

THE TRADE (ANTI-DUMPING AND COUNTERVAILING MEASURES) BILL
(No. XVIII of 2009)

Explanatory Memorandum

The object of this Bill is to –

- (a) define the basic concepts relating to anti-dumping, and countervailing duties following subsidisation;
- (b) provide the procedure for the initiation and conduct of anti-dumping investigations and the determination of the link between dumping and material injury to the domestic industry;
- (c) provide the procedure for investigating into subsidisation of products, determination of link between subsidisation and material injury to the domestic industry;
- (d) provide for the imposition of provisional measures, after a preliminary determination of dumping or subsidisation; and
- (e) define the circumstances in which anti-dumping or countervailing measures can be imposed and the conditions attached to any such measures or duties.

DR. A. BOOLELL

*Minister of Foreign Affairs,
Regional Integration and International Trade*

23 October 2009

THE TRADE (ANTI-DUMPING AND COUNTERVAILING MEASURES) BILL
(No XVIII of 2009)

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A BILL

To protect the domestic industry against the negative effects of dumped and subsidised imports

ENACTED by the Parliament of Mauritius, as follows –

1. Short title

This Act may be cited as the Trade (Anti-Dumping and Countervailing Measures) Act 2009.

PART I – PRELIMINARY

2. Interpretation

In this Act, unless the context otherwise requires –

“de minimis”, in -

- (a) a dumping investigation, means a margin of less than 2 per cent expressed as a percentage of the export price, or less than 3 per cent expressed as a percentage of the total volume of imports;
- (b) a subsidy investigation, means a subsidy of less than one per cent *ad valorem* or, where the investigation concerns a product from a developing country, 2 per cent *ad valorem*;

“Director” means the Director, Trade Policy, International Trade Division of the Ministry;

“dumping margin” means the difference between the export price and the normal value;

“export price” means the price at which a like product is introduced into the commerce of Mauritius;

“government”, in relation to any country other than Mauritius, means the government of that country and includes any provincial, state, municipal or other local or regional government in that country or any person, agency or institution acting for, or on behalf of, or under, the authority of any law passed by those governments;

“injury” means material injury to a Mauritian industry, threat of material injury to a Mauritian industry or material retardation to the establishment of a Mauritian industry;

"interested party" means –

- (a) the exporter or foreign producer of the investigated product;
- (b) the importer of the investigated product;
- (c) a trade or business association, a majority of the members of which are producers, exporters or importers of the investigated product;
- (d) the government of the exporting country;
- (e) the producer of the domestic like product in Mauritius;
- (f) a trade and business association, a majority of the members of which produce the domestic like product in Mauritius;
- (g) a labour union or other organisation representing the interests of workers in the domestic industry;
- (h) a consumer association;
- (i) an industrial user of the investigated product;
- (j) any other natural or legal person who has indicated an interest in participating in the investigation and any other person whom the Investigating Authority determines to have sufficient interest in the outcome of the investigation;

"investigated product" means the product subject to a dumping or subsidies investigation as described in the notice of initiation of the investigation;

"Investigating Authority" means the Investigating Authority referred to in section 72;

"like product" means a product which is identical or alike in all respects to the investigated product, or in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the investigated product;

"Minister" means the Minister to whom responsibility for the subject of international trade is assigned;

"Ministry" means the Ministry responsible for the subject of international trade;

“negligible” means the volume of dumped imports of an investigated product from a particular country which is found to account for less than 3 per cent of total imports of the investigated and like product in Mauritius, unless imports of the investigated product from all countries under investigation which individually account for less than 3 per cent of the total imports of the investigated and like product in Mauritius collectively account for more than 7 per cent of imports of the investigated and like product in Mauritius;

“normal value” means the price at which a like product is sold when destined for consumption in an exporting country;

“ordinary course of trade” means those commercial transactions which reflect market conditions in the country of export and which have been customarily conducted within a representative period between independent buyers and sellers;

“producer”, in a dumping or subsidy investigation, shall be deemed to be related to exporters or importers, where –

- (a) one of them directly or indirectly controls the other;
- (b) both of them are directly or indirectly controlled by a third person;
or
- (c) together they directly or indirectly control a third person,

provided that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers, and one shall be deemed to control another when the former is legally or operationally in a position to exercise restraint or direction over the latter;

“retardation” means retardation of the establishment of a domestic industry;

“specific subsidy ” means a subsidy which is specific to an enterprise, group of enterprise, industry or group of industry;

“subsidy” means –

- (a) a financial contribution by a government of a country other than Mauritius that confers a benefit to persons engaged in the production, manufacture, growth, processing, purchase, distribution, transportation, sale, export or import of goods but does not include the amount of any duty or internal tax imposed on goods by the government of the country of origin or country of

export from which the goods, because of their exportation, have been exempted or have been or will be relieved by means of a refund or drawback; or

- (b) any form of income or price support within the meaning of Article XVI of the General Agreement on Tariffs and Trade, 1994, that confers a benefit.

3. Application of Act

(1) This Act shall apply to any investigation into a dumped or subsidised product.

(2) This Act shall apply to any investigation initiated on or before the commencement of this Act.

(3) The enforcement and collection of duties under this Act shall be a function of the Customs Department of the Mauritius Revenue Authority.

PART II – DETERMINATION OF DUMPING

4. Dumped product

For the purposes of this Act, a product shall be deemed to be dumped where it is imported into Mauritius at a price which is less than its normal value.

5. Imposition of anti-dumping measures

The Investigating Authority may impose anti-dumping measures on products imported into Mauritius where it is determined pursuant to an investigation initiated and conducted in accordance with this Act, that –

- (a) the investigated product is dumped;
- (b) there is injury to the domestic industry; and
- (c) there is a casual link between the dumped product and injury to the domestic industry.

6. Determination of normal value based on prices in country of export or origin

(1) The Investigating Authority shall determine the normal value of the investigated product on the basis of the comparable price paid or payable, in the ordinary course of trade, for sales of the like product when destined for consumption in the exporting country.

(2) Notwithstanding subsection (1), the Investigating Authority may determine the normal value on the basis of comparable price paid or payable, in the ordinary course of trade for sales of the like product when destined for consumption in the country of origin where –

- (a) the investigated product is merely trans-shipped through the country of export;
- (b) the investigated product is not produced in the country of export;
- (c) there is no comparable price in the country of export.

