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Committee on Anti-Dumping Practices
Committee on Subsidies and Countervailing Measures

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NOTIFICATIONS OF LAWS AND REGULATIONS UNDER ARTICLES 18.5 AND 32.6 OF THE AGREEMENTS

BULGARIA

The following communication, dated 20 March 1997, has been received from the Permanent Mission of Bulgaria.

With reference to the provisions of Article 18.5 of the Agreement on Implementation of Article VI of the GATT 1994 and Article 32.6 of the Agreement on Subsidies and Countervailing Measures, please find enclosed the English translation of Regulation No 287 of 4 December 1996 (published in State Gazette No 106/1996) on protection against dumped or subsidized imports.

REGULATION No 287
of 4 December 1996
on protection against dumped or subsidized imports

THE COUNCIL OF MINISTERS HAS ADOPTED THIS REGULATION:

Article 1.(1) This Regulation lays down the conditions and procedures for protection of domestic market against dumped or subsidized imports.

(2) The protection under paragraph 1 is conducted by applying anti-dumping and countervailing duties, implemented in regard of the provisions of Article VI of the General Agreement on Tariff and Trade 1994 (GATT 1994), after completing an investigation procedure, initiated and completed in accordance with:

1. The Agreement on Implementation of Article VI of the GATT 1994, the Agreement on Subsidies and Countervailing Measures, in connection with the Agreement on Agriculture from Annex 1 of the Marrakesh Agreement Establishing the World Trade Organisation, signed on 15 April 1994 in Marrakesh, and

2. this Regulation.

Article 2.(1) An anti-dumping duty may be applied to any dumped product whose import in the Republic of Bulgaria causes or threatens to cause injury to the Bulgarian industry.

(2) For the purpose of this Regulation a product is to be considered as being dumped, i.e. introduced into the commerce at the domestic market at less than its normal value, if the price of the product exported from one country to the Republic of Bulgaria is less than the comparable price, in the ordinary course of trade, for the like product when destined for consumption in the exporting country.

(3) The exporting country shall normally be the country of origin. However, it may be an intermediate country, different from the country of origin, except where the products are merely transshipped through that country, or the products concerned are not produced in that country, or there is no comparable price for them in that country.

(4) For the purposes of this Regulation, the term "like product" shall be interpreted to mean a product which is identical i.e. alike in all respects to the product under consideration, or, in the absence of such a product, another product which has characteristics closely resembling those of the product under consideration.

Article 3.(1) The normal value shall normally be based on the prices really paid or payable, in the ordinary course of trade, by independent customers in the exporting country. However, where the exporter in the exporting country does not produce or does not sell the like product, the normal value may be established on the basis of prices of other sellers or producers. Prices between parties

which appear to be associated or to have a compensatory arrangements with each others may not be considered to be in the ordinary course of trade and may not be used to establish normal value unless it is determined that they are unaffected by the relationship.

(2) Sales of the like product intended for domestic consumption shall normally be used to determine normal value if such sales volume constitutes 5% or more of the sales volume of the product under consideration to the Republic of Bulgaria. However, a lower volume of sales may be used when the prices charged are considered representative for the market of the exporting country.

(3) When there are no or insufficient sales of the like product in the ordinary course of trade, or where because of the particular market situation such sales do not permit a proper comparison, the normal value of the like product shall be calculated on the basis of :

1. The export prices, in the ordinary course of trade, to an appropriate third country, provided that those prices are representative, or

2. the cost of production in the country of origin plus a reasonable amount for selling, general and administrative costs and for profits.

(4) Sales of the like product in the domestic market of the exporting country, or export sales to a third country, at prices below unit production costs (fixed and variable) plus selling, general and administrative costs may be treated as not being in the ordinary course of trade by reason of price, and may be disregarded in determining normal value, only if it is determined that such sales are made within an extended period in substantial quantities, and are at prices which do not provide for the recovery of all costs within a reasonable period of time.

(5) If prices under paragraph (4) which are below costs at the time of sale are above weighted average costs for the period of investigation, such prices shall be considered to provide for recovery of costs within a reasonable period of time.

(6) The extended period of time under paragraph (4) shall normally be one year but shall in no case be less than six months.

(7) Sales below unit costs shall be considered to be made in substantial quantities within the period under paragraph (4) when :

1. It is established that the weighted average selling price is below the weighted average unit cost, or

2. The volume of sales is not less than 20% of sales being used to determine normal value.

(8) Costs shall normally be calculated on the basis of records kept by the party under investigation (exporter or producer), provided that such records are in accordance with the generally accepted accounting principles of the country concerned and that it is shown that the records reasonably reflect the costs associated with the production and sale of the product under consideration.

(9) Consideration shall be given to evidence submitted by the exporter or the producer on the proper allocation of costs, provided that it is shown that such allocations have been historically utilized. In the absence of a more appropriate method, reference shall be given to the allocation of costs on the basis of turnover.

