

**ANTI-DUMPING AND ANTI-SUBSIDIES
REGULATION
NO. (26) OF THE YEAR 2003**

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No. (26) of the year 2003**

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Anti-Dumping and Anti-Subsidies Regulation **No. (26) of 2003**

Article (1):

This Regulation shall be cited as the Anti-Dumping and Anti-Subsidies Regulation for the year 2003 and shall come into effect as of the date of its publication in the Official Gazette.

Article (2):

Wherever used in this Regulation, and unless the context provides otherwise, the following terms and expressions shall have the meaning ascribed hereunder:

The Law:	National Production Protection Law in force.
The Ministry:	Ministry of Industry and Trade.
The Minister:	Minister of Industry and Trade.
Interested Party:	Producer, exporter and importer of imported product and any domestic producers of a like product or any organization in which the majority of members are producers, importers or exporters of such product and the government of the exporting country.

Article (3):

a) In determining domestic industry, domestic producers importing products allegedly dumped or subsidized shall be excluded in addition to domestic producers related to importers or exporters or producers of such products.

b) For the purposes of this Regulation, a person is considered related to another in any of the following circumstances:

1. If either of them directly or indirectly controls the other.
2. If a third person directly or indirectly controls both of them.
3. If a third person is directly or indirectly controlled by both of them.

c) For the purposes of paragraph (b) of this Article:

1. The relation shall have no effect unless it leads or may lead to the behavior of a person in a manner different from that of unrelated producers.
2. A person is considered in control of another if same is in a legal or practical position which permits him to restrict or direct the other person.

Determination of Dumping

Article (4):

A product is considered dumped if the price at which it is sold for exporting to the Kingdom (export price) is less than its normal value. The difference between the normal value and export price is known as the margin of dumping.

Determination of Normal Value

Article (5):

For the purposes of Article (4) of this Regulation, the normal value is the price of the product exported to the Kingdom when introduced for consumption in the country of origin in the ordinary course of trade.

Article (6):

a) When there are no sales of a product in the ordinary course of trade in the exporting country or if such sales do not permit a proper comparison as a result of a particular market situation or the low volume of sales, the normal value of the product shall be determined upon any of the following criteria:

1. The price of such product when exported to a third country appropriate for the conduct of a proper comparison.
2. The cost of production in the country of origin plus profit and a reasonable amount for administrative, selling and any other general costs (constructed value).

b) For the purposes of paragraph (a) of this article, the volume of sales shall not be considered a sufficient quantity if the amount of the sales of the product under examination in the country of origin or in a third country are less than (5%) five percent of the amount of its sales to the Kingdom unless the competent authority decides, based on evidence available to it or presented by the concerned parties, that such sales are of sufficient magnitude to provide for a proper comparison.

Article (7):

a) The normal value of a product shall be determined according to the price at which it is sold in the exporting country .

b) The normal value of a product not imported directly from the country of origin may be determined according to the price in the country of origin in any of the following cases:

1. If the product is merely transshipped through the country of export.
2. If the product is not produced in the country of export.
3. If the product has no comparable price in the country of export .

Article (8):

The normal value of the product imported from a country, which the competent authority decides, does not rely on market economies shall be determined according to information from a country which relies on such economies and in which the condition of production therein is similar to the condition of production in such country or by constructing the normal value or any other basis the competent authority deems appropriate.

Article (9):

The competent authority shall exclude the sales shown hereunder for the purposes of determining the normal value of the product:

a) Sales concluded with people related to the seller in accordance with the provisions of Article (3) of this Regulation.

b) Any sales of such product in the exporting country or a third country at a price below per unit costs of production plus administrative, selling and general costs of such unit and profits provided all the following conditions are present:

1. If the price of such sales do not lead to recovery of the costs within a reasonable period of time as a result of such prices being below that of the weighted average of the production per unit costs of the product during the investigation period plus administrative, selling and general costs of this unit.
2. If such sales are made within a period of time that extends over one year provided that such period does not fall beneath six months in all cases.
3. If such sales are made in substantial quantities when the weighted average selling price of the transactions that are considered in determining the normal value is below the weighted average per unit costs, or the volume of sales was made at a per unit cost that does not fall below (20) percent of the volume of sales of such transactions.

Determination of Export Price

Article (10):

The export price is the price paid or payable for the product when sold for export to the Kingdom from the exporting country.

Article (11):

In cases where a final export price cannot be determined or in cases in which the competent authority considers the export price unreliable as result of the existence of a relation in accordance with the provisions of Article (3) of this Regulation, or the existence of a special agreement between the exporter and the importer or a third party, the competent authority may construct the export price in the following manner:

- a) Based on the price at which the imported product is first resold to an unrelated and independent buyer in the Kingdom from which any profits, costs, duties or expenses that were realized between importing and resale within the Kingdom are deducted.
- b) Based on reasonable basis which the competent authority deems appropriate if the product is not resold to an independent buyer or not resold in the condition it was imported in.