7. Determination of normal value based on export price to a third country or on constructed value

(1) Where there are no sales of the like product in the ordinary course of trade in the domestic market of the exporting country, or where such sales do not permit a proper comparison due to a particular market situation or the low volume of the sales in the domestic market of the exporting country, the Investigating Authority shall determine the normal value of the investigated product on the basis of –

- (a) a comparable price of the like product when exported to an appropriate third country provided that this price is representative; or
- (b) the cost of production in the country of origin plus a reasonable amount for administrative, selling and general costs and for profits.

(2) For the purposes of subsection (1), any sale of the like product destined for consumption in the domestic market of the exporting country, or sale to an appropriate third country, shall be considered to be a sufficient quantity for the determination of the normal value where such sales constitute not less than 5 per cent of the sales of the investigated product to Mauritius.

(3) Notwithstanding subsection (2), the Investigating Authority shall apply a lower ratio where it is satisfied, based on the evidence submitted by any interested party or otherwise available that sales at such lower ratio are of sufficient magnitude to provide for a proper comparison.

8. Sales below cost

(1) (a) The Investigating Authority may treat any sale of the like product in the domestic market of the exporting country, or sales to a third country at prices below unit cost of production including administrative, selling and general costs as not being in the ordinary course of trade by reason of price.

(b) For the purposes of paragraph (a), unit cost of production shall include both fixed and variable costs of production.

(2) The Investigating Authority may, for the purposes of subsection (1), disregard such sales in determining the normal value where such sales were made –

- (a) within an extended period of time of not less than 6 months and not more than one year;
- (b) in substantial quantities; and
- (c) at prices which do not provide for the recovery of all costs within a reasonable period of time.

(3) For the purposes of this section, sales below cost shall be considered as made in substantial quantities where –

- (a) the weighted average selling price of the transaction under consideration for the determination of the normal value is below the weighted average cost; or
- (b) the volume of sales below cost represents not less than 20 per cent of the volume sold in transaction under consideration for the determination of the normal value.

(4) Where prices which are below cost at the time of sale are above the weighted average cost for the period of investigation, the Investigating Authority shall consider such prices as providing for recovery of costs within a reasonable period of time.

9. Calculation of costs

(1) The Investigating Authority shall calculate costs on the basis of records kept by the exporter or producer under investigation, provided that such records are in accordance with generally accepted accounting principles of the exporting country and reasonably reflect the costs associated with the production and sale of the like product.

(2) The amount for administrative, selling and general costs and for profits shall be based on actual data pertaining to production and sales in the ordinary course of trade of the like product by the exporter or producer under investigation.

(3) Where the amount of costs and profits cannot be calculated under subsection (2), the amount may be determined on the basis of –

- (a) the actual amount incurred and realized by the exporter or producer in respect of production and sales in the domestic market of the country of origin of the same general category of products;
- (b) the weighted average of the actual amounts incurred and realised by other exporters or producers subject to investigation in respect of production and sales of the like product in the domestic market of the country of origin; or
- (c) any other reasonable method, provided that the amount for profit so established does not exceed the profit normally realised by other exporters or producers on sales of products of the same general category in the domestic market of the country of origin of the like product.

(4) The Investigating Authority shall consider all available evidence on the proper allocation of costs, including that which is made available by the exporter or producer in the course of the investigation provided that such allocations have been historically utilised by the exporter or producer, in relation to establishing appropriate amortization and depreciation periods and allowances for capital expenditures and other development costs.

(5) Unless already reflected in the cost allocations under this section, the Investigating Authority shall adjust costs appropriately for non-recurring items of cost which benefit future or current production, or for circumstances in which costs during the period of investigation are affected by start-up operations.

(6) The adjustment made for start-up operations shall reflect the costs at the end of the start-up period or where that period extends beyond the period of investigation, the most recent costs which can reasonably be taken into account by the Investigating Authority during the investigation.

10. Non-market economies

Where the exporter of an investigated product is an exporter from a non-market economy country, the Investigating Authority may, if it considers the

methodology for determining normal value to be inappropriate, determine the normal value on the basis of –

- (a) the comparable price paid or payable, in the ordinary course of trade, for sales of the like product when destined for consumption in an appropriate market economy country;
- (b) the comparable price paid or payable, in the ordinary course of trade, for exports of the like product from an appropriate market economy country to other countries, including Mauritius;
- (c) the price actually paid or payable in Mauritius for the domestic like product, duly adjusted where necessary to include a profit margin corresponding to the margin to be expected under the existing economic circumstances for the sector concerned; or
- (d) any other reasonable method.

11. Determination of export price

(1) Save as provided for in subsections (2) and (3), the export price shall be the price actually paid or payable for the investigated product when sold for export from the exporting country to Mauritius.

(2) Where there is no export price or where it appears to the Investigating Authority that the export price is unreliable due to an association or a compensatory arrangement between the exporter and the importer or a third party, the export price may be determined –

- (a) on the basis of the price at which the imported products are first resold to an independent buyer; or
- (b) where the products are not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as the Investigating Authority may consider appropriate.

(3) Where the Investigating Authority determines the normal value on the basis of the country of origin pursuant to section 6(2), the export price shall be the price actually paid or payable for the investigated product when sold for export in the country of origin.

12. Comparison between normal value and the export price

(1) The Investigating Authority shall make a fair comparison between the export price and the normal value at the same level of trade, normally at the ex-factory level, and in respect of sales made at, as nearly as possible, the same

time, due allowance being made in each case, on its own merits, for differences which affect price comparability, including differences in conditions and terms of sale, taxation, levels of trade, quantities, physical characteristics, and any other differences which are demonstrated by interested parties to affect price comparability.

(2) Where the export price is determined under section 11(2)(a), the Investigating Authority shall make allowances for costs, including duties and taxes, incurred between importation and resale, and such reasonable amount for profits.

(3) Where price comparability has been affected on an application of subsection (2), the Investigating Authority shall determine the normal value at a level of trade equivalent to the level of trade of the determined export price, or shall make due allowance as may be warranted under this section.

(4) The Investigating Authority shall indicate to any interesting party the type of information which is necessary to ensure a fair comparison and shall not impose an unreasonable burden of proof.

13. Comparison methods

(1) Subject to section 12, the existence of dumping margins shall be determined on the basis of a comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions or by a comparison of normal value and export prices on a transaction-to-transaction basis.

(2) A normal value determined on a weighted average basis may be compared to prices of individual export transactions where the Investigating Authority considers that a pattern of export prices differs significantly among different purchasers, regions or time period.

