

**NOTIFICATION OF LAWS AND REGULATIONS
UNDER ARTICLES 18.5 AND 32.6 OF THE AGREEMENTS**

MALAYSIA

Addendum

The following communication, dated 10 May 2000, has been received from the Permanent Mission of Malaysia.

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- (a) Act A 1046 – Countervailing and Anti-Dumping Duties (Amendment) Act 1998; and
 - (b) Countervailing and Anti-Dumping Duties (Amendment) Regulations 1999.

With reference to Article 18.5 of the Agreement on the Implementation of Article VI of the GATT 1994 and Article 32.6 of the Agreement on Subsidies and Countervailing Measures, Malaysia submits herewith the Countervailing and Anti-Dumping Duties Act (Amendment) 1998 (Act A1046) and Countervailing and Anti-Dumping Duties (Amendment) Regulations 1999 (P.U. (A) 488/99).

Explanatory Notes

The Malaysian Countervailing and Anti-Dumping Duties Act 1993 (Act 504) and the Countervailing and Anti-Dumping Duties Regulations 1994 (P.U. (A) 233/94), the principal Act and Regulations, came into force on 15 July 1993 and 28 April 1994 respectively i.e. before the implementation of the WTO Agreement on Anti-Dumping and Agreement on Subsidies and Countervailing Measures. Hence, several provisions of the Act and the Regulations need to be amended to bring them into conformity with the WTO Agreements.

The amendments to the Act have been passed by the Parliament and given Royal Assent on 28 December 1998. Subsequently, the Minister of International Trade and Industry, Malaysia has approved amendments to the Regulations on 10 November 1999.

Both the Amendment Act (Act A1046) and the Amendment Regulations (P.U. (A) 488/99) have come into operation on 1 December 1999 except the amendments in section 3 of that Act which provide for the insertion of paragraphs 2C(b) and 2C(c) into Act 504.

LAWS OF MALAYSIA

Act A1046

**COUNTERVAILING AND ANTI-DUMPING DUTIES
(AMENDMENT) ACT 1998**

An Act to amend the Countervailing and Anti-Dumping Duties Act 1993.

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ENACTED by the Parliament of Malaysia as follows:

Short title and commencement

1. (1) This Act may be cited as the Countervailing and Anti-Dumping Duties (Amendment) Act 1998.

(2) This Act shall come into operation on a date to be appointed by the Minister by notification in the Gazette, and the Minister may appoint different dates for different provisions of this Act.

Amendment of section 2

2. The Countervailing and Anti-Dumping Duties Act 1993 [Act 504], which in this Act is referred to as the "principal Act", is amended in section 2 -

(a) in subsection (1) -

(i) by deleting the definition of "comparable merchandise";

(ii) by inserting before the definition of "domestic industry" the following definitions:

"country" includes a customs union or customs territory that possesses full autonomy in the conduct of its external commercial relations and of the other matters provided for in the World Trade Organization Agreement;

"*de minimis*"-

(a) in relation to subsidy means the amount of the subsidy in relation to the imports from the country under investigation is less than one per centum *ad valorem*; and

(b) in relation to dumping means the margin of dumping is less than two per centum, expressed as a percentage of the export price;";

(iii) by substituting for the definition of "domestic industry" the following definition:

"domestic industry" means -

- (a) the domestic producers as a whole of the like product;
- (b) the domestic producers whose collective output of the like product constitutes a major proportion of the total domestic production of the like product; or
- (c) where appropriate, the regional producers of the like product:

Provided that when any of the producers referred to in paragraphs (a), (b) and (c) are related to the exporters or importers, or are themselves importers of the subject merchandise or, in relation to Part II, are importers of a like product from other countries, the expression "domestic industry" may be construed as referring to the rest of the producers referred to in paragraph (a), (b) or (c), as the case may be, other than such related producers or producers who are importers;'

- (iv) by inserting after the definition of "domestic industry" the following definition:

"dumping" means the importation of merchandise into Malaysia at less than its normal value as sold in the domestic market of the exporting country;'

- (v) in the definition of "dumping margin" by substituting for the words "the subject merchandise exceeds its" the words "a merchandise exceeds the";
- (vi) in the definition of "exporting country" by substituting for paragraph (b) the following paragraph:

"(c) in cases where the subject merchandise is not exported directly to Malaysia but is transhipped through an intermediate country -

(i) where the subject merchandise is not substantially transformed in the intermediate country, the country of origin of the subject merchandise;

(ii) where the subject merchandise is substantially transformed in the intermediate country, the intermediate country;";

- (vii) by inserting after the definition of "exporting country" the following definitions:

"General Agreement on Tariffs and Trade 1994" means the General Agreement on Tariffs and Trade 1994 set out in Annex 1A to the World Trade Organization Agreement;

"Government" means the Government of Malaysia;

"injury" means material injury or threat of material injury to the domestic industry or material retardation of the establishment of such an industry;'

- (viii) in the definition of "interested party" -

- (A) by deleting the word "or" at the end of paragraph (d);
- (B) by inserting the word "or" at the end of paragraph (e); and
- (C) by inserting after paragraph (e) the following paragraph:
 - "(c) any other party as the Government considers appropriate;"
- (ix) by substituting for the definition of "like product" the following definition:
 - `"like product" means a product that is identical or alike in all respects to the subject merchandise or, in the absence of such a product, another product that although not alike in all respects has characteristics closely resembling the subject merchandise;`
- (x) by inserting after the definition of "like product" the following definition:
 - `"Member" means a Member to the World Trade Organization Agreement;`
- (xi) by inserting after the definition of "Minister" the following definition:
 - `"negligible" -
 - (a) in relation to a countervailing duty action, in the case of a developing country Member, means the volume of imports of the subject merchandise, actual or potential, from a particular developing country Member into Malaysia accounts for less than four per centum of the total imports of the like product unless developing country Members that individually account for less than four per centum of the imports of the like product into Malaysia collectively account for more than nine per centum of the total imports of the like product into Malaysia; and
 - (b) in relation to an anti-dumping duty action means the volume of imports of the subject merchandise, actual or potential, from a particular country into Malaysia accounts for less than three per centum of the total imports of the like product unless countries that individually account for less than three per centum of the imports of the like product into Malaysia collectively account for more than seven per centum of the total imports of the like product into Malaysia;`
- (xii) by substituting for the definition of "non-market economy country" the following definition:
 - `"non-market economy country" means any foreign country that the Government determines operates on a centrally-planned economy and not on market principles of cost or pricing structures or free-enterprise economy;`
- (xiii) by substituting for the definition of "regional producers" the following definition:
 - `"regional producers" means the domestic producers of the like product located in a specific regional market within Malaysia where in exceptional circumstances there are two or more competitive markets within Malaysia for the production in

question and in such case, the producers of the like product within each market may be regarded as a separate industry if -

- (a) the producers within each market sell all or almost all of their production of the merchandise in question within that market; and
- (b) the demand in each market is not to any substantial degree supplied by producers of the merchandise in question located elsewhere in Malaysia;'

(xiv) by deleting the definition of "Tribunal";

(xv) in the definition of "undertakings" by substituting for the full stop a semicolon;

and

(xvi) by inserting after the definition of "undertakings" the following definitions:

'"World Trade Organization" means the World Trade Organization established by the World Trade Organization Agreement;

World Trade Organization Agreement" means the Marrakesh Agreement Establishing the World Trade Organization done at Marrakesh on 15 April 1994.';

(b) by deleting subsection (2);

(c) by deleting subsection (4); and

(d) in subsection (5) -

(i) by substituting for the word "unless" the words "provided that";

(ii) by inserting after the word "believing" the words "or suspecting"; and

(iii) by substituting for the words "such related parties will not" the words "the effect of the relationship is such as to cause the party concerned to".

New Part IA

3. The principal Act is amended by inserting after Part I the following Part:

"PART IA

SUBSIDIES

Subsidy 2A. For the purposes of this Act, "subsidy", in relation to merchandise that is imported into Malaysia, means

- (a) a financial contribution by a government or a public body, or by a private body entrusted or directed by the government or public body to carry out a

governmental function, that is made in connection with the production, manufacture or export of the merchandise and that involves one or more of the following:

- (i) a direct transfer of funds from the government or public body or private body to the enterprise by whom the merchandise is produced, manufactured or exported (after this referred to as "the enterprise");
 - (ii) a potential direct transfer of funds from the government or public body or private body to the enterprise contingent on the occurrence of particular circumstances;
 - (iii) the acceptance of liabilities, actual or potential, of the enterprise by the government or public body or private body;
 - (iv) the forgoing, or non-collection, of revenue (other than an allowable exemption or remission) due to the government or public body or private body from the enterprise
 - (v) the provision by the government or public body or private body of goods or services to the enterprise other than general infrastructure;
 - (vi) the purchase by the government or public body or private body of goods provided by the enterprise;
 - (vii) the making of payments to a funding mechanism by the government or public body; or
- (b) any form of income or price support as specified in Article XVI of the General Agreement on Tariffs and Trade 1994 that is received from a government or public body, if that financial contribution or income or price support confers a benefit in relation to the merchandise.

