports from any exporter or producer not included in the examination who has nevertheless provided the necessary information during the course of the investigation, except where the number of exporters or producers is so large that individual examinations would be unduly burdensome to the authorities and prevent the timely completion of the investigation.

PART V - SUBSIDIES

General

30. No countervailing measure may be imposed where-
- (a) the margin of subsidisation for developing countries is less than 2 per cent of the export price, or for developed countries is less than 1 per cent of the export price; or
 - (b) the volume of subsidised imports from a country is less than 4 per cent of the volume of imports of the like product in Seychelles, unless countries which individually account for less than 4 per cent of the imports of the like product into Seychelles collectively account for more than 9 per cent of imports of the like product in Seychelles.

Export price

31. In countervailing investigations, the export price shall normally be the invoiced export price at ex-factory level.
32. Where there is no export price or where it appears to the Committee that the export price is unreliable because of association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be constructed on the basis of the price at which the imported products are first resold to an independent buyer, or if the products are not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as the Committee may determine.

Definition of subsidy

33. A subsidy shall be deemed to exist if –
- (1) there is a financial contribution by a government or any public body within the territory of the exporting country or country of origin; or

- (2) there is any form of income or price support in the sense of Article XVI of GATT 1994; and
 - (3) a benefit is thereby conferred.
34. A subsidy shall only be countervailed if it is prohibited or specific to an enterprise or industry or group of enterprises or industries, or if it is specific to a geographical region, within the jurisdiction of the granting authority in the exporting country.

Margin of subsidy

35. No countervailing duty may be imposed unless the Committee finds that a subsidy is specific and has conferred a benefit on the exporter or foreign producer under investigation.
36. In the determination of the margin of subsidy the Committee shall take into consideration the time value of money.
37. Government involvement in the economy of a country shall only be deemed to be a subsidy to the extent that it does not relate to normal market and investment practices or the extent that it confers a benefit over and above any benefit that would normally be derived through normal market forces.
38. Without prejudice to section 56, an individual margin of subsidisation shall normally be determined for each known foreign producer or exporter of the product under investigation.
39. For the purpose of determining the individual margin of subsidy and of applying countervailing duties, different legal entities may be treated as a single economic entity when it is demonstrated that the structural and trade relationship between such entities or with a third entity is sufficiently close, and 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.
40. Where the Investigating Authority has limited its examination in accordance with section 56, any countervailing duty applied to imports from exporters or producers not included in the examination shall not exceed the weighted average margin of subsidisation established with respect to the selected exporters or producers, provided that the Investigating Authority shall disregard for the purpose of this section any zero and de minimis margins and margins established under the circumstances referred to in section 57.
41. The Investigating Authority shall apply individual duties to imports from any exporter or producer not included in the examination who has nevertheless provided the necessary information during the course of the investigation, except where the number of exporters or producers is so large that individual examinations would be unduly burdensome to the authorities and prevent the timely completion of the investigation.

PART VI - SAFEGUARDS

General

42. In order for a safeguard measure to be imposed, it must be shown that
- (a) there has been a significant increase in imports;
 - (b) the increase in imports was caused by
 - (i) developments that were unforeseen at the time Seychelles concluded its WTO concessions; and
 - (ii) the effect of the obligations incurred by Seychelles under GATT 1994, including tariff concessions;
 - (c) the domestic industry producing the like or directly competitive product is experiencing serious injury or a threat of serious injury; and
 - (d) the injury is caused by the increased imports.
43. No safeguard measure may be imposed on a developing country as long as its share of imports of the product concerned into Seychelles does not exceed 3 per cent, provided that developing countries with less than 3 per cent import share collectively account for not more than 9 per cent of total imports of the product concerned.
44. Where imports from a developing country excluded from the application of a safeguard measure on the basis of section 43 increases its exports subsequent to the imposition of a safeguard measure, imports from such country shall immediately become subject to a safeguard measure if its imports increase to more than 3 per cent of the import share during the original investigation period.

Agricultural safeguards

45. For agricultural safeguards, an applicant shall provide evidence that the volume trigger, as set out in the regulations under this Act, has been breached.
46. There shall be no requirement to prove injury or causal link in agricultural safeguard investigations.

PART VII - INJURY

General

47. No anti-dumping or countervailing measure shall be imposed on a subject product unless it has been shown that the domestic industry is experiencing injury in the form of
- (a) material injury;

- (b) a threat of material injury; or
 - (c) the material retardation of the establishment of an industry.
48. No safeguard measure shall be imposed on a subject product unless it has been shown that the domestic industry is experiencing injury in the form of
- (a) serious injury; or
 - (b) a threat of serious injury.