Calculation of Costs

Article (12): For the purposes of the provisions of Article (6) and paragraph (b) of Article (9) of this Regulation, the Minister shall issue instructions determining the methods and directives used to calculate the costs and profits in accordance with the provisions of the Anti-Dumping Agreement of the World Trade Organization.

Comparison between Export Price and Normal Value

Article (13):

For the purposes of calculating the margin of dumping a fair comparison is made between the export price and normal value of the imported product pertaining to sales made at as nearly as possible on the same level of trade.

Article (14):

For the purposes of comparing between the export price and normal value, due allowance shall be made in each case on its own merits for differences that prejudice the comparison including the differences in the conditions and terms of sale, taxation, trade levels, quantities of the product and its physical characteristics.

Article (15):

For the purposes of comparing between the export price and the normal value, both shall be converted to the same currency by using the rate of exchange on the date of sale unless the export price is directly linked to currency transactions in the forward market. In such case the rate of exchange in the forward sale shall be used.

Article (16):

The margin of dumping which results exclusively from fluctuations in the rate of exchange shall be ignored. Such margin of dumping results from a continuous appreciation in the value of foreign currency in comparison to the Jordanian Dinar. The competent authority shall allow exporters in an investigation at least sixty days to adjust the export prices in order to reflect the sustained movements in the exchange rate during the period of investigation.

Determination of the margin of dumping

Article (17):

- a) The margin of dumping is the difference between the normal value of the imported product and its export price.
- b) It is permissible to refer to the margin of dumping in a percentage by dividing the resulted value in paragraph (a) of this article by the export price.
- c) Dumping is considered not to exist if the calculated margin of dumping is less than (2%).

Article (18):

Notwithstanding the provisions stipulated in Articles (13), (14), (15) and (16) of this Regulation, and for the purposes of defining whether dumping has occurred during the period under investigation, the margin of dumping of any exporter or producer shall be established in the following manner:

- a) The difference between the weighted average normal values of sales approved by the competent authority according to the conditions stipulated in Articles (5), (6), (7), (8) and (9) of this Regulation, and the weighted average of prices of all comparable export prices to the Kingdom within the same period.
- b) Or the weighted average of the margins of dumping resulting from the difference between each normal value of the product in each of the transactions referred to in paragraph (a) of this Article and the export price of the comparable transaction.

Article (19):

The margin of dumping of a specific country is calculated on the basis of the weighted average of the individual margins of dumping of exporters from that country.

Article (20):

Notwithstanding the provisions of Article (18) of this Regulation, if the competent authority discovers that the pattern of export prices differs, greatly, between different buyers, areas or periods of time then it may calculate the margin of dumping of the specific exporter or producer based on the weighted average of the margins of dumping resulting from the difference between the weighted average of the normal values of the products of such exporter or producer and the prices of his individual exporting transactions. In such cases the competent authority must present the Interested Parties with a justification for its inability to consider such differences and in an appropriate manner by applying the provisions of Article (18) of this Regulation.

Subsidies

Article (21):

It shall be permissible to impose countervailing duties on a product imported to the Kingdom if it becomes apparent as a result of an investigation carried out by the competent authority in accordance with the provisions of the Law and this Regulation, the existence of either of the following cases:

- a)
 1. The imported product is subsidized as defined in Article (22) of this Regulation.
 2. The granted subsidy is specific in accordance with the concept stipulated in Article (23) of this Regulation.
 3. The imports of the product which received subsidy causes injury to a like product in accordance with the provisions stipulated in the Law and this Regulation.
- b) Or the imported product benefits from a prohibited subsidy in accordance with the concept stipulated in Article (24) of this Regulation.

Article (22):

a) For the purposes of this Regulation subsidizing connotes a benefit or financial contribution provided by the exporting country or any form of income subsidy or price subsidy in accordance with the concept stipulated in Article (16) of GATT 1994, which leads to benefit entities or individuals producing, distributing, transporting, selling or exporting products or other means.

b) Any of the following forms of governmental financial contribution is considered a subsidy:

1. Any financial contribution provided by a government whether direct (grants and loans) or indirect (loan guarantees given by other entities).
2. Government's due revenues forgone by exempting them or not collecting them, except for exempting an exported product, completely or partially, from fees or taxes imposed on a like product when

destined for domestic consumption or refunding such fees or taxes after exporting if same are collected provided that the refunded amount does not exceed the amount that was actually collected.

3. a government purchases goods or provides goods or services other than general infrastructure,
4. a government implementing forms stipulated in clauses (1), (2) and (3) of this paragraph by making payments to funding establishments or entrusts or directs a private body to carry out one or more of the type of functions illustrated in this paragraph.