Prohibited
subsidy

2B. The following subsidies shall be prohibited:

- (a) subsidies contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance, including those as may be prescribed; and
- (b) subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported merchandise.

Actionable
subsidy

2C. A subsidy that causes the following adverse effects to the domestic interest shall be subject to countervailing measures under this Act:

- (a) injury to the domestic industry;
- (b) nullification or impairment of benefits accruing directly or indirectly under the General Agreement on Tariffs and Trade 1994, in particular the benefits of concessions bound under Article II of the General Agreement on Tariffs and Trade 1994; or
- (c) serious prejudice to domestic interests:

Provided that this subsection shall not apply to subsidies maintained on agricultural products as provided in Article 13 of the Agreement on Agriculture set out in Annex 1A to the World Trade Organization Agreement.

- Non-actionable subsidy 2D. The following subsidies shall be regarded as non-actionable subsidies and shall not be subject to countervailing duties under this Act:
- (a) subsidies that are not specific within the meaning of subsection 3(2); and
 - (b) subsidies that are specific within the meaning of sub-section 3(2) but meet all the prescribed conditions.
- Calculation of subsidy 2E. Subsidy shall be calculated in the prescribed manner."

Substitution of section 3

4. The principal Act is amended by substituting for section 3 the following section:

- "Imposition of counter-vailing duties 3. (1) No countervailing duty shall be imposed except in accordance with this Act.
- (2) A subsidy as specified in section 2A shall be subject to countervailing duties as provided under this Act only if the subsidy is specific, as may be prescribed, and is not a non-actionable subsidy.
- (3) The amount of the countervailing duty to be imposed shall be calculated in accordance with the method as may be prescribed."

Substitution of section 4

5. The principal Act is amended by substituting for section 4 the following section:

- "Initiation of investigation 4. (1) The Government may initiate an investigation to determine the existence, degree and effect of any alleged subsidy upon the submission of a written petition by or on behalf of the domestic industry producing the like product.
- (2) A petition under subsection (1) shall contain such information as may be prescribed and shall include sufficient evidence of the existence of a subsidy and injury and a causal link between the imports of the subject merchandise and the alleged injury.
- (3) The Government shall, within the prescribed period, examine the petition and other available information and evidence to determine whether –
- (a) the evidence is sufficient to justify the initiation of an investigation;
 - (b) there is a sufficient degree of support for or opposition to the petition expressed by the domestic industry; and
 - (c) an investigation is in the public interest.

(4) A petition under sub-section (1) shall be immediately rejected if the Government is satisfied that -

- (a) there is no sufficient evidence of either subsidization or of injury to justify the initiation of a countervailing duty investigation, such as but not limited to cases where the amount of a subsidy is *de minimis* or where the volume of imports of the subject merchandise, actual or potential, or the injury, is negligible; or
- (b) an investigation is not in the public interest.

(5) Where the Government rejects a petition under subsection (4), the Government shall, as soon as practicable, notify the petitioner in writing of its determination not to initiate an investigation.

(6) Notwithstanding subsection (1) the Government may, in special circumstances, initiate a countervailing duty investigation on its own accord without having received a written petition by or on behalf of the domestic industry for the initiation of such investigation if it has sufficient evidence of each of the matters specified in subsection (2).

(7) Where the Government decides to initiate an investigation under subsection (1) or subsection (6), it shall notify the appropriate interested parties and publish a notice of initiation of investigation.

(8) Evidence of both subsidy and injury shall be considered simultaneously in the decision whether to initiate an investigation and after that during the course of the investigation, starting on a date not later than the earliest date the provisional measures may be applied.

(9) The Government shall not disclose any petition made under this section unless the Government has made a decision to initiate an investigation."

Amendment of section 5

6. Section 5 of the principal Act is amended -

- (a) in subsection (1), by inserting after the word "provide" the words "the Members the merchandise of which are subject to investigation and"; and
- (b) by inserting after subsection (2) the following subsections:

"(3) No affirmative determination whether preliminary or final shall be made without reasonable opportunity for consultations having been given.

(4) The consultations referred to in subsection (1) may establish the basis for proceeding under section 4.

(5) The Government shall also permit, upon request, the Members the merchandise of which are subject to investigation access to non-confidential evidence, including the non-

confidential summary of confidential information, being used for initiating or conducting the investigation."

New section 7A

7. The principal Act is amended inserting after section 7 the following section:

"Injury and causal link. 7A. (1) A determination of injury for the purpose of a countervailing duty investigation under this Act shall be based on relevant evidence and shall involve an objective examination of both the volume of imports of the subject merchandise and the effect of the subject merchandise on prices in the domestic market for like products and the consequent impact of these imports on the domestic producers of such products.

(2) For the purposes of this Act, it shall be demonstrated that the subject merchandise is, through the effects of subsidies, causing injury.

(3) The demonstration of a causal relationship between the subject merchandise and the injury to the domestic industry shall be based on an examination of all relevant evidence available to the Government.

(4) The Government shall also examine any known factors other than the subject merchandise that at the same time are injuring the domestic industry and the injuries caused by these other factors shall not be attributed to the subject merchandise.

(5) A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility.

(6) In making a determination regarding the existence of a threat of material injury, the Government shall consider such factors as may be prescribed.

(7) In cases where injury is threatened by the subject merchandise, the application of countervailing measures shall be considered and decided with special care."

Amendment of section 8

8. Section 8 of the principal Act is amended -

(a) in subsection (1) -

(i) in paragraph (a), by inserting after the word "merchandise" the words "and the amount of such subsidy"; and

(ii) in paragraph (b), by substituting for subparagraphs (i), (ii) and (iii) the following subparagraphs respectively:

"(i) the subject merchandise, through the effects of the subsidy, is causing material injury to the domestic industry in Malaysia producing the like product;

- (ii) the subject merchandise, through the effects of the subsidy, is threatening to cause material injury to the domestic industry in Malaysia producing the like product; or
 - (iii) the subject merchandise, through the effects of the subsidy, is causing material retardation of the establishment of such an industry in Malaysia."; and
- (b) in subsection (3) -
 - (i) by substituting for the comma at the end of paragraph (b) a full stop; and
 - (ii) by deleting the words "and apply such provisional measures, if necessary."

Amendment of section 10

9. Section 10 of the principal Act is amended -

- (a) in subsection (1) -
 - (i) in paragraph (a), by deleting the comma after the word "merchandise"; and
 - (ii) in paragraph (b), by substituting for subparagraphs (i),(ii) and (iii) the following subparagraphs respectively:
 - "(c) the subject merchandise, through the effects of the subsidy, is causing material injury to the domestic industry in Malaysia producing the like product;
 - (ii) the subject merchandise, through the effects of the subsidy, is threatening to cause material injury to the domestic industry in Malaysia producing the like product; or
 - (iii) the subject merchandise, through the effects of the subsidy, is causing material retardation of the establishment of such an industry in Malaysia.";
- (b) by substituting for subsection (2) the following subsection:

"(2) The Government shall, before making a final determination, inform all interested Members and interested parties of the essential facts under consideration that form the basis for the decision whether to apply definitive measures.";
- (c) by inserting after subsection (2) the following subsection:

"(2A) A disclosure under subsection (2) shall be made in sufficient time for all interested Members and interested parties to defend their interests.";
- (d) in paragraph (4)(b), by substituting for the words "subsection 3(2)" the words "subsection 3(3)";
- (e) by inserting after subsection (4) the following subsection:

"(4A) Where an affirmative final determination has been made, the Government may take into consideration public interest in determining whether to impose countervailing duties and the amount of such duties.";

(f) by inserting after subsection (5) the following subsection:

"(5A) Notwithstanding subsection (5), where a determination of threat of injury or material retardation is made but no injury has occurred, a definitive countervailing duty may be imposed only from the date of the determination of the existence of a threat of injury or material retardation, and any security submitted during the period of the application of provisional measures shall be released immediately.";

(g) by inserting after subsection (7) the following subsection:

"(7A) No countervailing duties shall be imposed retroactively under subsection (7) on merchandise entered for consumption before the date of initiation of the investigation.";

(h) in subsection (8) -

(i) by substituting for the words "on a country-wide and" the words "in each case on a";
and

(ii) by inserting after the words "subsidizing the subject merchandise" the words "causing injury"; and

(i) by inserting after subsection (8) the following subsection:

"(9) Provisional measures and definitive countervailing duties shall only be applied to subject merchandise that enters for consumption after the time when the decision under subsection 9(1) or 10(4), as the case may be, enters into force.".

Amendment of section 11

10. Subsection 11(1) of the principal Act is amended -

(a) by deleting the word "or" at the end of paragraph (a);

(b) by substituting for the comma at the end of paragraph (b) a semicolon;

(c) by inserting after paragraph (b) the following paragraphs:

"(c) the Government is satisfied that there is no sufficient evidence of subsidization or injury to justify proceeding with the investigation;

(d) the amount of subsidy is *de minimis* or the volume of imports of the subject merchandise, actual or potential, or the injury, is negligible; or

(e) the Government determines that termination of the investigation is in the public interest."; and

- (d) by deleting the words "provided that the Government determines that such termination is in the public interest."