(3) For the purposes of subsection (2), the Investigating Authority shall state the reasons for which such differences cannot be taken into account appropriately by the use of a weighted average-to-weighted average or transaction-to-transaction comparison.

14. Currency conversion

(1) When the price comparison under sections 12 and 13 requires a conversion of currency, the Investigating Authority shall make such conversion based on the rate of exchange on the date of sale.

(2) The date of sale shall be the date of contract, purchase order, order confirmation, or invoice, whichever establishes the material terms of sale.

(3) Notwithstanding subsections (1) and (2), where a sale of foreign currency on forward markets is used in direct relation to an export sale, the Investigating Authority shall use the rate of exchange in the forward sale for all the related transactions.

(4) The Investigating Authority shall not take into account fluctuations in exchange rates, and shall allow an exporter not less than 60 days for the export price to be adjusted to reflect sustained movements in exchange rates during the period of investigation.

15. Individual dumping margin

(1) The Investigating Authority shall determine an individual dumping margin for each known exporter or producer of an investigated product.

(2) Notwithstanding subsection (1), where the number of exporters, producers, importers or type of products involved is so large as to make it impracticable to determine an individual dumping margin for each known exporter or producer of an investigated product, the Investigating Authority may limit its examination to –

- (a) a reasonable number of interested parties or investigated products by using samples which are statistically valid on the basis of information available at the time of the selection; or
- (b) to the largest percentage of the volume of the exports from the country under reference which can reasonably be investigated.

(3) Any selection of exporter, producer, importer or type of products made under this section shall be made after consultation with the exporter, producer or importer.

(4) Notwithstanding subsections (2) and (3), the Investigating Authority shall determine an individual dumping margin for any exporter or producer who voluntarily submits the necessary information in time for that information to be considered during the course of the investigation.

(5) For the purposes of subsection (4), where the number of exporters or producers is so large that individual examinations would be unduly burdensome to the Investigating Authority and prevent the timely completion of the investigation, the Investigating Authority may decline to determine an individual dumping margin on the basis of such voluntary responses and limit their examination to the exporters and producers in the sample.

PART III – SUBSIDISATION AND COUNTERVAILING MEASURES

16. Imposition of countervailing measures

(1) The Investigating Authority may impose countervailing measures on products imported into Mauritius where it is determined, pursuant to an investigation initiated and conducted in accordance with this Act, that –

- (a) the investigated product is subsidised;
- (b) there is injury to the domestic industry; and
- (c) there is a causal link between the subsidised imported product and injury to the domestic industry.

(2) No countervailing duty shall be imposed on any imported product in excess of the total rate of subsidisation of the investigated product from the subsidy or subsidy program found to exist in terms of subsidisation per unit of the subsidised and exported product.

(3) Only specific subsidy shall be subject to countervailing duties.

(4) The determination of the existence of the prohibited or actionable subsidy and the amount of the subsidy shall be established in such manner as may be prescribed.

(5) For the purposes of this section, a subsidy shall be deemed to exist where there is a financial contribution by a government or public body within the territory of a country.

PART IV – DETERMINATION OF INJURY AND OF CAUSAL LINK

17. Determination of Injury

A determination of injury for the purposes of sections 5 and 16 shall be based on positive evidence and involve an objective examination of –

- (a) the volume of the dumped or subsidised imports;
- (b) the effect of the dumped or subsidised imports on prices in the domestic market for like products; and
- (c) the consequent impact of those imports on domestic producers of such products.

18. Examination of volume of dumped or subsidised imports and their effects on prices

(1) With regard to the volume of imports, the Investigating Authority shall consider whether there has been a significant increase in dumped or subsidised imports, as the case may be, in absolute terms or relative to the production or consumption in Mauritius.

(2) With regard to the effect on the prices of imports, the Investigating Authority shall consider whether –

- (a) there has been a significant price undercutting by the dumped or subsidised imports as compared with the price of the domestic like product; or
- (b) the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which otherwise would have occurred, to a significant degree.

(3) Notwithstanding subsections (1) and (2), the Investigating Authority may consider such other factors as it deems relevant or necessary in examining the volume of dumped or subsidised imports and their effects on prices.

19. Cumulation

Where imports of a like product from more than one country are the subject of simultaneous anti-dumping or countervailing duties investigations, the Investigating Authority may cumulatively assess the effects of such imports on the domestic industry only if it is determined that –

- (a) the amount of dumping or the rate of subsidisation established in relation to the investigated product from each country is more than *de minimis* and the volume of the investigated product imported from each country is not negligible as defined under section 2; and
- (b) a cumulative assessment of the effects of the imports is appropriate in the light of the conditions of competition between the imports and the conditions of competition between the imports and the domestic like product.

20. Examination of import of dumped or subsidised imports on domestic industry

(1) The examination of the impact of dumped imports on the domestic industry shall, subject to subsection (2), include an evaluation by the

Investigating Authority of all relevant economic factors and indices having a bearing on the state of the industry, including –

- (a) actual and potential decline in sales, profits, output, market share, productivity, return on investments, or utilisation of capacity;
- (b) factors affecting domestic prices;
- (c) the magnitude of the dumping margin; and
- (d) actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments.

(2) In the case of agricultural imported products, the Investigating Authority shall, in respect of an examination of the impact of subsidised imports on the domestic industry, consider whether there has been an increased burden on government support programmes.

(3) The Investigating Authority shall assess the effect of the dumped imports or subsidised imports in relation to the production of the domestic like product when available data allows the separate identification of that production on the basis of, inter alia, the production process and the producers' sales and profits.

(4) Where a separate identification of the production of domestic like product is not possible, the Investigating Authority shall assess the effects of the dumped imports or subsidised imports by an examination of the production of the narrowest group or range of products including the domestic like product, for which the necessary information may be provided.

21. Threat of material injury in respect of dumped imports

In making a determination regarding the existence of a threat of material injury in relation to dumped imports, the Investigating Authority shall consider –

- (a) any significant rate of increase of dumped imports into the domestic market indicating the likelihood of substantially increased importations;
- (b) sufficient freely disposable or an imminent, substantial increase in capacity of the exporter indicating the likelihood of substantially increased dumped exports to the domestic market, taking into account the availability of other export markets to absorb any additional exports;

- (c) whether imports are entering at prices which have a significant depressing or suppressing effect on domestic prices, and is likely to increase demand for further imports; and
- (d) inventories of the investigated products.