Specificity of a subsidy

Article (23):

- a)
 1. A subsidy is considered specific if the government providing it or legislation governing it limits access to a subsidy to specific establishments or within a certain geographic area.
 2. For the purposes of the provisions of this Regulation, a specific enterprise is one enterprise or a specific industrial sector or a group of enterprises or industries.

- b) A subsidy shall not be considered specific if it was granted in accordance with objective criteria or conditions set by the authority or by the legislation governing the eligibility for, and the amount of, a subsidy, provided that the eligibility becomes automatic and that such criteria and conditions are strictly adhered to.

- c) For the purposes of this Article the terms and conditions shall be considered objective if they are characterized impartiality whereby they do not favor certain enterprises over others and which are economic in nature and horizontal in application such as the size of the enterprise or the number of employees therein or any other factor.

Prohibited Subsidies

Article (24):

- a) Subsidizing is prohibited in any of the following cases:
 1. Subsidies contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance.
 2. Subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods.

- b) A subsidy is contingent upon export performance, even without having been legally made so, if such subsidy is in fact tied to actual or anticipated exportation or export earnings.

- c) It is not sufficient for an establishment or company granted a subsidy to have exporting activities in order to regard the subsidy as prohibited.

Non-Actionable subsidies

Article (25):

It shall not be permissible to impose countervailing measures against the following forms of subsidies:

a) Subsidies granted for research activities conducted by firms or by higher education or research establishments based on a contract basis with firms, provided that the amount of subsidy does not exceed (75%) of the overall costs of industrial research or (50%) of the overall costs of pre-competitive development activity. The types of such costs and the concept of industrial research shall be determined in accordance with instructions issued by the Minister for such purpose.

b) Subsidies given to disadvantaged regions within the territory of exporting country, pursuant to a general plan for regional development provided that such assistance is given to the concerned establishments in that area. The conditions and terms necessary for considering such areas disadvantaged shall be determined in accordance with instructions issued by the Minister for such purpose.

c) Subsidies given to assist facilities to adapt to the new environmental requirements imposed by legislation which results in a financial burden and greater constraints on firms, provided that the percentage of subsidies does not exceed (20%) of the cost of adaptation and the institution has been operational for a period of two years at least as of the date of imposing the new environmental requirements in addition to any terms set by the Minister through instructions issued for such purpose.

Amount of Subsidy

Article (26):

a) The amount of subsidy is determined based on the realized benefit of the person receiving the subsidy and which is calculated during the period being investigated.

b) The rules shown underneath shall be implemented to calculate the realized benefit of the person receiving the subsidy:

1. 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 of private investors in the territory of the exporting country.
2. a loan by a government shall not be considered as conferring a benefit, unless there is a difference between the amount that the firm receiving the loan pays (interest and any other costs) on the government loan and the amount the firm would pay on a comparable commercial loan which the firm could actually obtain on the market. In this case the benefit shall be the difference these two amounts.
3. a loan guarantee by a government shall not be considered as conferring a benefit, unless there is a difference between the amount that the firm receiving

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

4. the provision of goods or services or purchase of goods by a government shall not be considered as conferring a benefit unless the provision is made for less than the market price, or the purchase is made for more than the market price. taking into consideration the prevailing market conditions such as the quality, availability, marketability, transportation and other conditions of sale and purchase.

Injury

Article (27):

The competent authority shall determine material injury actually affecting domestic producers as a result of dumping or subsidizing based on an investigation conducted in this regard, taking into consideration the following:

a) Existence of a significant increase in the volume of dumped or subsidized imports, whether absolute or relative to domestic production or consumption and the degree of impact of such dumped or subsidized imports on the prices of like domestic product in the domestic market, provided that the following factors are given due allowance:

1. Dumped or subsidized products have been introduced at prices below the price of a like product with a significant difference.
2. Imports have significantly led to depressing the price of the like domestic product or a prevention of an increase in its price, which would have been possible in the absence of such imports.

b) The degree of impact of dumped or subsidized imports on domestic producers. Such impact is determined by evaluating the economic indicators and factors related to the situation of domestic producers, including:

1. Actual or potential decline in sales, profits, production, market share, productivity, return on investments or utilization of capacity.
2. Actual or potential negative effects on cash flow, inventories, employment, wages, growth and ability to raise capital or investments.
3. Factors affecting domestic prices.

Article (28):

The evaluation of the effect of dumped or subsidized imports shall be assessed in relation to domestic producers based on information pertaining to the production of a like domestic product. If such information is unavailable evaluation shall be based on information pertinent to the narrowest group or range of products, which includes the like product, for which the necessary information can be provided.

Threat of Injury

Article (29):

For the purposes of determining threat of material injury, the competent authority shall rely on facts not merely on an allegation, conjecture or remote possibility. In that regard the competent authority shall take into consideration the following :

a) Any factors indicating the probability of the existence of an increase of dumped or subsidized imports such as:

1. A significant increase in the rate of imports.
2. Availability of un-utilized production capacity in the export country or availability of an increase in product's inventory in that country and unavailability of other export markets to absorb any additional exports.
3. Existence of future arrangements for exporting dumped or subsidized products to the Kingdom.
4. Existence of dumped or subsidized products at a prices less than that of the like domestic product indicating a likelihood of an increase on the demand of such dumped or subsidized product.

b) Increase in the inventory of the dumped or subsidized product in the Kingdom.