Amendment of section 12

11. Section 12 of the principal Act is amended -

(a) in subsection (2) -

(i) by deleting the words "such undertakings"; and

(ii) by substituting for paragraphs (a), (b) and (c) the following paragraphs:

"(a) the undertakings -

(i) will eliminate the subsidy or the injurious effects caused by the subject merchandise; and

(ii) can be monitored effectively; or

(b) the undertakings are in the public interest.";

(b) by substituting for subsection (3) the following subsection:

"(3) Undertakings shall not be sought or accepted unless the Government has made a preliminary affirmative determination of subsidization and injury caused by such subsidization and, in the case of undertakings from exporters, has obtained the consent of the exporting Member.";

(f) in subsection (5), by substituting for the word "may" the word "shall";

(g) in subsection (6), by deleting the words "or for any other reason,";

(h) in subsection (7) -

(i) by deleting the words "or for any other reason,"; and

(ii) by substituting for the words "in circumstances referred to in subsection (8)" the words "where the negative determination is due in large part to the existence of the undertakings";

(i) in subsection (8), by inserting after the word "maintained" the words "for a reasonable period";

(j) by inserting after subsection (8) the following subsections:

"(8A) The Government may suggest for price undertakings to be provided by exporting Members or exporters, but no exporter shall be obliged to enter into such undertakings.

(8B) The fact that the exporting Members or exporters do not offer price undertakings, or do not accept an invitation to do so, shall in no way affect the consideration of the case.

(8C) Notwithstanding sub-sections (8A) and (8B), the Government shall be free to determine that a threat of injury is more likely to be realized if the importation of the subject merchandise continues.

(8D) The Government may require any exporting Member or exporter from whom an undertaking has been accepted to provide, periodically, information relevant to the fulfilment of such undertaking and to permit verification of pertinent information.

(8E) Non-compliance with sub-section (8D) shall be construed as a breach of the undertaking."; and

(h) in subsection (10) -

(i) by deleting paragraph (a); and

(ii) in paragraph (b), by inserting after the words "section 9" the words ", if appropriate".

New section 12A

12. The principal Act is amended by inserting after section 12 the following section:

"Duration of duty "12A. A countervailing duty imposed under this Act shall remain in force only for as long as and to the extent necessary to counteract the subsidization that is causing the injury.".

Amendment of section 13

13. Section 13 of the principal Act is amended -

(a) in subsection (1) -

(i) by deleting the word "appropriate";

(ii) in paragraph (c) -

(A) by substituting for the word "modified" the word "revised"; and

(B) by deleting the word "or" at the end of that paragraph;

(iii) in paragraph (d)

(A) by inserting after the word "duty" the words "or undertaking"; and

(B) by substituting for the comma at the end of that paragraph the words "; or";

(iv) by inserting after paragraph (d) the following paragraph:

"(e) an administrative review is in the public interest,"; and

- (v) by deleting the words "if the Government determines that such review is in the public interest";
- (b) by substituting for subsection (6) the following subsection:
- "(6) No countervailing duty shall be collected on imports made after five years from the date of its imposition, or five years from the date of the conclusion of the most recent administrative review under subsection (1) that covered both subsidy and injury, and undertakings shall automatically lapse with respect to imports made after five years from the date of publication of the notice of suspension of the investigation, unless the Government determines, in an administrative review initiated before that date on the Government's own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time before that date, that the expiry of the duty or undertaking would be likely to lead to a continuation or recurrence of subsidization and injury."; and
- (c) by inserting after subsection (6) the following subsections:
- "(7) A countervailing duty duly imposed under this Act may remain in force pending the outcome of an administrative review under this section.
- (8) An interested party who submits relevant information substantiating the need for an administrative review shall have the right to request for an administrative review by the Government to determine one or more of the following:
- (a) whether the continued imposition of the countervailing duty is necessary to offset subsidization;
- (b) whether the injury would be likely to continue to recur if the duty were removed or varied:

Provided that the period specified in subsection (6) has lapsed since the imposition of the definitive countervailing duty."

New sections 13A and 13B

14. The principal Act is amended by inserting after section 13 the following sections:

"Refund review 13A. (1) Without prejudice to section 13, an importer may request for a refund of the countervailing duties paid where the importer can show that the amount of the countervailable subsidy on the basis of which the countervailing duties were imposed has been either eliminated or reduced to a level that is below the level of the countervailing duties in force.

(2) A request for a refund review shall be submitted in writing to the Government and shall contain -

- (a) a list of all entries of the subject merchandise into Malaysia for which the refund review is requested; and
- (b) all relevant evidence to show that the importer is entitled to a refund on each such entry.

(3) Where, on the completion of a refund review under this section, the Government determines that -

- (a) a refund of the countervailing duty, wholly or partly, is appropriate;
- (b) no countervailing duty should have been imposed; or
- (c) the countervailing duty that was imposed is higher than the countervailing duty that should have been imposed in the circumstances,

the Government shall refund such amount of the countervailing duty collected as it deems fit.

(4) A refund under subsection (3) shall, as far as practicable, be made within ninety days from the date of the determination of the refund review.

(5) A finding in the refund review that no countervailing duty should have been imposed shall not by itself require the Government to terminate the definitive countervailing duty.

Expedited
review

13B. (1) An exporter or producer whose exports of the subject merchandise are subject to a definitive countervailing duty but who was not actually investigated for reasons other than a refusal to co-operate shall be entitled to an expedited review in order that the Government may immediately establish an individual countervailing duty rate for the exporter or producer.

(2) No countervailing duty shall be imposed on imports from the exporters or producers referred to in subsection (1) while the review is being carried out.

(3) Notwithstanding subsection (2), the Government may withhold an appraisalment or request guarantees to ensure that, should a review under subsection (1) result in a determination of subsidization and injury caused thereby in respect of exports of the subject merchandise into Malaysia by the exporters or producers referred to in subsection (1), countervailing duties may be imposed retroactively to the date of the initiation of the review."

Substitution of section 14

15. The principal Act is amended by substituting for section 14 the following section:

"Developing
country
member

14. Notwithstanding any other provisions of this Act, countervailing duty proceedings against exporters or producers from developing country Members of the World Trade Organization shall be carried out in such manner as may be prescribed."

Amendment of section 15

16. Section 15 of the principal Act is amended -

(a) by substituting for subsection (1) the following subsection:

"(1) No anti-dumping duty shall be imposed except in accordance with this Act."; and

(b) in paragraph (2)(b), by deleting the words "determined in paragraph (1)(b)".

Amendment of section 16

17. Section 16 of the principal Act is amended -

(a) in subsection (1), by substituting for the words "comparable merchandise" the words "the like product";

(b) in subsection (2) -

(i) by substituting for the word "either" the word "determined"; and

(ii) by substituting for paragraphs (a) and (b) the following paragraphs respectively:

"(a) by comparison with a comparable price of the like product when exported to an appropriate third country provided that the comparable price is representative; or

(b) by constructing the value of the subject merchandise by adding cost of production in the country of origin plus a reasonable amount for selling, administrative and other general expenses and for profits.";

(c) by substituting for subsections (3), (4), (5) and (6) the following subsections respectively:

"(3) If there are reasonable grounds for believing or suspecting that a sale of the like product under subsection (1) or paragraph (2)(a) is at a price below unit production costs (fixed and variable) plus selling, administrative and other general expenses, the sale may be treated as not having been made in the ordinary course of trade by reason of price and may be disregarded in determining normal value only if the Government determines that such sale was made within an extended period of time in substantial quantities and is at a price that does not provide for the recovery of all costs within a reasonable period of time.

(4) If the price of a sale referred to in sub-section (3) is above the weighted average per unit cost for the period of investigation, such price shall be considered to provide for the recovery of costs within a reasonable period of time.

(5) For the purpose of this section, the amount for selling, administrative and other general expenses and for profits shall be based on actual information pertaining to production and sales in the ordinary course of trade of the like product by the exporter or producer under investigation.

(6) If the amount referred to in subsection (5) cannot be determined on the basis specified in that subsection, the amount may be determined on any of the following basis:

- (a) the weighted average of the actual amount incurred and realized by other exporters or producers subject to investigation in respect of production and sales of the like product in the domestic market of the country of origin;
 - (b) the actual amount incurred and realized by the exporter or producer in question in respect of production and sales in the domestic market of the country of origin of the same general category of products; or
 - (c) any other reasonable method, provided that the amount for profits so established shall not exceed the profit normally realized by other exporters or producers on the sale of products of the same general category in the domestic market of the country of origin."; and
- (d) by inserting after subsection (6) the following subsections:

"(7) For the purpose of this section, production costs shall be calculated on the basis of records kept by the exporter or producer under investigation, provided that such records are in accordance with the generally accepted accounting principles of the exporting country concerned and reasonably reflect the costs associated with the production and sale of the subject merchandise.