(10) Unless already reflected in the cost allocations, costs shall be adjusted appropriately for those non-recurring items of cost which benefit future and/or current production. Where the costs for part of the period for cost recovery are affected by:

1. The use of new production facilities requiring substantial additional investment, and
2. Low capacity utilization rates, which are the result of start-up operations which take place within or during part of the investigation period, the average costs for the start-up phase shall be those applicable, under the above mentioned allocation rules, at the end of such a phase, and shall be included at that level, for the period concerned, in the weighted average costs referred to in paragraph (5) of this Article.

The length of a start-up phase shall be determined in relation to the circumstances of the producer or exporter concerned, but shall not exceed an appropriate initial portion of the period for cost recovery. For this adjustment to costs applicable during the investigation period, information relating to a start-up phase which extends beyond that period shall be taken into account where it is submitted prior to verification visits under Article 23.(2) 3. and within three months of the initiation of the investigation.

(11) The amounts for selling, for general and administrative 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. When such amounts cannot be determined on this basis, the amounts can be determined on the basis of:

1. The weighted average of the actual amounts determined for other exporters or producers subject to investigation in respect of production and sale of the like product in the domestic market of the country of origin;
2. The actual amounts applicable to production and sales, in the ordinary course of trade, of the same general category of products for the exporter or producer in question in the domestic market of the country of origin;
3. Any other reasonable method, provided that the amount for profit so established shall not exceed the profit normally realized by other exporters or producers on sales of products of the same general category in the domestic market of the country of origin.

Article 4.(1) For the purpose of this Regulation the term “export price” shall mean the price actually paid or payable for a product when sold for export from the exporting country to the Republic of Bulgaria.

(2) In cases where there is no export price or where it appears that the export price is unreliable because of an association or a compensatory arrangements between the exporter and the importer or a third party, the export price may be constructed on the basis of:

1. The price at which the imported products is first resold to an independent buyer, or
2. On any other reasonable basis, if the products are not resold to an independent buyer or are not resold in the condition in which they were imported.

(3) In the cases referred to in paragraph (2) allowance shall be made for all costs incurred between importation and sale and for reasonable profit margin so as to establish a reliable export price at the frontier level of the Republic of Bulgaria. The items for which adjustment shall be made shall

include those normally borne by an importer but paid by any party, either inside or outside Bulgaria, which appears to be associated or to have a compensatory arrangement with the importer or exporter, including:

1. Usual transport, insurance, handling, loading and ancillary costs;
2. Custom duties, any anti-dumping duties, and other taxes payable in the importing country by reason of the importation or sale of the products;
3. A reasonable margin for selling , general and administrative costs and profit.

Article 5.(1) A fair comparison shall be made between the export price and the normal value. This comparison shall be made at the same level of trade and in respect of sales made at nearly as possible the same time and with due account taken of other differences which affect price comparability.

(2) Where the normal value and the export price as established are not on such a comparable basis due allowance, in the form of adjustments, shall be made in each case, on its merits, for difference in factors which are claimed, and demonstrated, to affect prices and price comparability. Any duplication when making adjustments shall be avoided.

(3) Adjustments under paragraph (2) can be made for the factors listed below pursuant to the rules as follows:

1. Physical characteristics - The amount of the adjustment shall correspond to a reasonable estimate of the market value of the difference;
2. Import charges and indirect taxes - An adjustment shall be made to normal value for an amount corresponding to any import charges or indirect taxes borne by the like product and by materials physically incorporated therein, where intended for consumption in the exporting country and not collected or refunded in respect of the product exported to the Republic of Bulgaria;
3. Discounts, rebates and quantities - An adjustment shall be made for differences in discounts and rebates, including those given for differences in quantities, if these are properly quantified and are directly linked to the sales under consideration. An adjustment may also be made for deferred discounts and rebates if the claim is based on consistent practice in prior periods, including compliance with the conditions required to qualify for the discount or rebates;
4. Level of trade - An adjustment for differences in level of trade shall be granted where, in relation to the distribution chain in both markets, it is shown that the export price, including a constructed export price, is at a different level of trade in comparison with the normal value and the difference has affected price comparability which is demonstrated by consistent and distinct differences in functions and prices of the seller for the different levels of trade in the domestic market of the exporting country. the amount of the adjustments shall be based on the market value of the difference.
5. Transport, insurance, handling, loading and ancillary costs - An adjustment shall be made for differences in the directly related costs incurred for conveying the product concerned from the premises of the exporter to an independent buyer, where such costs are included in the prices charged.
6. Packing - An adjustment shall be made for differences in the directly related packing costs for the product concerned.

7. Credit - An adjustment shall be made for differences in the cost of any credit granted for the sales under consideration, provided that it is a factor taken into account in the determination of the prices charged.

8. After-sales costs - An adjustment shall be made for differences in the direct costs of providing warranties, guarantees, technical assistance and services, as provided for by law and/or in the sales contract.