Article (30):

The competent authority may not determine the existence of threat of injury unless the totality of the factors referred to in Article (29) of this Regulation lead to the conclusion that there is an imminent increase in dumped or subsidized products which shall cause injury unless measures are imposed in accordance with this Regulation.

Casual Link

Article (31):

The competent authority shall ascertain that the dumped or subsidized imports, in view of the results, are the cause of the injury that occurred or which may occur to the domestic producers, and shall especially consider the existence of a significant increase in such dumped or subsidized imports whether such increase is absolute or relative to domestic production or consumption in the Kingdom and the impact of such imports on prices and the degree of the margin of dumping.

Article (32):

The competent authority shall consider, when evaluating the casual link, any other factors besides the dumped or subsidized imports which caused or may lead to such injury such as the volume of the imports not sold at dumped or subsidized prices, other factors which may effect domestic prices and suppress demand, changes in the patterns of consumption, trade restrictive practices, competition between foreign and domestic producers, development of technology, export performance and the productivity of domestic producers.

Article (33):

The competent authority may, for the purposes of evaluating injury, when investigating the imports of a certain product from more than one country, accumulate the effects of such imports if the following becomes evident:

- a) The margin of dumping of imports of each country exceeds (2%) of the export price in the case of dumping, and that the subsidy amount is not less than (1%) in the case of subsidizing.
- b) The volume of imports from each country is not negligible.
- c) The evaluation of the effects of imports in a cumulative manner is appropriate in light of the conditions of competition between the imported products and the conditions of competition between the imported products and the like domestic products.

Material retardation of the establishment of a domestic industry

Article (34):

- a) The competent authority shall assess, when determining the existence of a material retardation of the establishment of a domestic industry for the production of a like domestic product, the following:
 - 1. The prospect of establishing a domestic industry within a reasonable period of time.
 - 2. The likelihood of the growth and continuance of such an industry.
- b) The competent authority shall consider, especially, economic feasibility studies, concluded loans or those that shall be concluded and equipment purchase contracts concluded for the purpose of establishing new investment projects or expanding existent plants.

The Application

Article (35):

Domestic producers or their representatives such as chambers of industry and trade, unions, societies, concerned associations, ministries supervising any production sector and others may submit a written application to the minister to protect their production from dumped or subsidized imports on the form prepared by the Ministry for such purpose.

Article (36):

Domestic producers or their representatives shall include evidence on dumping or subsidizing, injury and casual link in the application. The application shall also include, as reasonably possible, the following information and data:

- a) The identity of the applicant and a description of the volume and value of his production of the like product. In case an application is made on behalf of domestic producers then it shall include a list of their names and the volume and value of their production of the like product.
- b) A detailed description of the allegedly dumped or subsidized product and the like domestic product including their technical specifications, uses and HS tariff code and specifically the pertinent country or countries of origin or export.
- c) The volume and value of the production of the domestic product.
- d) The name and address of every foreign exporter or producer known to the applicant who produces or exports the dumped or subsidized product and a list of the known importers who import same.
- e) Information on the export price and normal value in the case of dumping as follows:

1. Price at which the imported product is sold for consumption in the domestic market of the exporting country, or where appropriate, the price at which the product is sold from the exporting country to a third country or the constructed price of the product in question, subject to the provisions of Article (6) of this Regulation.
2. Export prices of the product allegedly dumped in the Kingdom, or, where appropriate, the prices at which the product is first sold to an independent purchaser in the Kingdom.

f) Information on the existence of subsidizing, its form, volume and its capacity to bear measures taken against it in the case of subsidizing.

g) Information on the increase in the volume of dumped or subsidized imports and the effect of such imports on the prices of the like product in the domestic market and on domestic producers in accordance with the factors and indicators stipulated in Article (27) of this Regulation.

h) Any detailed or additional information the Minister decides to include in the application.

Article (37):

The applicant requesting protection shall submit copy of such application not containing confidential information.

Support of domestic producers

Article (38):

The Minister is prohibited from issuing a decision to initiate an investigation, unless it becomes evident to the competent authority, subsequent to an announcement published to assess the support of domestic producers, that:

a) Application is supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the like product produced by that portion of the domestic industry expressing either support for or opposition to the application .

b) The collective total production of domestic producers expressly supporting the application accounts for not less than (25%) twenty-five percent of the total production of domestic producers of the like product.

Article (39):

The competent authority may base its examination of the degree of support or opposition to the application on statistical samples in the cases where the number of domestic producers is very large.