(8) The Government shall consider all available evidence on the proper allocation of costs, including any evidence that is made available by the exporter or producer in the course of the investigation, provided that it is shown that such allocations have historically been utilized by the exporter or producer, in particular in relation to establishing appropriate amortization and depreciation periods and allowances for capital expenditures and other development costs."

Amendment of section 17

18. Subsection 17(2) of the principal Act is amended -

- (a) by substituting for the words "it appears that" the words "there is no export price or where it appears that the export price is unreliable because"; and
- (b) by deleting the words "or that for other reasons the price actually paid or payable for the subject merchandise is unreliable,".

Substitution of section 18

19. The principal Act is amended by substituting for section 18 the following section:

"Comparison of normal value and export price 18. (1) A fair comparison shall be made between the export price and the normal value.

(2) The comparison shall be made at the same level of trade, normally at ex-factory level, and in respect of sales made at as nearly as possible the same time and due account shall be taken of other differences that affect price comparability.

(3) Where the normal value and the export price as established are not on a comparable basis, due allowance, in the form of adjustments, shall be made in

each case, on its merits, for differences in factors that are claimed, and demonstrated, to affect prices and price comparability.

(4) If the determination of the export price under subsection 17(2) affects price comparability, the Government shall establish the normal value at a level of trade equivalent to the level of trade of the constructed export price, or shall make due allowance as provided under this section.

(5) In a case where the subject merchandise is not imported directly from the country of origin but is exported from an intermediate country, the price at which the subject merchandise is sold from the exporting country to Malaysia shall be compared with the comparable price in the exporting country.

(6) Notwithstanding subsection (5), comparison may be made with the price in the country of origin if -

- (a) the subject merchandise is merely transhipped through the exporting country;
- (b) the subject merchandise is not produced in the exporting country; or
- (c) there is no comparable price for the subject merchandise in the exporting country.

(7) Where an exporter or importer claims for an adjustment under subsection (3), it shall prove that its claim is justified.

(8) The Government shall indicate to the parties in question the information that is necessary to ensure a fair comparison."

Substitution of section 20

20. The principal Act is amended by substituting for section 20 the following section:

"Initiation of Investigation of 20. (1) The Government may initiate an investigation to determine the existence, degree and effect of any alleged dumping upon the submission of a written petition by or on behalf of the domestic industry producing the like product.

(2) A petition under subsection (1) shall contain such information as may be prescribed and shall include sufficient evidence of the dumping and injury and a causal link between the imports of the subject merchandise and the alleged injury.

(3) After receipt of a petition under subsection (1) but before proceeding under subsection (4), the Government shall notify the government of the exporting country of the receipt of the petition.

(4) The Government shall, within the prescribed period, examine the petition and other available information and evidence to determine whether -

- (a) the evidence is sufficient to justify the initiation of an investigation;
 - (b) there is a sufficient degree of support for or opposition to the petition expressed by the domestic industry; and
 - (c) an investigation is in the public interest.
- (5) A petition under sub-section (1) shall be immediately ejected if the Government is satisfied that -
- (a) there is no sufficient evidence of either dumping or of injury to justify the initiation of an anti-dumping duty investigation, such as but not limited to cases where the dumping margin is *de minimis* or where the volume of imports of the subject merchandise, actual or potential, or the injury, is negligible; or
 - (b) an investigation is not in the public interest.
- (6) Where the Government rejects a petition under subsection (5), the Government shall, as soon as practicable, notify the petitioner in writing of its determination not to initiate an investigation.
- (7) Notwithstanding sub-section (1) the Government may, in special circumstances, initiate an anti-dumping duty investigation on its own accord without having received a written petition by or on behalf of the domestic industry for the initiation of such investigation if it has sufficient evidence of each of the matters specified in subsection (2).
- (8) Where the Government decides to initiate an investigation under sub-section (1) or subsection (7), it shall notify the appropriate interested parties and publish a notice of initiation of investigation.
- (9) Evidence of both dumping and injury shall be considered simultaneously in the decision whether to initiate an investigation and after that during the course of the investigation, starting on a date not later than the earliest date the provisional measures may be applied.
- (10) The Government shall not disclose any petition made under this section unless the Government has made a decision to initiate an investigation."

New section 22A

21. The principal Act is amended by inserting after section 22 the following section:

"Injury and causal link

22A. (1) A determination of injury for the purpose of an anti-dumping duty investigation under this Act shall be based on relevant evidence and shall involve an objective examination of both the volume of imports of the subject merchandise and the effect of the subject merchandise on prices in the domestic market for like products and the consequent impact of these imports on the domestic producers of such products.

(2) For the purposes of this Act, it shall be demonstrated that the subject merchandise is, through the effects of dumping, causing injury.

(3) The demonstration of a causal relationship between the subject merchandise and the injury to the domestic industry shall be based on an examination of all relevant evidence available to the Government.

(4) The Government shall also examine any known factors other than the subject merchandise that at the same time are injuring the domestic industry and the injuries caused by these other factors shall not be attributed to the subject merchandise.

(5) A determination of a threat of material injury shall be based on facts and not merely on allegation, conjecture or remote possibility.

(6) In making a determination regarding the existence of a threat of material injury, the Government shall consider such factors as may be prescribed.

(7) In cases where injury is threatened by the subject merchandise, the application of anti-dumping measures shall be considered and decided with special care."

Amendment of section 23

22. Section 23 of the principal Act is amended -

(a) in subsection (1) -

(i) in paragraph (a), by inserting after the word "merchandise" the words "and the margin of such dumping"; and

(ii) in paragraph (b), by substituting for subparagraphs (i), (ii) and (iii) the following subparagraphs respectively:

"(i) the subject merchandise, through the effects of dumping, is causing material injury to the domestic industry in Malaysia producing the like product;

(ii) the subject merchandise, through the effects of dumping, is threatening to cause material injury to the domestic industry in Malaysia producing the like product;
or

(iii) the subject merchandise, through the effects of dumping, is causing material retardation of the establishment of such an industry in Malaysia."; and

(b) in subsection (3) -

(i) by substituting for the comma at the end of paragraph (b) a full stop; and

(ii) by deleting the words "and apply such provisional measures, if necessary."

Amendment of section 25

23. Section 25 of the principal Act is amended -

(a) in subsection (1) -

(i) in paragraph (a), by inserting after the word "merchandise" the words "and the margin of such dumping"; and

(ii) in paragraph (b), by substituting for subparagraphs (i), (ii) and (iii) the following subparagraphs respectively:

"(f) the subject merchandise, through the effects of dumping, is causing material injury to the domestic industry in Malaysia producing the like product;

(ii) the subject merchandise, through the effects of dumping, is threatening to cause material injury to the domestic industry in Malaysia producing the like product; or

(iii) the subject merchandise, through the effects of dumping, is causing material retardation of the establishment of such an industry in Malaysia.";

(b) by substituting for subsection (2) the following subsection:

"(2) The Government shall, before making a final determination, inform all interested parties of the essential facts under consideration that form the basis for the decision whether to apply definitive measures.";

(c) by inserting after subsection (2) the following subsection:

"(2A) A disclosure under subsection (2) shall be made in sufficient time for all interested parties to defend their interests.";

(d) in the national language text by renumbering the subsection appearing as the second subsection (3) as subsection (4);

(e) by inserting after subsection (4) the following subsection:

"(4A) Where an affirmative final determination has been made, the Government may take into consideration public interest in determining whether to impose anti-dumping duties and the amount of such duties.";

(f) by inserting after subsection (5) the following subsection:

"(5A) Notwithstanding subsection (5), where a determination of threat of injury or material retardation is made but no injury has occurred, a definitive anti-dumping duty may be imposed only from the date of the determination of the existence of a threat of injury or material retardation, and any security submitted during the period of the application of provisional measures shall be released immediately.";

(g) by inserting after subsection (7) the following subsection:

"(7A) No anti-dumping duties shall be imposed retroactively under subsection (7) on merchandise entered for consumption before the date of initiation of the investigation.";

- (h) in subsection (8) -
 - (i) by substituting for the words "on a company specific basis, where practicable, and" the words "in each case"; and
 - (ii) by inserting after the words "dumping the subject merchandise" the words "causing injury"; and
- (i) by inserting after subsection (8) the following subsection:

"(9) Provisional measures and definitive anti-dumping duties shall only be applied to subject merchandise that enters for consumption after the time when the decision under subsection 24(1) or 25(4), as the case may be, enters into force."

Amendment of section 26

24. Subsection 26(1) of the principal Act is amended -

- (a) by deleting the word "or" at the end of paragraph (a);
- (b) by substituting for the comma at the end of paragraph (b) a semicolon;
- (c) by inserting after paragraph (b) the following paragraphs:
 - "(f) the Government is satisfied that there is no sufficient evidence of dumping or injury to justify proceeding with the investigation;
 - (d) the dumping margin is *de minimis* or the volume of imports of the subject merchandise, actual or potential, or the injury, is negligible; or
 - (e) the Government determines that termination of the investigation is in the public interest."; and
- (d) by deleting the words "provided that the Government determines that such termination is in the public interest."