22. Determination of threat of material injury in respect of subsidised imports

In making a determination regarding the existence of a threat of material injury in relation to subsidised imports, the Investigating Authority shall consider, in addition to sections 18 and 20, the following –

- (a) the nature of the subsidy in question and the trade effects likely to arise therefrom;
- (b) the significant rate of increase of subsidised imports into the domestic market indicating the likelihood of substantially increased importations;
- (c) sufficient freely disposable, or an imminent, substantial increase in, capacity of the exporter indicating the likelihood of substantially increased subsidised exports to the domestic market, taking into account the availability of other export markets to absorb any additional exports;
- (d) whether imports are entering at prices which have a significant depressing or suppressing effect on domestic prices, and is likely to increase demand for further imports; and
- (e) inventories of the investigated products.

23. Causal link

(1) The Investigating Authority shall demonstrate that the dumped or subsidised imports have, through the effects of dumping or subsidisation, caused injury to the domestic industry.

(2) The causal link between the dumped or subsidised imports and the injury to the domestic industry shall be based on an examination of all relevant evidence before the Investigating Authority.

(3) The Investigating Authority shall examine any known factor other than the dumped or subsidised imports which at the same time are injuring the domestic industry, and the injuries caused by those factors shall not be attributed to the dumped imports.

- (4) The factors referred to in subsection (3) shall include –

- (a) the volume and prices of imports not sold at dumping prices or non-subsidised imports of the product in question;
- (b) contraction in demand or changes in the patterns of consumption;
- (c) trade restrictive practices of and competition between the foreign and domestic producers;
- (d) developments in technology; and
- (e) the export performance and productivity of the domestic industry.

PART V – INITIATION OF INVESTIGATIONS

24. Application by domestic industry

(1) An investigation under this Part may be initiated by the Investigating Authority upon receipt of a written application by, or on behalf of, a domestic industry.

- (2) An application under subsection (1) shall include evidence of –
 - (a) dumping or subsidy;
 - (b) injury; and
 - (c) causal link.

25. Evidence and information required in application

An application under section 24 shall contain the following –

- (a) the name, address and telephone number of the applicant;
- (b) the identity of the domestic industry by, or on behalf of, which the application is being made, including the names, addresses and telephone numbers of all other known producers in the domestic industry;
- (c) information relating to the degree of the domestic industry's support for the application, including –
 - (i) the total volume and value of domestic production of the domestic like product; and

- (ii) the volume and value of the domestic like product produced by the applicant and by each domestic producer identified;
- (d) a complete description of the allegedly dumped product, including the technical characteristics and uses of the product and its current tariff classification number;
- (e) the country in which the allegedly dumped or subsidised product is manufactured or produced and, where it is imported from a country other than the country of manufacture or production, the intermediate country from which the product is imported;
- (f) the name and address of each person the applicant believes sells the allegedly dumped or subsidised product and the proportion of total exports to Mauritius that person accounted for during the most recent twelve-month period;
- (g) in relation to an allegedly dumped product –
 - (i)
 - (A) information on prices at which the product in question is sold when destined for consumption in the domestic market of the country of export or origin;
 - (B) where appropriate, information on the prices at which the product is sold from the country of export or origin to a third country or on the constructed value of the allegedly dumped product and information on export prices; or
 - (C) where appropriate, on the prices at which the allegedly dumped product is first resold to an independent buyer in Mauritius, and on any allowable adjustment; and
 - (ii) information on the evolution of the volume of the allegedly dumped imports, the effect of those imports on prices of the domestic like product in the domestic market and the consequent impact of the imports on the domestic industry, as demonstrated by relevant factors and indices having a bearing on the state of the domestic industry, and information on the existence of a causal link as provided under section 23.
- (h) in relation to an allegedly subsidised product –
 - (i) evidence with regard to the existence, amount and nature of the subsidy; and

- (ii) evidence that the alleged injury to a domestic industry is caused by subsidised imports through the effects of the subsidy.

26. Publication of application

(1) The Investigating Authority shall avoid, unless a decision has been made to initiate an investigation, any publicity on the application for the initiation of an investigation.

(2) Notwithstanding subsection (1), the Investigating Authority shall, upon receipt of an application under section 24, promptly notify the government of each exporting country concerned.

27. Withdrawal of application before initiation

A domestic industry may, after making an application under section 24, at any time prior to the initiation of an investigation, withdraw the application.

28. Initiation of investigation

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

(2) The Investigating Authority may seek additional information from the applicant before deciding whether to initiate an investigation.

(3) Where the Investigating Authority determines that –

- (a) the application is made by, or on behalf of, the domestic industry; and
- (b) there is sufficient evidence of dumping, injury and causal link or subsidy,

the Investigating Authority may initiate an investigation.

(4) Where the Investigating Authority does not consider it appropriate to initiate an investigation, it shall notify, in writing, the applicant of the reasons for not initiating the investigation.

(5) The Investigating Authority shall, within 60 days of the date of receipt of a written application, decide whether or not to initiate an investigation.

29. Domestic industry

(1) For the purposes of this Act, an application shall be considered to have been made by, or on behalf of, the domestic industry where –

- (a) it is supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the domestic like product produced by that portion of the domestic industry expressing either support for, or opposition to, the application; and
- (b) the domestic producers expressly supporting the application account for not less than 25 per cent of the total production of the domestic like product produced by the domestic industry.

(2) In the case of fragmented industries involving an exceptionally large number of producers, the Investigating Authority may determine support and opposition to the application by using a statistically valid sampling technique.

30. Self initiation

(1) Notwithstanding section 24, the Investigating Authority may, on its own initiative, initiate an investigation without having received a written application by, or on behalf of, the domestic industry for the initiation of such investigation.

(2) Where the Investigating Authority initiates an investigation under subsection (1), it shall proceed with the investigation where there is sufficient evidence of dumping or subsidy, injury and causal link.

31. Negligible infringement

The Investigating Authority shall not initiate an investigation where, from information reasonably available, it determines that –

- (a) there is insufficient evidence of dumping or subsidisation, injury, or causal link;
- (b) the volume of imports of the allegedly dumped product or the actual or potential volume of subsidised product from a country into Mauritius is negligible; or

- (c) the dumping margin or the rate of subsidisation is *de minimis*.

32. Public notification of initiation

(1) Where the Investigating Authority decides to initiate an investigation, it shall –

- (a) notify the initiation of an investigation to the exporters, importers and representative associations of importers or exporters known to the Investigating Authority to be concerned, as well as representatives of the exporting country, the complainant and other interested party known to the Investigating Authority to have an interest therein; and
- (b) give public notice of its decision.