Article (40):

For the purposes of evaluating the degree of opposition to the application, the competent authority shall exclude producers who import the allegedly dumped or subsidized products. It shall be permissible to exclude producers related to importers or exporters of such products in accordance with the provisions of this Regulation.

Article (41):

The Minister may issue instructions to determine the period of time during which he shall refuse any application for the investigation of a specific product if the applicant had expressly opposed an application, which was made for the same product.

Minimum volume of imports

Article (42):

It shall be prohibited to initiate an investigation regarding an imported product from a specific country and the investigation shall be promptly terminated during any stage if the competent authority determined that the volume of imports of that product is less than a certain percentage of the total imports of that product to the Kingdom as stipulated in international agreements of the World Trade Organization and in accordance with their provisions and exceptions.

Periods of investigation

Article (43):

The competent authority shall decide upon the initiation of the investigation to endorse appropriate periods of time called the periods of investigation and the competent authority shall assemble information pertinent to the existence of dumping or subsidizing and the consequent injury, verify the accuracy of such information and analyze it in relation to the endorsed periods.

Article (44):

The competent authority shall determine an individual margin of dumping for each producer or exporter known to it during the investigation.

Article (45):

In cases where it is impracticable to determine an individual margin of dumping, in accordance with the provisions of this Regulation, for every producer or exporter under investigation because of their large number, the competent authority may limit the investigation to a sample of them based on the information available to it at the time of selection or to limit it to a percentage of exports from a specific country when its investigation is practical. The margin of dumping in such cases shall be determined in the following manner:

- a) The margin of dumping shall be decided on an individual basis for each item in the sample.
- b) The margin of dumping of those not included in the sample based on the weighted margin of dumping calculated for those included in the sample provided that any margin of dumping which is negative or equals zero or any margin of dumping determined by virtue of information available in accordance with Article (52) of this Regulation is excluded from the calculation of such weighted average.

Collecting and evaluating evidence

Article (46):

Notwithstanding the provisions of Article (52) of this Regulation, the competent authority shall verify during the course of the investigation the accuracy of the information presented by the Interested Parties upon which their findings are based.

Article (47):

a) The competent authority may request the applicant or the interested parties in the investigation to examine any information or data it deems necessary for the purposes of the investigation within a period it sets for such purpose. It may also send questionnaires to such parties and allow the concerned domestic parties receiving the questionnaires a thirty day period as of the date of handing the questionnaire for reply. Such period may be extended to a period that does not exceed forty five days upon a justified reason. The foreign interested parties shall be allowed a period of forty-five days which may be extended to a period that does not exceed sixty days upon a justified reason.

b) For the purposes of implementing the provisions of paragraph (a) of this Article and in the absence of evidence indicating the date of receiving the questionnaires, it shall be considered received after the expiry of one week as of the date of sending them to the interest party or delivering them to the authorized representative of the exporting country in the Kingdom.

Article (48):

The competent authority shall allow the interested parties in the investigation the following:

- a) Examine any non-confidential information or data found in the investigation file.
- b) Present written submissions to the competent authority substantiated with any available evidence in the course of the investigation within a period set by the competent authority.
- c) Convene public hearings, upon request, under the supervision of the competent authority, between itself and the other parties interested with hearing views and rebuttal arguments to each of them. It shall be permissible to present oral information and arguments provided same are subsequently presented in writing and provided that either party is not obliged to attend the public hearing. Failure to do so shall not prejudice the case of the absent party.

Article (49):

The competent authority shall take into consideration any difficulties that may encounter the interested parties and applicants and may extend the given period to present the information upon a justified request whenever that is possible.

Article (50):

The competent authority shall provide opportunities for related parties whether they be industrialists using the imported product in their industries or persons or entities representing them and representatives of consumers to present information or views relevant to the investigation in the manner benefiting the Kingdom in implementing such measures.

Investigations outside the Kingdom

Article (51):

For the purposes of verifying information provided or to obtain further details, the competent authority may conduct the necessary investigations in the other countries provided they obtain the agreement of the companies or establishments which it desires to obtain information from and provided the government of the interested

country does not object after notification of its representative in the Kingdom. The Minister shall issue instructions to regulate the conducting of the investigations in other countries in accordance with the provisions of the World Trade Organization international agreements and their addendums.

Article (52):

a) If any of the interested parties impeded such investigation or prevented attaining results or did not provide the necessary information and data required for the purposes of the investigation within the set period ,the competent authority may base its findings on the information available from other sources to complete the investigation procedures and to issue a recommendation in that regard.

b) The Minister shall issue the necessary instructions to implement the provisions of paragraph (a) of this Article in accordance with the provisions of World Trade Organization international agreements and their addendums.

Article (53):

The notifications sent to the applicant or interested parties in the Investigation, request for information or delivery of copies of the application in accordance with the provisions of this Regulation shall be sent by means of registered mail unless the interested party or his representative thereof receives same by hand from the competent authority.