Amendment of section 27

25. Section 27 of the principal Act is amended -

- (a) by inserting before the word "undertakings" wherever it appears, except in subsection (2) in the expression "such undertakings", the word "price";
- (b) in subsection (2) -
 - (i) by deleting the words "such undertakings"; and

(ii) by substituting for paragraphs (a), (b) and (c) the following paragraphs:

"(f) the price undertakings -

(i) will eliminate the dumping margin or the injurious effects caused by the subject merchandise; and

(ii) can be monitored effectively; or

(b) the price undertakings are in the public interest.";

(c) by substituting for subsection (3) the following subsection:

"(3) Price undertakings shall not be sought or accepted from exporters unless the Government has made a preliminary affirmative determination of dumping and injury caused by such dumping.";

(d) in subsection (5) -

(i) by substituting for the word "may" the word "shall"; and

(ii) by substituting for the words "interested foreign government" the word "exporter";

(e) in subsection (6), by deleting the words ", or for any other reason,";

(f) in subsection (7) -

(i) by deleting the words ", or for any other reason,"; and

(ii) by substituting for the words "in circumstances referred to in subsection (8)" the words "where the negative determination is due in large part to the existence of the price undertakings";

(g) in subsection (8), by inserting after the word "maintained" the words "for a reasonable period";

(h) by inserting after subsection (8) the following subsections:

"(8A) The Government may suggest for price undertakings to be provided by exporters, but no exporter shall be obliged to enter into such undertakings.

(8B) The fact that the exporters do not offer price undertakings, or do not accept an invitation to do so, shall in no way affect the consideration of the case.

(8C) Notwithstanding subsections (8A) and (8B), the Government shall be free to determine that a threat of injury is more likely to be realized if the importation of the subject merchandise continues.

(8D) The Government may require any exporter from whom a price undertaking has been accepted to provide, periodically, information relevant to the fulfilment of such undertaking and to permit verification of pertinent information.

(8E) Non-compliance with sub-section (8D) shall be construed as a breach of the price undertaking."; and

- (i) in subsection (10) -
 - (i) by deleting paragraph (a); and
 - (ii) in paragraph (b), by inserting after the words "section 24" the words ", if appropriate".

New section 27A

26. The principal Act is amended by inserting after section 27 the following section:

"Duration of duty 27A. An anti-dumping duty imposed under this Act shall remain in force only for as long as and to the extent necessary to counteract the dumping that is causing the injury."

Amendment of section 28

27. Section 28 of the principal Act is amended -

- (a) in subsection (1) -
 - (i) by deleting the word "appropriate";
 - (ii) by deleting paragraph (b);
 - (iii) in paragraph (d) -
 - (A) by substituting for the word "modified" the word "revised"; and
 - (B) by deleting the word "or" at the end of that paragraph;
 - (iv) in paragraph (e)-
 - (A) by inserting after the word "duty" the words "or undertaking"; and
 - (B) by substituting for the comma at the end of that paragraph the words "; or";
 - (v) by inserting after paragraph (e) the following paragraph:
 - "(f) an administrative review is in the public interest,"; and
 - (vi) by deleting the words "if the Government determines that such review is in the public interest";
- (b) in subsection (5), by substituting for the words "Except in the case of an administrative review for a refund under paragraph (1)(b), any" the word "Any";
- (c) by substituting for subsection (6) the following subsection:

"(6) No anti-dumping duty shall be collected on imports made after five years from the date of its imposition, or five years from the date of the conclusion of the most recent administrative review under subsection (1) that covered both dumping and injury, and undertakings shall automatically lapse with respect to imports made after five years from the date of publication of the notice of suspension of the investigation, unless the Government determines, in an administrative review initiated before that date on the Government's own initiative or upon a duly substantiated request made by or on behalf of the domestic industry within a reasonable period of time before that date, that the expiry of the duty or undertaking would be likely to lead to a continuation or recurrence of dumping and injury."; and

(d) by inserting after subsection (6) the following subsections:

"(7) An anti-dumping duty duly imposed under this Act may remain in force pending the outcome of an administrative review under this section.

(8) An interested party who submits relevant information substantiating the need for an administrative review shall have the right to request for an administrative review by the Government to determine one or more of the following:

- (a) whether the continued imposition of the anti-dumping duty is necessary to offset dumping;
- (b) whether the injury would be likely to continue to recur if the duty were removed or varied:

Provided that the period specified in subsection (6) has lapsed since the imposition of the definitive anti-dumping duty."

New sections 28A and 28B

28. The principal Act is amended by inserting after section 28 the following sections:

"Refund review 28A. (1) Without prejudice to section 28, an importer may request for a refund of the anti-dumping duties paid where the importer can show that the dumping on the basis of which the anti-dumping duties were imposed has been either eliminated or reduced to a level that is below the level of the anti-dumping duties in force.

(2) A request for a refund review shall be submitted in writing to the Government and shall contain -

- (a) a list of all entries of the subject merchandise into Malaysia for which the refund review is requested; and
- (b) all relevant evidence to show that the importer is entitled to a refund on each such entry.

(3) Where, on the completion of a refund review under this section, the Government determines that-

- (a) a refund of the anti-dumping duty, wholly or partly, is appropriate;

- (b) no anti-dumping duty should have been imposed; or
- (c) the anti-dumping duty that was imposed is higher than the anti-dumping duty that should have been imposed in the circumstances,

the Government shall refund such amount of the anti-dumping duty collected as it deems fit.

(4) A refund under subsection (3) shall, as far as practicable, be made within ninety days from the date of the determination of the refund review.

(5) A finding in the refund review that no anti-dumping duty should have been imposed shall not by itself require the Government to terminate the definitive anti-dumping duty.

"Expedited
review

28B. (1) An exporter or producer whose exports of the subject merchandise are subject to a definitive anti-dumping duty but who has not exported the subject merchandise to Malaysia during the period of investigation shall be entitled to an expedited review in order that the Government may immediately establish an individual anti-dumping duty rate for the exporter or producer, provided that the exporter or producer can show that the exporter or producer is not related to any of the exporters or producers in the exporting country who are subject to the anti-dumping duties on the subject merchandise.

(2) No anti-dumping duty shall be imposed on imports from the exporters or producers referred to in subsection (1) while the review is being carried out.

(3) Notwithstanding subsection (2), the Government may withhold an appraisalment or request guarantees to ensure that, should a review under subsection (1) result in a determination of dumping and injury caused thereby in respect of exports of the subject merchandise into Malaysia by the exporters or producers referred to in subsection (1), anti-dumping duties may be imposed retroactively to the date of the initiation of the review."

Substitution of section 29

29. The principal Act is amended by substituting for section 29 the following section:

"Anti-dumping
action on behalf
of third country

29. (1) The Government may initiate an anti-dumping duty investigation on third of a third country upon receipt of a written request for an anti-dumping action from the government of the third country.

(2) The request referred to in subsection (1) shall be supported by price information to show that the imports are being dumped and by detailed information to show that the alleged dumping is causing injury to the domestic industry concerned in the third country.

(3) The government of the third country shall give all assistance to the Government to obtain any further information as may be necessary for the investigation.

(4) In considering a request under this section, the Government shall consider the effects of the alleged dumping on the industry concerned as a whole in the third country.

(5) The decision whether to proceed with an anti-dumping duty investigation on behalf of a third country shall rest solely with the Government.

(6) If the Government decides to initiate an anti-dumping duty investigation under this section, the Government shall obtain the approval of the Council for Trade in Goods of the World Trade Organization before beginning the investigation."

Amendment of section 30

30. Subsection 30(3) of the principal Act is amended by substituting for the words "an administrative" the word "a".

Deletion of section 32

31. The principal Act is amended by deleting section 32.

New section 34A

32. The principal Act is amended in Part V by inserting before section 35 the following section:

"Judicial
review

P.U.(A)50/80

34A. (1) An interested party who is not satisfied or who is aggrieved by the decision of the Government in relation to a final determination or a final administrative review determination under this Act shall have the right to refer such matter to the High Court for judicial review in accordance with Order 53 of the Rules of the High Court 1980.

(2) A request for judicial review shall be filed in the High Court within thirty days after the publication of the final determination or the final administrative review determination in question.

(3) A request for judicial review shall not be filed in the High Court unless the final determination or final administrative review determination in question has been published by the Government in accordance with this Act.

(4) Notwithstanding subrule 1(5) of Order 53 of the Rules of the High Court 1980, a request for judicial review in the High Court shall not hinder the Government from collecting the countervailing duty or anti-dumping duty imposed under any final determination or final administrative review determination."

Substitution of section 35

33. The principal Act is amended by substituting for section 35 the following section:

"Cumulative assessment

35. (1) Where imports of subject merchandise from more than one country are simultaneously subject to countervailing or anti-dumping duty investigations, the Government may cumulatively assess the effects of such imports.