(2) The notification and public notice of the initiation of an investigation under subsection (1) shall contain –

- (a) the name of the country of export, and the country of origin, of the investigated product;
- (b) a complete description of the investigated product, including the technical characteristics and uses of the product and its current tariff classification number;
- (c) a description of the alleged dumping or subsidy practice to be investigated;
- (d) a summary of the factors on which the allegations of injury and causal link are based;
- (e) the address where information and comments may be submitted;
- (f) the date of initiation of the investigation; and
- (g) the proposed schedule for the investigation.

(3) The initiation shall be effective on the date of the publication of the notice in the *Gazette*.

33. Disclosure of application

(1) Subject to section 36, the Investigating Authority shall, as soon as the investigation is initiated, provide the full text of the written application under section 24 to –

- (a) the known exporters, foreign producers and to the authorities of the exporting country; and
- (b) any other interested party, upon request.

(2) Notwithstanding subsection (1), where the number of exporters involved is particularly high, the Investigating Authority may provide a copy of the written application to the relevant trade association of the exporting country.

PART VI – CONDUCT OF INVESTIGATIONS

34. Duration of investigations

The Investigating Authority shall conclude an anti-dumping investigation or subsidy investigation within one year, and in no case not later than 18 months after the date of initiation of investigation.

35. Customs clearance

An anti-dumping or countervailing investigation or proceedings shall not hinder the procedures of customs clearance.

36. Confidentiality

(1) The Investigating Authority shall, upon good cause shown, keep confidential information which –

- (a) by nature is confidential;
- (b) if disclosed would be of significant competitive advantage to a competitor;
- (c) if disclosed could have a significant adverse effect upon a person supplying the information or upon a person from whom the supplier acquired the information;
- (d) were provided on a confidential basis by parties to an investigation.

(2) The following types of information shall be deemed to be by nature confidential –

- (a) business or trade secrets concerning the nature of a product, production processes, operations, production equipment, or machinery;

- (b) information concerning the financial condition of a company which is not publicly available;
- (c) information concerning the costs, identification of customers, sales, inventories, shipments, or amount or source of any income, profit, loss or expenditure related to the manufacture and sale of a product.

(3) Any person who seeks confidentiality over certain information shall request such treatment at the time the information is submitted, including the reasons as to why confidential treatment is warranted.

(4) The Investigating Authority shall consider a request made under subsection (3) expeditiously, and inform the party submitting the information where it determines that the request for confidential treatment is not warranted.

(5) Notwithstanding subsection (3) but subject to subsection (6), a person shall furnish non-confidential summary of all information for which confidential treatment is sought.

(6) Where a person considers that information for which confidential treatment is sought is not susceptible of any summary, he shall submit a statement of the reasons why a summary is not possible.

(7) Where the Investigating Authority is not satisfied of the request for a confidential summary, the Investigating Authority shall determine that the request for confidential treatment is not warranted.

37. Reliance on information available

- (1) Where, at any time during an investigation, any interested party –
 - (a) refuses access to, or otherwise does not provide, necessary information within such time as determined by the Investigating Authority; or
 - (b) otherwise significantly impedes the investigation,

the Investigating Authority may reach preliminary and final determinations, in the prescribed manner, on the basis of information available.

(2) The Investigating Authority shall take due account of any difficulty encountered by any interested party, in supplying the information requested.

38. Register of investigations

(1) The Investigating Authority shall establish and maintain a register relating to each investigation or review made under this Act.

(2) The Investigating Authority shall record in the register –

- (a) all public notices relating to the investigation or review;
- (b) all relevant materials, including questionnaires, responses to questionnaires, and written communications submitted to it;
- (c) all other information developed or obtained by the Investigating Authority, including any verification report prepared pursuant to section 50; and
- (d) any other documents which the Investigating Authority deems appropriate for public disclosure.

(3) The register shall be available for consultation to the general public at the offices of the Investigating Authority at all times during the course of the investigation or review.

PART VII – INVESTIGATION PROCEDURES

39. Time frame

The Investigating Authority shall, after consultation with any known interested party, draw up a time-frame for an investigation which shall, except owing to circumstances beyond its control, be followed so as not to cause injustice to any party.

40. Gathering of information

(1) The Investigating Authority shall send questionnaires to any person whom it believes may have information relevant to the investigation, including known domestic producers, importers, exporters and foreign producers.

(2) (a) The Investigating Authority shall, subject to subsection (3), give exporters and foreign producers not less than 30 days from the date of receipt of the questionnaire to reply to the questionnaire referred to in subsection (1).

(b) A questionnaire shall be deemed to have been received by a party 7 days after it has been sent to that party or transmitted to the appropriate diplomatic representatives where the party is an exporting country.

(3) Any person who receives a questionnaire may request for an extension of time and the Investigating Authority may grant an extension of time, upon good cause shown, taking into account the time limits for investigation.

(4) The Investigating Authority may disregard any reply to a questionnaire that is not submitted within the time provided and in the form requested.

(5) The Investigating Authority, may, during the course of the investigation, request further information from any interested party.

(6) A request made under subsection (5) shall state the date by which a reply shall be made.

(7) Any interested party may, on its own initiative, submit in writing any information it considers relevant to the investigation.

(8) The Investigating Authority shall consider such information submitted under subsection (7) unless such consideration would be unduly burdensome to the Investigating Authority and disrupt the timely progress of the investigation.

(9) The Investigating Authority shall base its assessment of dumping, injury and causal link on data relating to the period under investigation.

(10) For the purposes of this section –

- (a) the period of investigation in the case of dumping shall cover a period of one year preceding the date of initiation of the investigation for which data are available;
- (b) the period of investigation for the case of subsidy shall cover a period of one year preceding the date of initiation of investigation;
- (c) in the case of injury, the period shall cover a period of 3 years.

41. Preliminary written arguments

Any interested party may submit written arguments to the Investigating Authority not later than 15 days before the scheduled date of the preliminary determination, concerning any matter relevant to the investigation.

42. Preliminary determination

(1) The Investigating Authority shall make a preliminary determination of an investigation of dumping or subsidy, injury and causal link at least 60 days but not later than 250 days after initiation of the investigation.

(2) A preliminary determination shall be based on all information available to the Investigating Authority at the time of the investigation.

(3) The Investigating Authority shall give public notice of the preliminary determination.