Confidentiality

Article (54):

a) If any party of the investigation parties furnishes information or data and requests for justifiable reasons to consider it confidential ,the competent authority shall be prohibited from disclosing it without the permission of the party at risk of legal responsibility.

b) If the competent authority finds that the reasons which any party in the investigation bases its claim for confidentiality of information or data submitted in the application or during the investigation do not warrant secrecy and in spite of that the party insists on treating it as confidential then the competent authority may disregard such data in the course of the investigation unless it can be demonstrated to its satisfaction from trusted and associated sources that it is accurate.

c) In all cases any interested party providing any confidential information shall furnish non-confidential summaries thereof. Such summaries shall be in sufficient detail to permit an understanding of the information. The competent authority may exempt that party from submitting such a summary if it becomes apparent to it that same is impossible.

Preliminary determination

Article (55):

The competent authority and in accordance with the provisions of the law shall issue a preliminary determination pertinent to the existence or not of dumping or subsidizing, injury and the casual link not sooner than sixty days as of the publication of the announcement of the initiation of the investigation and subsequent to giving the interested parties a chance to submit any related information.

Article (56):

If the preliminary determination ruled that dumping, subsidizing, injury or a casual link did not exist, the Minister may decide to complete or terminate the investigation as he deems necessary.

Article (57):

The competent authority shall publish the preliminary determination and shall notify it to the Organization in accordance with the provisions of this Regulation.

Suspension of the investigation**Article (58):**

a) The Minister may, upon the recommendation of the competent authority, retract the decision to initiate the investigation by closing the file and terminating it at any stage in any of the following circumstances:

1. If the Minister is convinced that evidence on dumping or subsidizing or injury or the casual link are insufficient and do not justify proceeding with the investigation.
2. If the applicant retracts the application and withdraws it in accordance with the provisions of the law.
3. If it becomes apparent to the competent authority that the margin of dumping is less than (2%) of the export price or that the amount of subsidy is less than (1%) or that the injury is unsubstantial.
4. If any of the cases stipulated in Article (42) of this Regulation are present.

b) The termination of the investigation shall be limited to the exporter or country which fulfills any of the cases stipulated in clauses (1), (3) and (4) of paragraph (a) of this Article, and shall not include any other exporters or countries if they exist.

Acceptance of price undertakings**Article (59):**

a) It shall not be permissible to seek price undertakings from exporters if the Minister did not issue a preliminary affirmative determination of dumping or subsidizing, injury and a casual link.

b) It shall not be permissible to accept price undertakings if they include price increases higher than necessary to eliminate the margin of dumping or higher than the amount of subsidy.

c) Price undertakings need not be accepted if the competent authority considers their acceptance impractical if the number of exporters is too great or for any other reasons. Should the case arise and where practicable the competent authority shall notify the exporters of its determination and the reasons justifying it.

Article (60):

The competent authority may request any exporter whose price undertakings were accepted to periodically present information pertaining to his implementation of such undertaking and shall allow the competent authority to verify the pertinent data and

subject such information to the confidentiality provisions stipulated in this Regulation.

Article (61):

The price undertaking shall automatically lapse if a final negative determination of dumping, subsidizing or the resulting injury is made except in cases where such determination is due in large part to the existence of such an undertaking. The Minister may require the maintenance of the undertaking for a reasonable period.

Article (62):

In case of violation of any price undertaking the Minister may terminate or suspend the undertaking and immediately take provisional measures based on the information available to him.

Article (63):

The provisions of Article (73), (74) and (75) of this Regulation shall be implemented, and the necessary adjustments shall be made to the price undertakings which are accepted in accordance with the provisions of this Regulation.

Provisional measures

Article (64):

a) Provisional measures applied in pursuance to the provisions of the Law may take the form of a duty, cash security or bank guarantee for the account of the Customs Department provided that it does not exceed the margin of dumping or amount of subsidy.

b) For the purposes of determining the duty referred to in paragraph (a) of this Article, the margin of dumping or amount of subsidy shall be estimated in accordance with the information available to the competent authority at the time of assessment.

Article (65):

a) The application of provisional measures in the case of dumping shall not exceed four months. The period may be extended upon the request by exporters representing a significant percentage of the trade with the Kingdom in a specific product provided it does not exceed two months. However if the competent authority finds, during the course of an investigation, that the provisional duty imposed to offset dumping is lower than the margin of dumping, provisional measures may be applied for a period that does not exceed six months to be extended for a period that does not exceed three months.

b) Provisional measures may be applied in the case of subsidizing for a period that does not exceed four months.

Article (66):

The provisions of Articles (18) of the law and Articles (68), (69) and (70) of this Regulation shall be given due allowance when evaluating the amount of duty imposed and collected in the case of provisional measures.

Article (67):

The competent authority shall notify the applicant promptly after provisional measures decision is taken and prior to applying it. It shall also publish the

announcement and notify the Organization in accordance with the provisions of this Regulation.