Injury in anti-dumping and countervailing investigations

49. In anti-dumping and countervailing investigations-
- (1) A determination of injury shall be based on positive evidence and involve an objective examination of both
 - (a) the volume of the dumped or subsidised imports and the effect of the dumped or subsidised imports on prices in the domestic market for like products; and
 - (b) the consequent impact of these imports on domestic producers of such products.
 - (2) Where imports of a product from more than one country are simultaneously subject to anti-dumping or countervailing investigations, the Committee may cumulatively assess the effects of such imports only if it determines that
 - (a) the margin of dumping or subsidisation established in relation to the imports from each country is more than de minimis and the volume of imports from each country is not negligible, and
 - (b) a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between the imported products and the conditions of competition between the imported products and the like domestic product.
 - (3) Notwithstanding subsection (2), cumulation may only take place in respect of either anti-dumping or countervailing investigations, and no cross-cumulation may take place between anti-dumping and countervailing investigations.
 - (4) Notwithstanding the provisions of this article, nothing shall prevent the Committee from taking measures to protect an infant industry in terms of the provisions of any free or preferential trade agreement to which Seychelles is party.

Injury in safeguard investigations

50. In safeguard investigations a determination of serious injury or threat thereof shall be based on positive evidence and involve an objective examination of both (a) the volume of the increased imports and the effect of the increased imports on prices in the domestic market

for like or directly competitive products, and (b) the consequent impact of these imports on domestic producers of such products.

PART VIII - CAUSALITY

51. It must be demonstrated that the dumped, subsidised or increased imports are, through the effects of dumping, subsidisation or the increase, causing injury within the meaning of this Act. The demonstration of a causal relationship between the imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the Committee. The Committee shall also examine any known factors other than the dumped, subsidised or increased imports, as the case may be, which at the same time are injuring the domestic industry, and the injuries caused by these other factors must not be attributed to the dumped, subsidised or increased imports.
52. Factors which may be relevant in this respect include, inter alia
- (1) contraction in demand or changes in the patterns of consumption;
 - (2) trade restrictive practices of and competition between the foreign and domestic producers;
 - (3) developments in technology;
 - (4) the export performance and productivity of the domestic industry; and
 - (5) in the case of anti-dumping and countervailing investigations, the volume and prices of imports not sold at dumped or subsidised prices, respectively.

PART IX – INVESTIGATION PROCEDURES

General

53. After initiation, any interested party may voluntarily file with the Investigating Authority any document, affidavit or statement of the views of that party with regard to the application, or other relevant information.
54. The Investigating Authority shall maintain a public file containing all non-confidential information obtained during the course of an investigation and all interested parties shall be free to have access to the public file at all reasonable times throughout the investigation, to make copies of documents from the public file, and to prepare presentations on the basis of this information.
55. Except in circumstances provided for in section 57, the Investigating Authority shall during the course of an investigation satisfy itself as to the accuracy of the information supplied by interested parties upon which its findings are based, as provided for in the regulations.

56. In cases where the number of exporters, producers or types of products involved is so large as to make such a determination impracticable, the Investigating Authority may limit its examination either to a reasonable number of interested parties or products by using samples which are statistically valid on the basis of information available to the authorities at the time of the selection, or to the largest percentage of the volume of the exports from the country in question which can reasonably be investigated.
57. 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 determinations, affirmative or negative, may be made on the basis of the facts available, as provided for in the regulations.
58. (1) Prior to the initiation of an anti-dumping or countervailing investigation, the Investigating Authority shall inform the government of the exporting country that it has received a properly documented application.
- (2) In countervailing investigations, in addition to the requirements under paragraph (1), the Committee shall, prior to initiation of an investigation, invite the government of the exporting country to consultations to discuss the subsidies identified in the application with a view to negate the effects of subsidization, but such consultations shall not delay the initiation of an investigation and the consultations may continue throughout the investigation.
- (a)
- (3) In safeguard investigations, the Investigating Authority shall notify the initiation of an investigation to the WTO Committee on Safeguards within no more than 7 days after the investigation was initiated.
59. Nothing in the Act shall prevent the Investigating Authority to conduct, or the Committee or the Minister to make any decision in, any trade remedy investigations undertaken in terms of any free or preferential trade agreement to which Seychelles is a party.
60. (1) The Investigating Authority may make use of a non-governmental local or foreign expert to assist it in any trade remedies investigation.
- (2) Where it is intended to include non-governmental experts in the investigating team, the known interested parties must be so informed.
- (3) Such non-governmental experts may not have a clash of interest in the matter and shall be subject to confidentiality requirements of the Act.