(4) The notice of preliminary determination shall provide for the findings and conclusions, due regard being given to the requirement for protection of confidential information and shall include –

- (a) the names of the known exporters and producers of the investigated product;
- (b) a description of the investigated product that is sufficient for customs purposes, including the current domestic tariff classification;
- (c) the amount of the dumping margin or subsidy, if any, found to exist, the basis of the determination and the methodology used in determining normal value, export price, and any adjustments made;
- (d) the factors that have led to the determination of injury and causal link, including information on factors other than dumped imports or subsidised imports taken into account; and
- (e) the amount of any provisional measures to be applied and the reasons why such provisional measures are necessary to prevent injury caused during the investigation.

(5) A copy of the public notice shall be forwarded to the country exporting the investigated product and to any other interested party.

43. Disclosure after preliminary determination

The Investigating Authority shall, on request made by an exporter or producer of the investigated product and within 15 days of the publication of the preliminary determination, hold separate disclosure meetings with exporters or producers to explain the dumping or subsidy calculation methodology preliminarily applied for that exporter or producer.

44. Offer of price undertaking

(1) (a) The Investigating Authority may suspend an investigation without the imposition of provisional measures, or anti-dumping or countervailing duties upon acceptance of the offer of an undertaking from an exporter to revise its prices or to cease exports at dumped or subsidised prices or take other measures concerning the injurious effects of the dumping or subsidisation.

(b) In case of subsidy, the undertaking may be given by the government of the exporting country.

(2) Prices increases under an undertaking shall not be higher than necessary to eliminate the dumping or subsidisation and shall be less than the dumping margin or countervailing duties where the Investigating Authority determines that such lesser price increase would be adequate to remove the injury to the domestic industry.

45. Acceptance of undertaking

(1) The Investigating Authority shall not accept an undertaking –

(a) unless it has made a preliminary affirmative determination of dumping or subsidisation, injury and causal link; and

(b) the undertaking has been made not less than 60 days before the proposed date of final determination.

(2) Where the Investigating Authority declines to accept an undertaking, it shall provide to the exporter or, where appropriate, the government of the exporting country that offered the undertaking the reasons for its decision and shall provide the exporter or government an opportunity to make written comments on the decision.

(3) The Investigating Authority may require from any exporter or government from which an undertaking has been accepted periodical information relevant to the fulfilment of the undertaking and to permit verification of pertinent data.

46. Notification of undertaking

(1) Where the Investigating Authority accepts an undertaking, it shall give public notice of its decision.

(2) The public notice shall include the non-confidential part of the undertaking and set forth with the findings and conclusions of the Investigating Authority.

(3) A copy of the public notice referred to in this section shall be forwarded to the government of the country the products of which are the subject of such an undertaking and to any other interested party.

47. Continuation of investigation

(1) Notwithstanding the fact that an undertaking has been accepted, the Investigating Authority may –

- (a) upon the request of an exporter; or
- (b) where it thinks fit,

complete the investigation.

(2) Where the Investigating Authority makes a negative determination of dumping or subsidisation and injury, the undertaking shall automatically lapse except in cases where such a determination is due in large part to the existence of such undertaking.

(3) Where a negative determination is due in large part to the existence of an undertaking, the Investigating Authority may require that such undertaking be maintained for a reasonable period of time to be determined by the Investigating Authority.

(4) Where the Investigating Authority makes an affirmative determination of dumping or subsidisation and injury, the undertaking shall continue to be effective.

48. Violation of undertaking

(1) Where an undertaking is violated, the Investigating Authority may, in conformity with the provisions of this Act, take expeditious actions which may constitute immediate application of provisional measures using the best information available.

(2) Definitive duties may be levied in accordance with this Act on goods entered for consumption not more than 90 days before the application of such provisional measures, except that any such retroactive assessment shall not apply to imports entered before the violation of the undertaking.

49. Review of price undertaking

(1) The Investigating Authority may require any party from whom undertakings have been accepted to provide information relevant to the fulfilment of the undertaking.

(2) The Investigating Authority may, on its own initiative, and shall, when requested to do so by an interested party, submit positive evidence justifying the need for a review, initiate a review of any undertaking given and accepted under this Part and shall complete that review within 12 months of its initiation.

(3) An undertaking given and accepted under this Part shall automatically lapse after 5 years from the date that is the later of –

- (a) the date of acceptance of the undertaking; or
- (b) where a review carried out under subsection (2) has been completed, the date of an initiation of that review, unless at that date the undertaking is subject to a review under subsection (2).

50. Verification of information

Except as provided for in section 37, the Investigating Authority shall, during the course of an investigation, satisfy itself of the accuracy of the information supplied by an interested party upon which its findings are based.

51. Written arguments

(1) In an investigation in which no hearing is requested, any interested party may submit, not later than 45 days before the date proposed for the final determination, written arguments concerning any matter it considers relevant to the investigation.

(2) In an investigation in which a hearing is held, any interested party may submit not later than 10 days before the scheduled date of the hearing, written arguments concerning any matter it considers relevant to the investigation.

(3) Any interested party who participated in the hearing may, within 10 days of the hearing, submit further written arguments in response to arguments and information presented at the hearing.

52. Hearings

(1) The Investigating Authority shall, upon request made by an interested party not later than 30 days after publication of the preliminary determination, fix a hearing at which all interested parties may submit information and arguments.

(2) A hearing shall be held not later than 60 days prior to the date proposed for the final determination.

(3) An interested party who intends to appear at the hearing shall notify the Investigating Authority, not less than 7 days before the date of the hearing of the names of representatives and witnesses who will attend the hearing.

53. Contributions by industrial users and representative consumer organisations

The Investigating Authority shall allow industrial users of the investigated product in Mauritius, or representative consumer organisation, to provide information and submit in writing or orally on matters relevant to the investigation.

54. Essential facts

(1) After any hearing has been held and the Investigating Authority has completed verification of information collected in the course of the investigation and, in any event, not less than 30 days before the proposed date for the final determination, the Investigating Authority shall inform all interested parties, in writing, subject to the confidentiality requirements of section 36, of the essential facts under consideration which will form the basis for the decision whether to apply definitive measures.

(2) Interested parties shall submit comments, if any, on information disclosed to them pursuant to this Article, in writing within 15 days of the disclosure.

55. Final determination

(1) The Investigating Authority shall make a final determination of an investigation of dumping or subsidy, injury and causal link within 180 days of the preliminary determination.

(2) Subject to section 35, the final determination shall be based on all information obtained by the Investigating Authority during the course of the investigation.