(2) Subsection (1) shall apply only if the Government determines -

(a) that the amount of a subsidy or the margin of dumping established in relation to the imports from each country is more than *de minimis*;

(b) that the volume of imports of the subject merchandise from each country is not negligible; and

(c) that the cumulative assessment of the effects of the imports of the subject merchandise is appropriate in view of the conditions of competition between the subject merchandise, and the conditions of competition between the subject merchandise and the like domestic product."

Substitution of section 38

34. The principal Act is amended by substituting for section 38 the following section:

"Notice of information and opportunities to present evidence

38. (1) The Government shall provide a copy of the notice of the information that it requires from the Members and all interested parties whose product is the subject of an investigation under this Act to the Members and interested parties and shall give the Members and interested parties an opportunity within the period as may be prescribed to present in writing all evidence that they consider relevant in respect of the investigation.

(2) As soon as an investigation has been initiated, the Government shall provide the full text of the written petition received under subsection 4(1) or 20(1), as the case may be, to the known exporters and the exporting Members and shall make it available, upon request, to the other interested parties involved, due regard being given to the protection of confidential information.

(3) Subject to the requirement to protect confidential information, evidence presented in writing by any interested Member or interested party shall be made available immediately to the other interested Members or interested parties involved in the investigation.

(4) The Government shall, whenever practicable, provide timely opportunities for all interested Members and interested parties to see all information that is relevant to the presentation of their case provided that the information is not confidential and is used by the Government in the investigation."

Amendment of section 39

35. Section 39 of the principal Act is amended -
- (a) in the marginal note, by deleting the words "from interested parties";
 - (b) in subsection (1), by substituting for the words "by parties to an investigation" the words "to the Government"; and
 - (c) in paragraph (7)(a), by inserting after the word "public" the words "or to authorize its disclosure in a generalized or summary form unless it can be demonstrated to the Government's satisfaction from appropriate sources that the information is correct".

Amendment of section 40

36. Section 40 of the principal Act is amended by substituting for the words "using any reasonable method to conduct the verification" the words "in the prescribed manner".

Amendment of section 41

37. Section 41 of the principal Act is amended -
- (a) by inserting after the word "investigation" the words "or review";
 - (b) by substituting for the words "of either subsidization or dumping" the words "in investigations or reviews under this Act"; and
 - (c) by inserting after the word "available" the words ", including the facts contained in the petition received under subsection 4(1) or 20(1), as the case may be".

Amendment of section 47

38. Section 47 of the principal Act is amended in the English language text by substituting for the words "the procedure" the word "procedures".

Amendment of section 50

39. Paragraph 50(2)(e) of the principal Act is amended by deleting the word "administrative".

COUNTERVAILING AND ANTI-DUMPING DUTIES ACT 1993
COUNTERVAILING AND ANTI-DUMPING DUTIES (AMENDMENT)
REGULATIONS 1999

IN exercise of the powers conferred by section 50 of the Countervailing and Anti-Dumping Duties Act 1993 [*Act 504*], the Minister makes the following regulations:

Citation and commencement

1. (1) These regulations may be cited as the Countervailing and Anti-Dumping Duties (Amendment) Regulations 1999.

(2) These Regulations shall come into operation on 1 December 1999.

Amendment of regulation 2

2. The Countervailing and Anti-Dumping Duties Regulations 1994 [*P.U.(A) 233/94*], which in these Regulations are referred to as the “principal Regulations”, are amended in regulation 2 -

(a) in subregulation (1) –

(i) in paragraph (b), by substituting for the words “technical characteristics and uses of such merchandise” the words “its physical, technical and chemical characteristics, the technology and manufacturing processes involved, relevant industry specifications, pricing structures, distribution channels, functions and uses”;

(ii) in paragraph (f), by substituting for the word “two” wherever it appears the word “three”;

(iii) by inserting after paragraph (f) the following paragraphs:

“(fa) information on the evolution of the volume of the merchandise imported;

(fb) the effect of the importation of the merchandise on the price of the like product in the domestic market;” and

(iv) in paragraph (i), by substituting for subparagraphs (iii) and (iv) the following subparagraph:

“(iii) in relation to –

(A) a countervailing duty petition, information about an export subsidy that is inconsistent with the international obligations of the foreign government, if applicable; or

(B) an anti-dumping duty petition, evidence of a history of dumping by the exporters or evidence that the importer was aware or should have been aware that the merchandise was being sold in Malaysia at prices less than the normal value; and” ; and

- (b) in subregulation (2), by substituting for the words “returns or” the words “return on”.

Amendment of regulation 3

3. Subregulation 3(1) of the principal Regulations is amended in the English language text by inserting after the word “notify” the word “the”.

Amendment of regulation 5

4. Subregulation 5(1) of the principal Regulations is amended by substituting for the words “petitioner is submitting the petition” the words “petition is being submitted by or”.

Amendment of regulation 6

5. Regulation 6 of the principal Regulations is amended –

- (a) in subregulation (1) –
- (i) by substituting for the word “fourteen” the word “thirty”; and
- (ii) by substituting for the words “properly submitted” the word “written” ; and
- (b) by substituting for subregulation (2) the following subregulation:

“(2) A petitioner whose petition has been rejected under subsection 4(4) or 20(5) of the Act shall only be allowed to submit a new petition six months after the date of the notification under subsection 4(5) or 20(6) of the Act.”.

Amendment of regulation 7

6. Regulation 7 of the principal Regulations is amended –

- (a) by renumbering the existing regulation as subregulation (1);
- (b) in paragraph (1)(b), by inserting after the word “submitted” the words “by or”; and
- (c) by inserting after subregulation (1) the following subregulation:

“(2) For the purposes of paragraph (1)(b), a petition shall be deemed to be submitted by or on behalf of the domestic industry if –

(a) the petition is supported by those domestic producers whose collective output constitutes more than fifty per centum of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the petition; and

(b) the domestic producers who expressed their support for the petition account for more than twenty-five per centum of the total production of the like product produced by the domestic industry.”.

Amendment of regulation 8

7. Regulation 8 of the principal Regulations is amended –

(a) by substituting for the words “subsection 4(5) or (7) and subsection 20(5) or (7)” the words “subsections 4(7) and 20(8)”;

(b) in the English language text in paragraph (a), by inserting after the words “other than” the word “that”;

(c) in paragraph (b), by deleting the words “which is the scope of the investigation”; and

(d) in paragraph (g), by substituting for the words “the investigation” the words “interested parties to make their views known”.

Amendment of regulation 9

8. Regulation 9 of the principal Regulations is amended by inserting after subregulation (5) the following subregulation:

“(6) The Government may, if it deems it necessary, issue any party with a supplementary questionnaire, a request for clarification or a request for additional information relevant to the countervailing or anti-dumping duty investigation and the party shall respond to the supplementary questionnaire or request within the time specified in the questionnaire or request.”.

Amendment of regulation 10

9. Subregulation 10(1) of the principal Regulations is amended by substituting for the word “ninety” the words “one hundred and twenty”.

Amendment of regulation 11

10. Regulation 11 of the principal Regulations is amended by substituting for the words “subsection 8(3) or 23(3)” the words “subsection 8(2) or 23(2)”.

Substitution of regulation 12

11. The principal Regulations are amended by substituting for regulation 12 the following regulation:

Affirmative
preliminary
determination

12. A notice of a preliminary affirmative determination under subsection 8(3) or 23(3) of the Act shall include all relevant information on the matters of fact and law that have led to arguments being accepted or rejected, due regard being given to the requirement for the protection of confidential information, and in particular –

(a) the names of the exporters and producers of the subject merchandise, where practicable, and the name of the country in which the subject merchandise is produced or any intermediate country involved;

(b) a description of the subject merchandise that is sufficient for customs purposes, including the current Malaysian tariff classification;

- “
- (c) the amount of subsidy or margin of dumping found to exist and the basis for such determination;
 - (d) factors that have led to the injury determination, including information on factors other than subsidized or dumped imports that have been taken into account when the injury determination was made;
 - (e) any other reasons leading to the preliminary determination;
 - (f) the reasons why provisional measures are necessary; and
 - (g) the proposed time limits for making a final determination.”.

Amendment of regulation 14

12. Subregulation 14(2) of the principal Regulations is amended by substituting for paragraphs (c) and (d) the following paragraph:

- “(c) in relation to –
- (i) the imposition of countervailing duties, the export subsidy that is being provided with respect to the subject merchandise contrary to the interested foreign government’s obligations; or
 - (ii) the imposition of anti-dumping duties –
 - (A) the history of dumping that caused injury to the domestic industry; or
 - (B) the importer’s awareness that the exporter practises dumping and that such dumping would cause injury to the domestic industry.”.