Imposing Anti-dumping and Countervailing duties

Article (68):

- a) The anti-dumping duty or countervailing duty shall be collected at a non-discriminatory basis from all exporters whose exports cause injury, except for imports from sources from which price undertakings have been accepted.
- b) The Ministry shall notify the Customs Department of the names of those exporting specific products whose dumping or subsidizing has been established so that collection is made from them only.
- c) Paragraphs (a) and (b) of this Article shall be applied in accordance with the provisions of the World Trade Organization international agreements.

Article (69):

- a) If the competent authority has limited its investigation to a statistical sample of exporters or producers in accordance with Article (45) of this Regulation then the anti-dumping duty applied to imports from any exporter or producer not included in the sample and not investigated on an individual basis may not exceed the margin of dumping so that it equals the difference between the weighted average of the normal value for all exporters and producers who have been investigated and the export price of that exporter or producer not included in the sample.
- b) When calculating the weighted average in accordance with paragraph (a) of this Article, the normal values calculated on the basis of information available in accordance with the provisions of Article (52) of this Regulation shall be disregarded.
- c) If the competent authority has limited its investigation to a statistical sample of exporters or producers in accordance with Article (45) of this Regulation then the countervailing duty may not exceed the weighted average of the subsidy values calculated for all exporters or producers who have been investigated. When calculating the weighted average any subsidizing value which is negative or equal to zero or calculated on the basis of information available in accordance with the provisions of Article (52) of this Regulation shall be disregarded.

Article (70):

The Minister shall form a committee comprised of representatives of the Ministry and Customs Department to examine the refund request for duties that have been paid in excess of the actual margin of dumping or the amount of subsidy by any importer of the product subject to duties and supported with verifying evidence. The committee shall issue its recommendation to the Minister as soon as possible within a period that does not exceed twelve months as of the date of the refund request.

Article (71):

If a product is subject to anti-dumping duties or countervailing duties and the product subject to duties was exported by new exporters or producers from the exporting country in question who have not exported the product to the Kingdom during the period of investigation and were not subject to investigation then the competent authority shall carry out a review in an expeditious manner for the purposes of determining the individual margin of dumping or countervailing duty for such exporters or producers provided that these exporters or producers can demonstrate

that they are not related to any exporters or producers being investigated and whose products are subject to anti-dumping duties or countervailing duties.

Article (72):

No anti-dumping duties or countervailing duties shall be levied on imports from exporters or producers referred to in Article (71) of this Regulation during the review period. The Ministry may however withhold appraisement being carried out in this regard or request guarantees necessary to ensure that duties can be collected retroactively to the date of the initiation of the review should such a review result in a determination of dumping or subsidizing in respect of such exporters or producers.

The amount and extent of Anti-dumping and Countervailing duties

Article (73):

An anti-dumping duty or countervailing duty shall be in the amount and to the extent necessary to offset dumping or subsidizing causing injury.

Article (74):

a) The competent authority shall self- review the need for the continuation of imposing anti-dumping duties or countervailing duties or upon justified request of an interested party, after a specific period of imposing duties to be set by the competent authority.

b) If the competent authority finds, as a result of the review, that the continuation of the anti-dumping duty or countervailing duty is unwarranted the duty shall be terminated immediately by following the legal measures for such purpose.

Article (75):

a) The validity period of an anti-dumping duty or countervailing duty shall be terminated on a date not later than five years from its imposition or from the date of the most recent review realized in accordance with Article (74) of this Regulation if such review included dumping or subsidizing and injury.

b) Notwithstanding the provisions of paragraph (a) of this Article, if it becomes evident as a result of a review, which was initiated prior to the date of terminating the period stipulated in paragraph (a) of this Article, or based on a request accompanied with sufficient evidence submitted by domestic producers or their representatives, that terminating the imposition of the duty shall result in the continuation or reoccurrence of dumping or subsidizing and injury, then the Ministry may decide the maintenance of validity of the duty in addition to its maintenance during the review period provided that requests for review are submitted for the purposes of this Article sixty days prior to the date referred to in paragraph (a) of this Article.

Article (76):

The provisions pertinent to the measures and principles of investigation stipulated in the law and this Regulation shall be applied to the review provided they are realized in accordance with the provisions of Article (74) of this Regulation and that the review procedure is conducted as quickly as possible and concluded within twelve months as of the date of its initiation.

Retroactivity

Article (77) :

Provisional measures, anti-dumping duties and countervailing duties shall only be applied to products imported for domestic consumption after the decision to impose such duties enters into force subject to exceptions stipulated in Articles (78) and (79) of this Regulation.

Article (78):

It shall be permissible to impose anti-dumping duties and countervailing duties retroactively in the period during which provisional measures were applied in any of the following exclusive situations:

- a) Where injury actually occurs and was not a possibility or in the form of a material retardation to the establishment of a domestic industry.
- b) Where there is a threat of injury and it was substantiated that non-application of provisional measures shall lead to the occurrence of actual injury.