(3) The Investigating Authority shall give public notice of its final determination.

(4) The notice of final determination shall provide all relevant information which has led to the determination and include –

- (a) the names of the known exporters and producers of the investigated product;
- (b) a description of the investigated product that is sufficient for customs purposes, including the tariff classification;
- (c) the amount of the dumping margin or subsidy, if any, found to exist, the basis of the determination, and the methodology used in determining normal value, export price, and any adjustments made;
- (d) the factors that have led to the determination of injury and causal link, including information on factors other than dumped or subsidised imports that have been taken into account including, where appropriate –
 - (i) any other reasons leading to the final determination; and
 - (ii) the reasons for the acceptance or rejection of relevant arguments or claims made by exporters and importers;
- (e) the amount of any anti-dumping duty or countervailing to be imposed, including any considerations relevant to the examination of the domestic interest and of whether a duty less than the dumping margin would be adequate to remove the injury to the domestic industry; and
- (f) the final anti-dumping duty or countervailing duty to be collected with regard to the imports to which provisional measures are applied.

(5) A copy of the notice shall be forwarded to the country the products of which are subject to such determination and any interested party.

56. Disclosure

On completion of a final determination, the Investigating Authority shall, on request made by the exporter or producer and within 15 days of the publication of the final determination, hold separate disclosure meetings with exporters or producers to explain the dumping or subsidy calculation methodology finally applied for that exporter or producer.

PART VIII – CONCLUSION OF INVESTIGATION

57. Withdrawal of application

An application made under section 24 may be withdrawn at any time after an investigation has been initiated, in which case the Investigating Authority shall terminate the investigation unless it determines that it is in the public interest to continue the investigation.

58. Termination for insufficient evidence, *de minimis* or negligible volume

(1) An investigation shall be terminated at any time where the Investigating Authority is satisfied that there is insufficient evidence of dumping, subsidy, injury or causal link.

(2) The Investigating Authority may terminate an investigation where it determines that the dumping margin or the amount of subsidy is *de minimis*, or that the volume of dumped or subsidised imports, actual or potential, or the injury, is negligible.

59. Public notice of conclusion of an investigation without imposition of measures

(1) The Investigating Authority shall issue a public notice of the conclusion of an investigation without imposition of measures.

(2) The notice shall give in details the findings and conclusions reached on all issues of fact and law which the Investigating Authority considers material including the matters of fact and law which led to arguments being accepted or rejected.

PART IX – PROVISIONAL MEASURES

60. Imposition of provisional measures

The Investigating Authority may impose provisional measures where it makes preliminary determination of dumping or subsidy, injury and causal link,

and considers that provisional measures are necessary to prevent injury being caused during the investigation.

61. Form of provisional measures

Any provisional measure taken under section 60 shall provide for a security, by cash deposit or bond, not greater than the estimated dumping margin or subsidy set forth in the notice of preliminary determination.

62. Duration of application of provisional measures

(1) A provisional measure shall apply for a period of not more than 6 months.

(2) The Investigating Authority may, upon request by exporters representing a significant percentage of the trade involved, extend the period of application of provisional duties to a further period not exceeding 9 months.

PART X – IMPOSITION AND COLLECTION OF ANTI-DUMPING AND COUNTERVAILING DUTIES

63. Public interest and lesser duty rule

(1) The Investigating Authority shall examine whether the imposition of anti-dumping duty or countervailing duty shall be in the interest of Mauritius, due regard being given to the interest of the domestic industry, the situation of domestic competition for the product under investigation, the needs of industrial users and the interest of consumers.

(2) The Investigating Authority shall examine whether a duty less than the full dumping margin shall be adequate to remove the injury to the domestic industry.

(3) Where the Investigating Authority determines that a lesser duty shall be adequate to remove the injury, the amount of the final anti-dumping duty or countervailing duty imposed shall not exceed that lesser duty.

64. Amount of duty

(1) The amount of the anti-dumping or countervailing duties shall not exceed the dumping margin or the amount of subsidy as determined by the Investigating Authority.

(2) An anti-dumping or countervailing duty shall take the form of *ad valorem* or specific duty.

(3) An anti-dumping or countervailing duty shall be imposed in addition to import duty levied on the imported product.

(4) An anti-dumping or countervailing duty shall be collected by the relevant department of the Mauritius Revenue Authority, on a non-discriminatory basis on imports of such product from all sources found to be dumped or subsidised and causing injury, except as to imports from those countries from which a price undertaking is accepted under this Act.

(5) Subject to subsection (6), the Investigating Authority shall establish an individual anti-dumping duty or countervailing duty for each known exporter or producer of dumped or subsidised imports.

(6) Where the Investigating Authority limits its examination in accordance with section 15, any anti-dumping duty or countervailing duty applied to imports from exporters or producers not included in the examination shall not exceed the weighted average dumping margin or subsidy established with respect to the selected exporters or producers, provided that the Investigating Authority shall disregard any zero margin, and *de minimis* margins and margins established under section 37.

(7) Except as otherwise provided for in section 15, the Investigating Authority shall apply individual duty to imports from any exporter or producer, not included in the examination, who has provided the necessary information during the course of the investigation.

(8) The Investigating Authority may apply a residual anti-dumping or countervailing duty rate for imports from exporters and producers not known to the Investigating Authority at the time the final determination was made.

(9) The residual anti-dumping or countervailing duty rate shall not exceed the weighted average of the individual dumping margin or countervailing duty rate or countervailing duty rate or subsidy margin established for exporters and producers examined during the investigation, excluding margins established under section 37.

65. Refund of duties paid in excess of dumping margin or rate of subsidisation

(1) An importer shall be granted a refund of duty where the Investigating Authority determines that the dumping margin or the actual rate of subsidisation, on the basis of which duties were paid, has been eliminated or reduced to a level which is below the level of the duty in force.

(2) The importer shall submit an application for the refund of anti-dumping duty or countervailing duty to the Investigating Authority in the prescribed manner.

(3) (a) Except where there are related pending judicial review proceedings, a refund of duties paid in excess of the actual dumping margin or subsidy shall take place within 12 months, and in no case more than 18 months, after the date on which an application for a refund was made.

(b) Any refund authorised, plus a reasonable amount for interest, shall be made by the Investigating Authority within 90 days of the decision to grant a refund.

66. Suspension

The Investigating Authority may, in the public interest, suspend the application of measures imposed under this Act for a specified period –

- (a) where there is a temporary change in market conditions; and
- (b) the Investigating Authority determines that the application of the measures shall not be in the public interest.