Confidentiality

61. (1) Any person may, when submitting information to the Investigating Authority, identify information that the person claims to be information that-

- (a) is confidential by its nature; or
 - (b) the person otherwise wishes to be recognized as confidential.
 - (2) No claim for confidentiality shall be accepted unless the party claiming confidentiality has shown good cause for such treatment.
- 62.
- (1) When making any decision in terms of this Act, the Committee may take confidential information into account in making its decision.
 - (2) If the Committee's reasons for a decision would reveal any confidential information, the Investigating Authority must, after publishing the decision in the matter, provide a copy of the proposed reasons to the party concerned before publishing those reasons.
 - (3) No confidential information may be made available to any third party, except in terms of a Court order or as provided for under section 63(2) of this Act.
 - (4) Notwithstanding subsection (3), where the information before the Investigating Authority or the Committee contains evidence of fraud, the Investigating Authority or the Committee shall be obliged to make such information available to the Seychelles Revenue Committee or Customs, as the case may be.
- 63.
- (1) It is an offence to disclose any confidential information regarding the affairs of any person obtained in –
 - (a) carrying out any function in terms of this Act; or
 - (b) as a result of initiating an investigation, or participating in any proceedings in terms of this Act.
 - (2) Subsection (1) does not apply to information disclosed –
 - (a) for the purpose of the proper administration or enforcement of this Act;
 - (b) for the purpose of the administration of justice, including by providing information to
 - (i) the Tribunal in a review by the Tribunal;
 - (ii) a court of law in a judicial review; or
 - (iii) the WTO in a dispute declared against Seychelles; and
 - (c) at the request of an investigation officer or member of the Committee entitled to receive the information.

Hearings and technical meetings

64. The Committee shall, on request or on its own initiative, provide opportunities for all interested parties 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 a meeting, and failure to do so shall not be prejudicial to that party's case. Interested parties shall also have the right, on justification, to present other information orally.
65. Oral information provided under section 64 shall be taken into account by the Committee only in so far as it is subsequently reproduced in writing and made available to other interested parties.
66. Interested parties shall also have the right to request a technical meeting with the Investigating Authority to discuss pertinent aspects of an investigation. Taking into consideration confidentiality requirements, all information discussed during such technical meetings shall be placed on the public file within 7 days from the technical meeting.

Merit assessment and initiation

67. (1) Except as provided for in subsection (4), a trade remedy investigation shall be initiated upon a written application by or on behalf of the domestic industry.
- (2) Any application for anti-dumping, countervailing or safeguard measures must be made using the official questionnaires.
- (3) An investigation shall not be initiated pursuant to subsection (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, in anti-dumping and countervailing cases, or the like and directly competitive product, in the case of safeguard investigations, that the application has been made by or on behalf of the domestic industry, as contemplated in section 16.
- (4) If, in special circumstances, the Committee decides to initiate an investigation without having received a written application by or on behalf of a domestic industry for the initiation of such investigation, it shall proceed only if it has sufficient evidence to justify the initiation of an investigation.
- (5) An investigation shall formally be initiated through publication in the Official Gazette.

Preliminary investigation

68. After initiation, the Investigating Authority shall in-

- (a) anti-dumping and countervailing investigations, inform all known interested parties of the initiation of the investigation and provide them with the relevant documents; and
 - (b) safeguard investigations, inform the WTO Committee on Safeguards of the initiation of the investigation within 7 days and provide it with the relevant documents.
69. The initiation notice and any correspondence shall clearly indicate the period within which to respond.
70. All known interested parties in an anti-dumping or countervailing investigation shall be given notice of the information which the authorities require and ample opportunity to present in writing all evidence which they consider relevant in respect of the investigation in question.
71. The Investigating Authority may grant extensions to individual interested parties for the submission of information on good cause shown.
72. Where any submission contains deficiencies, or where further clarity is required at any stage of an investigation, the Investigating Authority shall identify all such deficiencies or information to be clarified and provide the supplier of the submission an opportunity to address the deficiencies identified or provide the clarification sought.
73. The request to address deficiencies or clarify information may be repeated as many times as the Investigating Authority deems necessary, but shall not delay the taking of a preliminary determination or delay finalisation of the investigation.
74. The Investigating Authority shall prepare a technical report for the Committee to use as basis for the Committee's preliminary determination whether to impose a provisional anti-dumping, countervailing or safeguard measure.
75. The Investigating Authority shall publish a separate report of all preliminary decisions sufficiently detailing the findings and conclusions reached on all relevant issues of fact and law considered in the preliminary investigation.