Article (79):

For the purposes of applying the provisions of Article (78) of this Regulation, if the anti-dumping duty or countervailing duty is higher than the duty paid or payable and imposed during the period of applying the provisional measures or higher than the amount estimated for the purpose of the guarantee or deposit submitted as a security in accordance with the provisions of this Regulation, the difference shall not be collected. If the duty is lower than that, the difference shall be refunded or the duty recalculated as the case may be.

Article (80):

Notwithstanding the provisions of Article (78) of this Regulation, where a determination of a threat of injury or material retardation of the establishment of a domestic industry it shall be prohibited to impose an anti-dumping or countervailing duty except from the date of the determination of a decision in that regard. Any guarantee submitted during the application period of provisional measures shall be refunded and any bonds shall be released within thirty days as of the date of such decision.

Article (81):

a) It shall be permissible to impose a definitive duty to offset dumping in a retroactive manner on certain products imported for domestic consumption ninety days prior to the date of application of provisional measures for a period that does not exceed the date of initiation of the investigation, provided the following conditions are present:

1. There was a history of dumping which caused injury pertinent to the dumped product and the importer was aware, or should have been, that the exporter practices dumping and that such dumping may cause injury.
2. The injury was caused by massive imports of the dumped product in a relatively short time which in light of the timing and other circumstances, such as rapid build-up of inventories of the imported product, is likely to seriously undermine the

remedial effect of the definitive anti-dumping duty to be applied.

b) It shall be permissible to impose anti-dumping duties retroactively on products imported for domestic consumption imported prior to a period that does not exceed ninety days as of the application of provisional measures if a violation of the price undertaking occurs provided that such period does not extend to cover the period prior to the date of the occurrence of this violation.

c) It shall be permissible to impose a countervailing duty retroactively on products imported for domestic consumption prior to a period that does not exceed ninety days as of the application of provisional measures if there were difficult circumstances which substantiated the existence of injury difficult to remedy as a result of the entry of imports of a specific product in massive quantities during a relatively short period and to prevent the reoccurrence of such injury.

Announcements and notifications

Article (82):

Procedures set hereunder shall be followed pertinent to public announcements and notices which have been stipulated in the law and this Regulation:

a) The announcements shall be published in two local daily newspapers at the expense of the applicant.

b) A copy of the announcement shall be sent to the parties interested in the investigation and known to the competent authority and the Organization in accordance with the principles so that the Organization would in turn notify the interested member countries.

c) The announcements shall refer to the possibility of member countries and interested parties acquiring a report upon request setting forth in adequate detail to the basic material and legal reasons supporting the determination.

Article (83):

Notwithstanding the provisions pertinent to the protection of confidential information stipulated in this Regulation, a public notice announcing the initiation of the investigation shall be published setting forth the following information:

a) Name of the country or countries exporting a particular product.

b) Date of the initiation of the investigation.

c) Basis stipulated in the application claiming the existence of dumping.

d) Summary of the factors stipulated in the application, which support the claim of injury.

e) Address to which notices and replies of interested parties should be sent at.

f) Period during which interested parties may present their views and submit any memorandums or information prior to making a preliminary and final determination and submitting requests to convene public hearings with parties with contradicting interests.

Article (84):

a) Notwithstanding the provisions pertinent to the protection of confidential information stipulated in this Regulation, an announcement of the preliminary and final determination, imposition of definitive duties and provisional measures or terminating them, accepting price undertakings or terminating them, suspending the investigation or terminating it, determinations pertinent to applying anti-dumping

duties retroactively and all determinations in relation to the review, provided such determinations contain the following:

1. Names of importers of dumped product in the Kingdom, and if that becomes impossible then names of specific importing countries.
2. Complete description of the product allegedly dumped for customs purposes.
3. Specified margin of dumping with a detailed explanation of the reasons justifying the approved method of calculation for specifying and comparing the export price and normal value.
4. Considerations pertinent to the determination of the existence of injury as set forth in the provisions of this Regulation.
5. Issues of fact and law on which were based the determinations and reasons which lead to the acceptance or rejection of the arguments of exporters or producers.

b) The determinations stipulated in paragraph (a) of this Article shall come into force as of the date of publishing the notices concerning them.

Fees

Article (85):

a) The Ministry shall collect the following fees from applicants:

1. Two-hundred and fifty Dinars for the submitting an application to realize measures pertinent to dumping and subsidizing.
2. Seven-hundred and fifty Dinars upon the initiation of the investigation.

b) The provisions of paragraph (a) of this Article shall not be applied if the application and investigation are related to an agricultural product.

Article (86):

The Minister may issue the instructions necessary for the implementation of the provisions of this Regulation and publish same in the Official Gazette.