67. Application of measures

Except as provided for in sections 48 and 68, provisional measures and anti-dumping duty or countervailing duty shall apply to products which enter into Mauritius for consumption on or after the date of publication of an affirmative preliminary or final determination in an investigation or review conducted under this Act.

68. Retroactive application of definitive duties

(1) A definitive anti-dumping duty may be collected on products which were entered into Mauritius for consumption not more than 90 days prior to the date of application of provisional measures where the Investigating Authority determines that –

- (a) there is a history of dumping which caused injury;
- (b) the importer, ought to have been aware that the exporter practises dumping and that such dumping would cause injury; or
- (c) the injury is caused by massive dumped imports of a product in a relatively short time.

(2) Where a final determination of injury is made, or in the case of a final determination of a threat of injury, where the effect of subsidised imports would, in the absence of provisional measures, have led to a determination of

injury, countervailing duties may be levied retroactively for the period for which provisional measures, if any, have been applied.

69. Security

(1) Where the definitive anti-dumping duty or countervailing duty is higher than the amount of security deposited under this Act, the difference shall not be collected.

(2) Where the definitive duty is lower than the amount of the security deposited under this Act, the difference in the amount shall be paid to the importer.

(3) Where the Investigating Authority makes a determination of threat of injury or material retardation, a definitive anti-dumping or countervailing duty may be imposed from the date of the determination of threat of injury or material retardation.

(4) Any security provided during the period of the application of provisional measures shall be released.

(5) Where the Investigating Authority makes a negative final determination, any security provided during the period of application of the provisional measures shall be released.

PART XI – DURATION AND REVIEW OF ANTI-DUMPING, COUNTERVAILING DUTIES AND PRICE UNDERTAKINGS

70. Sunset review

(1) Subject to subsection (2), an anti-dumping duty or countervailing duty shall remain in force as long as and to the extent necessary to counteract dumping or subsidisation which is causing injury.

(2) (a) Any definitive anti-dumping or countervailing duty shall be terminated on a date not later than 5 years from the date of the imposition of the antidumping or countervailing duty of the most recent review under section.

(b) The Investigating Authority shall, within 90 days preceding the date of expiry of the duty give public notice of the impending expiry of anti-dumping or countervailing duty.

(3) Notwithstanding subsection (2), where the Investigating Authority determines in a review initiated before the date of expiry of the anti-dumping or countervailing duty, on its own initiative or upon a duly substantiated request made by, or on behalf of, the domestic industry, within 45 days from the date of publication of the public notice that the expiry of the duty would be likely to

lead to continuation or recurrence of dumping or subsidisation and injury, the duty may remain in force pending the outcome of such a review.

71. Review for change of circumstances

(1) In conducting a review under this section, the Investigating Authority shall –

- (a) consider the need for the continued imposition of the duty, on its own initiative or, provided that a reasonable period of time has elapsed since the imposition of the definitive anti-dumping duty or countervailing duty, upon a written request submitted by any interested party;
- (b) upon request from any interested party, examine whether –
 - (i) the continued imposition of the duty is necessary to offset dumping or subsidisation;
 - (ii) the injury would be likely to continue or recur if the duty were removed or varied.

(2) Where as a result of a review under this section, the Investigating Authority determines that the anti-dumping or countervailing duty is no longer warranted, it shall forthwith be terminated.

(3) A review under section 70 and this section shall be completed within 12 months of the date of initiation of the review.

PART XII – INSTITUTIONAL ARRANGEMENTS AND REVIEW

72. Investigating Authority

(1) The Director shall be the Investigating Authority.

(2) For the purposes, of this Act, the Director may –

- (a) make use of the services of a public officer designated for that purpose by the Head of the Civil Service; or
- (b) subject to the approval of the Minister, where he considers it expedient to do so, retain the services of an independent professional or specialised agency from Mauritius or overseas for such specific purpose as he may require.

(3) The Minister may, in relation to the exercise of the powers of the Investigating Authority under this Act, give such general directions to the

Investigating Authority, not inconsistent with the Act, as he considers necessary in the public interest and the Investigating Authority shall comply with those directions.

73. Functions and powers of Investigating Authority

(1) The Investigating Authority shall, in addition to any specific duty vested upon it by this Act –

- (a) investigate any allegation or suspicion of dumping or subsidised imports -
 - (i) either on its own initiative; or
 - (ii) on receiving a complaint or information which gives rise to such allegation or suspicion;
- (b) gather, process and evaluate information relating to such allegation or suspicion; and
- (c) take such measures as may be necessary and provided for in this Act to prevent dumping or subsidised imports, including the issue of directives and proposals for remedial action.

(2) (a) The Investigating Authority shall, not later than 3 months after the end of a financial year, issue an annual report on its activities.

(b) The annual report shall be submitted to the Minister for his approval and laid at the first available opportunity before the Assembly.

74. Appeal by judicial review

(1) An aggrieved party may appeal to the Supreme Court against a final decision of the Investigating Authority by way of judicial review.

(2) An application for judicial review under this section shall not operate as a stay of the decision of the Investigating Authority.

PART XIII – MISCELLANEOUS

75. Offences

(1) Any person who, for the purposes of this Act, furnishes to the Investigating Authority any information which is false or misleading in a material particular, shall commit an offence and shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 2 years.

(2) Any person who commits an offence under this Act or any regulations made under this Act shall, on conviction, be liable to a fine not exceeding 100,000 rupees and to imprisonment for a term not exceeding 2 years.

76. Jurisdiction

(1) Notwithstanding –

(a) section 114(2) of the Courts Act; and

(b) section 72(5) of the District and Intermediate Courts (Criminal Jurisdiction) Act,

a Magistrate shall, subject to subsection (2), have jurisdiction to try any offence under this Act and may impose any penalty provided by this Act.

(2) No prosecution shall be instituted under this Act except by, or with the consent of, the Director of Public Prosecutions.

77. Regulations

(1) The Minister may, after consultation with the Investigating Authority, make such regulations as he thinks fit for the purposes of this Act.

(2) Any regulations made under subsection (1) may provide for –

(a) prescribing anything which is required to be prescribed; and

(b) the taking of fees and the levying of charges.

78. Commencement

(1) Subject to subsection (2), this Act shall come into operation on a date to be fixed by Proclamation.

(2) Different dates may be fixed for the coming into operation of different sections of this Act.