Final investigation

76. The Investigating Authority shall, before a final determination is made, inform all interested parties of the essential facts under consideration which will form the basis for the decision whether to apply definitive measures, and such disclosure should take place in sufficient time for the parties to defend their interests.
77. The Investigating Authority shall provide opportunities for 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.

78. The Investigating Authority shall prepare a technical report for the Committee to use as basis for the Committee's final determination, which will be in the form of a recommendation to the Minister responsible for trade matters.
79. The Minister responsible for trade matters shall take a final decision whether to impose a definitive anti-dumping, countervailing or safeguard measure on the basis of the Committee's recommendation.
80. The Minister may accept or reject a recommendation by the Committee or refer it back for reconsideration.
81. (1) Anti-dumping and countervailing investigations shall, except in special circumstances, be concluded within one year, and in no case more than 18 months, after their initiation.
(2) Safeguard investigations shall, except in special circumstances, be concluded within 9 months, and in no case more than 12 months, after their initiation.
82. Where the shorter deadlines contemplated in section 81 are exceeded, the Investigating Authority shall provide an explanation of the special circumstances that led to the extension of the investigation.
83. (1) The Investigating Authority shall publish a notice in the Official Gazette providing a broad overview of any preliminary and final determinations by the Committee and the Minister.
(2) The Investigating Authority shall publish a separate report of all final determinations sufficiently detailing the findings and conclusions reached on all relevant issues of fact and law considered in the investigation.
(3) All public notices and reports shall be forwarded to all interested parties.

Trade remedy measures

84. Where the Committee is of the opinion that further injury may be caused during the course of an investigation, or that a threat of injury may culminate in actual injury while an investigation is in progress, it may request the Commissioner of Customs to impose a provisional payment in the amount and for the duration indicated in any such request.
85. Definitive measures may take the form—
- (1) in anti-dumping and countervailing investigations, an anti-dumping or countervailing duty, as the case may be, or an undertaking from a relevant interested party to increase the price to remove the dumping or subsidisation, as the case may be, or the negative impact of the subsidies on the Seychelles industry;
- (2) in safeguard investigations, a duty, a quota or a tariff quota.

86. Where a final decision is made to impose a definitive measure, the Minister shall request the Commissioner for Customs to impose the measure, indicating the form, level and duration thereof and, where applicable, any liberalisation thereof.
87. The lesser duty rule may be considered in anti-dumping and countervailing investigations, and the level of duty may be set at the lower of the margin of dumping or subsidisation and the margin of injury experienced by the domestic industry.
88. The final decision whether to impose an anti-dumping, countervailing or safeguard measure even if all the requirements for the imposition of such measure have been met, will lie with the Minister responsible for Trade, on recommendation from the Committee.

PART XI—REVIEWS

General

89. (1) Any trade remedy measure shall remain in force only as long as and to the extent necessary to counteract dumping, subsidised imports or increased imports which are causing injury.
(2) Notwithstanding paragraph (1), any definitive anti-dumping or countervailing duty shall be terminated on a date not later than five years from its imposition or re-imposition, unless the Committee determines, in a sunset review initiated before that date on its initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time prior to that date, that the expiry of the duty would be likely to lead to continuation or recurrence of dumping or subsidised imports and injury. The duty may remain in force pending the outcome of such a review.
(3) For purposes of paragraph (2), the duration of a provisional anti-dumping or countervailing measure shall not be regarded as part of the duration of an anti-dumping or countervailing duty, regardless of whether the provisional measure was definitively collected or not.
(4) The Committee shall review the need for the continued imposition of an anti-dumping or countervailing duty, where warranted, on its own initiative or, provided that a reasonable period of time has elapsed since the imposition of such definitive duty, upon request by any interested party which submits positive information substantiating the need for a changed circumstances review.
(5) The Committee shall promptly carry out a new shipper review for the purpose of determining individual margins of dumping or subsidisation for any producers in the exporting country in question that did not export the product to Seychelles during the period of investigation, provided the producer can show that it is not related to any of the exporters or producers in the exporting country who are subject to the anti-dumping or countervailing duties on the product.

(6) The Committee shall investigate the absorption or circumvention of any anti-dumping, countervailing or safeguard measure, where warranted, on its own initiative or upon request by any interested party which submits positive information substantiating the need for an anti-circumvention review.

(7) Any safeguard measure imposed for a period exceeding one year, including the period of provisional application, shall be progressively liberalised at regular intervals during the period of application.

(8) If the duration of a safeguard measure exceeds three years, the Committee shall review the situation not later than the mid-term of the measure to determine whether the industry is adjusting and, if appropriate, withdraw it or increase the pace of liberalisation.