Amendment of regulation 15

13. Regulation 15 of the principal Regulations is amended -

- (a) in subregulation (2) –
 - (i) by substituting for the words “and reasons that have led to the determination” the words “considered material by the Government”;
 - (ii) in the English language text in paragraph (a) –
 - (A) by inserting before the words “of the country” the words “the name”; and
 - (B) by deleting the word “of” appearing before the word “any”;
 - (iii) in paragraph (c), by inserting before the word “dumping” the words “margin of”;

- (iv) in the English language text in paragraph (d), by substituting for the word “is” the word “was”;
 - (v) by deleting paragraph (f); and
 - (vi) in paragraph (g), by substituting for the word “reason” the word “reasons ”; and
- (b) in subregulation (3) -
- (i) by substituting for the word “dumping” the words “the margin of dumping is *de minimis*”; and
 - (ii) in the national language text, by inserting after the word “sedikit” the word “sahaja”.

Amendment of regulation 18

14. Regulation 18 of the principal Regulations is amended -

- (a) in subregulation (2) –
 - (i) in paragraph (a), by deleting subparagraph (ii); and
 - (ii) in subparagraph (b)(ii), by deleting the words “the government of the exporting country or” ;
- (b) by deleting subregulations (3), (4) and (5);
- (c) in subregulation (6), by inserting after the word “government” the words “or exporter, as the case may require,”;
- (d) in subregulation (7), by deleting the words “and decides to complete the investigation”; and
- (e) in subregulation (8), by deleting the words “or on any other reasonable basis”.

Deletion of regulation 19

15. The principal Regulations are amended by deleting regulation 19.

Amendment of regulation 20

16. Regulation 20 of the principal Regulations is amended -

- (a) by substituting for subregulation (1) the following subregulation:

“(1) In determining the injury to the domestic industry from subsidized or dumped imports for the purposes of sections 7A and 22A of the Act, the Government

shall evaluate all relevant economic factors and indices having a bearing on the state of the industry.”; and

- (b) in subregulation (2) –
 - (i) in paragraph (a), by substituting for the words “returns or investments” the words “return on investments or utilization of capacity”;
 - (ii) by deleting the word “and” at the end of paragraph (b);
 - (iii) by inserting after paragraph (b) the following paragraph:

“(ba) in relation to section 22A of the Act, the margin of dumping; and”;
 - (iv) in paragraph (c), by substituting for the words “investment, wages, growth or ability to raise capital ” the words “wages, growth, ability to raise capital or investments”.

Amendment of regulation 21

17. Regulation 21 of the principal Regulations is amended -

- (a) by substituting for subregulation (1) the following subregulation:

“(1) In determining whether the injury to the domestic industry is caused by the subject merchandise through the effects of subsidy or dumping, the Government shall consider, among other factors –

 - (a) in relation to the volume of the subsidized or dumped imports, whether there has been a significant increase in subsidized or dumped imports, either in absolute terms or relative to production or consumption in Malaysia; and
 - (b) in relation to the effect of the subsidized or dumped imports on prices –
 - (i) whether there has been a significant price undercutting by the subsidized or dumped imports as compared with the price of a like product of Malaysia; or
 - (ii) whether the effect of the subsidized or dumped imports is otherwise to depress prices to a significant degree or to prevent price increases, that otherwise would have occurred, to a significant degree.”;
- (b) by inserting after subregulation (1) the following subregulation:

“(1A) The factors referred to in subregulation (1) shall not be exhaustive nor shall one or several of such factors be necessarily conclusive.”;
- (c) by substituting for subregulation (4) the following subregulation:

“(4) For the purposes of subsections 7A(4) and 22A(4) of the Act, the factors that may be relevant include the following:

- (a) in relation to –
 - (i) a countervailing duty investigation, the volume and prices of non-subsidized imports of the merchandise in question; or
 - (ii) an anti-dumping duty investigation, the volume and prices of imports not sold at dumping prices;
 - (b) contraction in demand or changes in the patterns of consumption;
 - (c) trade-restrictive practices of and competition between the foreign and domestic producers;
 - (d) developments in technology; and
 - (e) the export performance and productivity of the domestic industry.”;
- (d) by deleting subregulation (5); and
- (e) in subregulation (6), by deleting the words “under paragraphs 3(1)(b) and 15(1)(b) of the Act”.

Substitution of regulation 22

18. The principal Regulations are amended by substituting for regulation 22 the following regulation:

- “Threat of material injury
22. (1) In determining whether a threat of material injury exists, the Government shall consider all relevant factors including-
- (a) in relation to a countervailing duty investigation, the nature of the subsidy in question and the trade effects likely to arise from the subsidy;
 - (b) a significant rate of increase of subsidized or dumped 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 subsidized or dumped exports to the Malaysian market, taking into account the availability of other export markets to absorb any additional exports;
 - (d) whether imports of the subject merchandise are entering at prices that will have a significant depressing or suppressing effect on domestic prices, and would likely increase demand for further imports of the subject merchandise; and

(e) inventories of the subject merchandise being investigated.

(2) No one of the factors referred to in subregulation (1) shall by itself be necessarily conclusive but the totality of the factors considered must lead to the conclusion that further imports of the subsidized or dumped imports are imminent and that, unless protective action is taken, material injury would occur.

(3) A threat of material injury shall be clearly foreseen and imminent

Substitution of regulation 23

19. The principal Regulations are amended by substituting for regulation 23 the following regulation:

“Material
retardation

23. (1) In determining whether material retardation of the establishment of a domestic industry exists, the Government shall consider all relevant factors including-

(a) whether a domestic industry producing the like product is in the process of being established;

(b) whether such an industry is viable;

(c) whether the establishment of such an industry is imminent; and

(d) whether the subsidized or dumped imports are through the effects of the subsidy or dumping causing material retardation of the establishment of such an industry.

(2) For the purposes of subregulation (1), the Government shall consider, among other factors -

(a) feasibility studies;

(b) negotiated loans and contracts for the purchase of machinery aimed at new investment projects or the expansion of existing plants; and

(c) whether there has been significant investment for the establishment of such an industry.

(3) A determination of material retardation of the establishment of a domestic industry shall be based on facts and not merely on allegation, conjecture or remote possibility.”.

Substitution of regulation 24

20. The principal Regulations are amended by substituting for regulation 24 the following regulation:

“Specificity of
subsidy

24. (1) In order to determine whether a subsidy is specific for the purposes of subsection 3(2) of the Act to an enterprise or industry or a group of enterprises or industries (in this regulation referred to as “certain enterprises”) within the jurisdiction of the granting authority, 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 and are clearly spelt out in written law or in any other official document so as to be capable of verification;
- (c) if notwithstanding any appearance of non-specificity resulting from the application of the principles specified in paragraphs (a) and (b) there are reasons to believe that the subsidy may in fact be specific, the factors specified in subregulation (3) may be considered;
- (d) a subsidy that is limited to certain enterprises located within a designated geographical region within the jurisdiction of the granting authority shall be specific; and
- (e) 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.

(2) For the purposes of paragraph (1)(b), the expression “objective criteria or conditions” means criteria or conditions that are neutral, that do not favour certain enterprises over others, and that are economic in nature and horizontal in application, such as the number of employees or the size of the enterprise.

(3) For the purposes of paragraph (1)(c) -

(a) the factors that may be considered are -

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

(b) 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.

(4) For the purposes of paragraph (3)(a), information on the frequency with which applications for a subsidy are refused or approved and the reasons for such decisions shall be considered.

(5) A determination of specificity under these Regulations shall be clearly substantiated on the basis of relevant evidence.”.

New regulations 24A and 24B

21. The principal Regulations are amended by inserting after regulation 24 the following regulations:

“Prohibited subsidy. 24A. (1) For the purposes of paragraph 2B(a) of the Act, the subsidies referred to in Annex I to the Agreement on Subsidies and Countervailing Measures under the World Trade Organization Agreement are prescribed to be prohibited subsidies.

(2) For the avoidance of doubt it is declared that the reference to Annex I to the Agreement on Subsidies and Countervailing Measures under the World Trade Organization Agreement is a reference to the Annex as may be amended from time to time.

Non-actionable subsidy 24B. (1) For the purposes of paragraph 2D(b) of the Act, the conditions referred to in Article 8.2 of the Agreement on Subsidies and Countervailing Measures under the World Trade Organization Agreement are prescribed to be conditions that render a subsidy that is specific a non-actionable subsidy.

(2) For the avoidance of doubt it is declared that the reference to Article 8.2 of the Agreement on Subsidies and Countervailing Measures under the World Trade Organization Agreement is a reference to the Article as may be amended from time to time.”.

Amendment of regulation 25

22. Regulation 25 of the principal Regulations is amended -

- (a) in the English language text, by deleting the figure “(1)”;
- (b) in paragraph (b), by substituting for the words “, industry or exporters” the words “ or industry”; and
- (c) in paragraph (c), by substituting for the words “, industry or exporters” the words “ or industry”.

New regulation 25A

23. The principal Regulations are amended by inserting after regulation 25 the following regulation:

“Calculation of subsidy in terms of benefit to recipient 25A. (1) Without prejudice to regulation 25, the calculation of the amount of a subsidy in terms of the benefit to the recipient shall be based on the following guidelines:

- (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 that Member;
- (b) a loan by a government shall not be considered as conferring a benefit unless there is a difference between the amount that the enterprise receiving the loan pays on the government loan and the amount the enterprise would pay on a comparable commercial loan that the enterprise could actually obtain on the market, in which 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 enterprise receiving the guarantee pays on a loan guaranteed by the government and the amount that the enterprise would pay on a comparable commercial loan absent the government guarantee, in which 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 the 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.