(9) A safeguard measure shall not be imposed for an original period exceeding four years, which period shall include the duration of a provisional safeguard measure, unless the Committee determines, in an extension review finalised before that date on its initiative or upon a duly substantiated request made by or on behalf of the domestic, that the safeguard measure is still required to assist the domestic industry to adjust to international competition, and only if there is evidence of such adjustment taking place.

(10) Any safeguard measure applied subsequent to an extension review shall not be more restrictive than the safeguard measure in place before the review and such safeguard measure shall continue to be liberalised at regular intervals.

(11) A safeguard measure may be extended, once or in any number of extensions, before the original period for which it was imposed lapses, to a maximum of 10 years, including the period for which a provisional measure was applied, on condition that a prior review, finding that such a safeguard measure continues to be necessary, is concluded before each extension.

Ex-parte reviews

90. The Committee may amend or revoke a decision or recommendation concerning an application if-

(1) the decision or recommendation was based on incorrect information and the applicant or supplier of the information-

(a) was responsible for the error in the information; and

(b) benefited or could have benefited, from the decision or recommendation;

(2) the decision was obtained by deceit; or

(3) a person has breached an obligation attached to the decision or recommendation.

Tribunal

91. (1) Any interested party that cooperated in an investigation or review and that is affected by a final decision of the Investigating Authority, Committee or Minister, may apply to the Tribunal for a review of that decision and shall serve a copy of the review application on the Investigating Authority and on the Committee on the same day.
- (2) A final decision referred to in subsection (1) shall include
- (a) a decision not to initiate an investigation;
 - (b) a decision on whether information is confidential or not;
 - (c) a decision to terminate an investigation without the application of any measures; and
 - (d) a decision to impose definitive measures.
- (3) Any review under this Act shall be brought within no more than 60 days after publication of the final determination in the matter or, for determinations that are not published, within 60 days from the date the determination was made known to the party in question.
- (4) The Investigating Authority shall provide the Tribunal with the full body of evidence that served before the Investigating Authority, the Committee and the Minister, including both confidential and non-confidential information, within 5 working days from the date the review is lodged.
- (5) In its assessment of the facts of the matter, the Tribunal shall determine
- (a) whether the establishment of the facts was proper;
 - (b) whether the evaluation of those facts was unbiased and objective; and
 - (c) whether the correct procedures were followed.
- (6) If the establishment of the facts was proper and the evaluation was unbiased and objective, even though the Tribunal might have reached a different conclusion, the evaluation shall not be overturned.
- (7) The applicant before the Tribunal shall submit its full written submissions within 30 days from the date the review was lodged.
- (8) The Investigating Authority, the Committee, the Minister and other interested parties that had cooperated in the investigation shall receive 30 days from the date of the applicant's written submission to respond, and the applicant will have 14 days from that date to reply.
- (9) The Tribunal may grant an extension to the time periods in subsection (7) and (8) where good cause is shown, including where the Tribunal is in recess.
- (10) The Tribunal may decide to hold a hearing, in which case all parties shall receive at least 14 days' notice of the date and venue for such hearing.

(11) Parties may rely on third parties to represent them in the review proceedings before the Tribunal.

(12) The Tribunal shall normally provide its ruling within 90 days from the date the applicant's written submissions were received. In special circumstances, this may be extended to a maximum of 150 days.

(13) All parties shall pay their own costs before the Tribunal.

Court of law

92. (1) Any decision by the Tribunal may be reviewed by the Supreme Court in line with normal Supreme Court rules.

(2) An appeal against a decision of the Supreme Court in respect of a matter within its jurisdiction lies to the Court of Appeal, only with leave to appeal, and subject to its rules.

PART XII – REGULATIONS AND GUIDELINES

93. The Minister may approve regulations-

(1) regarding the proceedings and functions of the Committee and the Investigating Authority;

(2) to give effect to the objects of this Act; and

(3) on any matter that may or must be prescribed in terms of this Act.

94. The Committee may issue guidelines on the Committee's policy approach to any matter within its jurisdiction and on the procedures to be followed by the Investigating Authority.

PART XIII – FINAL PROVISIONS

95. (1) A person found guilty of an offence as set out in subsection (1) of section 63 shall be liable to a fine of not less than R50,000 but not more than R500,000 or to imprisonment for not less than one month but not more than 12 months or to both such fine and imprisonment.

(2) Any person found guilty of any other offence, such as the deliberate supply of false information to the Investigating Authority or the Committee, shall be liable to a fine not exceeding R50 000,00 or to imprisonment for a period not exceeding six months, or to both such fine and imprisonment.

96. This Act will come into effect on a date to be promulgated by the Minister.