(2) For the purposes of paragraph (1)(d), the adequacy of remuneration shall be determined in relation to prevailing market conditions for the goods or services in question in the country of provision or purchase (including price, quality, availability, marketability, transportation and other conditions of purchase or sale).

(3) In this regulation, the expression “enterprise” means the enterprise by whom the subject merchandise is produced, manufactured or exported.”

Amendment of regulation 26

24. Regulation 26 of the principal Regulations is amended -

- (a) in subregulation (1), by substituting for the words “comparable merchandise” the words “like product”;
- (b) in subregulation (2) –
 - (i) by substituting for the words “comparable merchandise” the words “like product”;

- (ii) by substituting for paragraph (a) the following paragraph:
 - (a) the quantity of merchandise sold for consumption in the domestic market of the exporting country during the period of investigation is less than five per centum of the sales of the subject merchandise to Malaysia, unless there is evidence to demonstrate that such ratio is nonetheless of sufficient magnitude to provide for a proper comparison;”;
- (iii) by substituting for the full stop at the end of paragraph (b) the words “; or”; and
- (iv) by inserting after paragraph (b) the following paragraph:
 - “(c) a particular market situation exists.”; and
- (c) by inserting after subregulation (2) the following subregulation:
 - “(3) For the purposes of paragraph (2)(b), the sales in the domestic market are not in the ordinary course of trade if –
 - (a) the sales below per unit costs are made within an extended period of time where the extended period of time is normally one year but shall in no case be less than six months;
 - (b) the sales below per unit costs are made in substantial quantities where the Government establishes that the weighted average selling price of the transactions under consideration for the determination of the normal value is below the weighted average per unit costs, or that the volume of sales below per unit costs represents not less than twenty per centum of the volume sold in transactions under consideration for the determination of the normal value; and
 - (c) the sales below per unit costs are made at a price that does not provide for the recovery of all costs within a reasonable period of time where the price is below per unit costs at the time of sale.”.

Deletion of regulation 27

25. The principal Regulations are amended by deleting regulation 27.

Amendment of regulation 28

26. Regulation 28 of the principal Regulations is amended -

- (a) in subregulation (1) -
 - (i) by substituting for the words “paragraph 27(a)” the words “paragraph 16(2)(a) of the Act”; and

- (ii) in the English language text in paragraph (c), by substituting for the word “cause” the word “course”; and
- (b) by deleting subregulation (2).

Amendment of regulation 29

27. Regulation 29 of the principal Regulations is amended -

- (a) by substituting for the marginal note the following marginal note:
“Constructed normal value.”;
- (b) by deleting subregulation (1); and
- (c) in subregulation (3), by substituting for the words “subregulation (1)” the words “paragraph 16(2)(b) of the Act”.

Substitution of regulation 31

28. The principal Regulations are amended by substituting for regulation 31 the following regulation:

“Establishment of dumping margin. 31. (1) For the purposes of subsection 18(1) of the Act, the existence of dumping margins shall be established on the following basis:

- (a) by a comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions;
- (b) by a comparison of normal value and export prices on a transaction-to-transaction basis; or
- (c) by a comparison of a weighted average normal value with prices of individual export transactions, if the Government finds a pattern of export prices that differs significantly among different purchasers, regions or time periods and if an explanation is provided as to why such differences cannot be taken into account appropriately by the use of a comparison under paragraph (a) or (b).

(2) If the comparison under this regulation requires a conversion of currencies, such conversion shall be made using the rate of exchange on the date of sale, except that when a sale of foreign currency on forward markets is directly linked to the export sale involved, the rate of exchange in the forward sale shall be used.

(3) For the purposes of subregulation (2) -

- (a) the date of sale shall be the date of invoice, contract, purchase order

or order confirmation, whichever establishes the material terms of sale; and

(b) fluctuations in exchange rates shall be ignored and the Government shall allow exporters at least sixty days to adjust their export prices to reflect sustained movements in exchange rates during the period of investigation.

(4) The Government shall determine an individual dumping margin for each known exporter or producer concerned of the subject merchandise.

(5) Notwithstanding subregulation (4), where the number of exporters, producers or importers involved or the types of subject merchandise involved is so large as to make it impracticable to determine individual dumping margins as required under subregulation (4), the Government may limit its examination to –

(a) a reasonable number of interested parties or types of subject merchandise by using samples that are statistically valid on the basis of information available to the Government at the time of the selection; or

(b) the largest percentage of the volume of the exports from the country in question that can reasonably be investigated.

(6) Any selection of exporters, producers or importers or types of subject merchandise made under subregulation (5) shall preferably be chosen in consultation with and with the consent of the exporters, producers or importers concerned.

(7) Where the Government has limited its examination under subregulation (5), the Government shall nevertheless determine an individual dumping margin for any exporter or producer not initially selected who submits the necessary information in time for that information to be considered 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 Government and prevent the timely completion of the investigation.

(8) Voluntary responses shall not be discouraged under this regulation.”.

New regulation 33A

29. The principal Regulations are amended by inserting after regulation 33 the following regulation:

“Countervailing duty proceedings against exporters or producers from developing country Members.

33A. (1) For the purposes of section 14 of the Act, countervailing duty proceedings against exporters or producers from developing country Members of the World Trade Organization shall be carried out in accordance with Article 27 of the Agreement on Subsidies and Countervailing Measures under the World Trade Organization Agreement.

(2) For the avoidance of doubt it is declared that the reference to Article 27 of the Agreement on Subsidies and Countervailing Measures under the World Trade Organization Agreement is a reference to the Article as may be amended from time to time.”.

Amendment of regulation 35

30. Regulation 35 of the principal Regulations is amended -

(a) by substituting for the marginal note the following marginal note:

“Notice of termination of countervailing or anti-dumping duties.”; and

(b) by deleting subregulations (3), (4) and (5).

Amendment of regulation 36

31. Regulation 36 of the principal Regulations is amended -

(a) by substituting for the marginal note the following marginal note:

“Refund review.”;

(b) in the national language text, by substituting for the word “bayaran” wherever it appears the word “pembayaran”;

(c) in subregulation (1) –

(i) by inserting after the word “review” the words “under sections 13A and 28A of the Act”; and

(ii) by inserting after the words “determination of” the words “a countervailing duty investigation or”;

(d) in paragraph (2)(b) –

(i) by inserting after the words “amount of” the words “countervailing or”; and

(ii) by inserting before the word “dumping” the words “amount of the countervailable subsidy or”;

(e) by deleting subregulation (3);

(f) by substituting for subregulation (5) the following subregulation:

“(5) The results of the refund review shall determine the final countervailing or anti-dumping duty applicable for each entry for which the refund was requested.”; and

(g) by deleting subregulations (6) and (7).

Amendment of regulation 37

32. Regulation 37 of the principal Regulations is amended -
- (a) in subregulation (6), by substituting for the words “computer tape or discs ” the words “computer tapes, diskettes or discs or on any other data storage medium”; and
 - (b) by deleting subregulations (7) and (8).

Amendment of regulation 38

33. Regulation 38 of the principal Regulations is amended by substituting for subregulation (1) the following subregulation:

“(1) Where the Government decides to verify the accuracy of any information submitted during an investigation or an administrative review, the Government shall –

- (a) inform the interested party concerned of the intention to carry out a verification visit;
- (b) obtain the written agreement of the interested party concerned to the verification visit;
- (c) notify the representative of the government of the exporting country concerned of the names and addresses of the enterprises, industry or exporters to be visited and the dates agreed;
- (d) advise the interested party concerned of the nature of the information to be verified during the verification visit and of any further information that may need to be provided during the visit though this should not preclude requests being made during the verification visit for further details to be provided in the light of information obtained; and
- (e) in exceptional circumstances, inform the interested party and the representative of the government of the exporting country concerned if non-governmental experts are to be included in the investigating team.”.

Substitution of regulation 39

34. The principal Regulations are amended by substituting for regulation 39 the following regulation:

“Meeting of interested parties. 39. (1) This regulation shall only apply in respect of an anti-dumping duty investigation.

(2) A request from an interested party to meet the parties with adverse interests for the purpose of defending its interests shall be made in writing to the Minister.

(3) The interested parties shall be notified of the date, time and place of the meeting at least fourteen days before the date specified for the meeting.

(4) Any interested party, other than the interested party requesting the

meeting, proposing to attend the meeting shall submit a written request to the Minister at least seven days before the date specified for the meeting and shall provide a valid justification for participating in the meeting.

(5) The Minister may refuse a request under subregulation (2) or (4), as the case may be, if the Minister is of the opinion that there is no valid justification for the meeting or that there is no valid justification for participating in the meeting, as the case may be.”