9. Commissions - An adjustment shall be made for differences in commissions paid in respect of the sales under consideration.

10. Currency conversions - When the price comparison requires a conversion shall be made using the rate of exchange on the date of sale, except that when a sale of foreign currency on forward markets is directly linked to the export sale involved, the rate of exchange in the forward sale shall be used. Normally, the date of sale shall be the date of invoice but the date of contract, purchase under or order confirmation may be used if these more appropriately establish the material terms of sale. Fluctuations in exchange rates shall be ignored and exporters shall be granted 60 days to reflect a sustained movement in exchange rates during the investigation period.

(4) In a case that the product is not imported directly from the country of origin, but is exported to Bulgaria by other countries, the price on which the product is sold from the exporting country to the Republic of Bulgaria shall be compared with a comparable price in the exporting country. The comparison can be made with the price in the country of origin, in a cases that:

1. The product is only reloaded in the exporting country,
2. Such a product is not produced in the exporting country, or
3. There is not a comparable price for this product in the exporting country.

Article 6.(1) Subject to the provisions of paragraph (5) the existence of margin of dumping during the investigation period shall normally be established on the basis of comparison of:

1. A weighted average normal value with a weighted average of prices of all export transactions to the Republic of Bulgaria, or
2. Individual normal values and individual export prices to the Republic of Bulgaria;
3. A normal value established on a weighted average basis and the prices at all individual export transactions to the Republic of Bulgaria, if there is a pattern of export prices which differs significantly among different purchasers, regions or time periods, and if the methods specified in the 1 and 2 sub-paragraph above would not reflect the full degree of dumping being practised.

(2) The paragraph 1 shall not preclude the application of Article 36.

(3) The dumping margin shall be the amount by which the normal value exceeds the export price. Where dumping margins vary, a weighted average dumping margin may be established.

Article 7.(1) A countervailing duty may be imposed for the purposes of offsetting and subsidy bestowed, directly or indirectly, in the country of origin or export, upon the manufacture, production,

export or transportation of any product whose importation in the Republic of Bulgaria causes or threatens to cause injury.

(2) A product is considered as being subsidized if it benefits from a countervailable subsidy as defined in Article 8 and 9 of this Regulation.

(3) Such countervailable subsidy may be granted by:

1. The government of the country of origin of the imported product, or
2. The government of a third country from which the product is exported to the Republic of Bulgaria, and different from the country of origin, known for the purpose of this Regulation as “the country of export”.

(4) Notwithstanding the above, where products are not directly imported from the country of origin but are exported to the Republic of Bulgaria from an intermediate country, the provisions of this Regulation shall be fully applicable and the transaction or transactions shall, where appropriate, be regarded as having taken place between the country of origin and the Republic of Bulgaria.

Article 8.(1) A subsidy shall be deemed to exist if:

1. There is a financial contribution by a government or any public body within the territory of the country in consideration, and a benefit is thereby conferred, i.e., where:

(a) A government practice involves a direct transfer of funds (e.g. grants, loans, equity infusion), potential direct transfers of funds or liabilities (for example, loan guarantees);

(b) Government revenue that is otherwise due, is foregone or not collected (for example, fiscal incentives such as tax credits);

(c) A government provides products or services other than general infrastructure, or purchases products;

(d) A Government makes payments to a funding mechanism or entrusts or directs the private body to carry out one or more of the type of functions illustrated in (a), (b) and (c) above which would normally be vested in the Government and the practice, in no real sense, differs from practices normally followed by Governments, or

2. There is any form of income or price support within the meaning of Article XVI of the GATT 1994.

(2) A subsidy is deemed to exist if as a result of the practice under paragraph 1 a benefit is thereby conferred.

Article 9.(1) Subsidies as defined in Article 8 shall be subject to countervailing measures only if they are specific, as defined in paragraph (2), (3) and (4).

(2) In order to determine whether a subsidy is specific to an certain enterprise or industry or group of enterprises or industries within the jurisdiction of the granting authority, the following principles shall apply:

1. The subsidy is specific - where the granting authority, or the legislation pursuant to which the granting authority operates, explicitly limits access to a subsidy to certain enterprises;

2. Where the granting authority, or the legislation pursuant to which the granting authority operates, establishes objective criteria or conditions governing the eligibility for, and the amount of, a subsidy, specificity shall not exist, provided that the eligibility is automatic and that such criteria and conditions are strictly adhered to. For the purposes of this Regulation, objective criteria or conditions mean criteria or conditions which are neutral, which do not favour certain enterprises over others, and which are economic in nature and horizontal in application, such as number of employees or size of enterprise. The criteria or conditions must be clearly spelled out by law, regulation, or other official document, so as to be capable of verification.

3. If, notwithstanding any appearance of non-specificity resulting from the application of the principles laid down in sub-paragraphs 1 and 2, there are reasons to believe that the subsidy may in fact be specific, other factors may be considered. Such factors are:

- (a) use of a subsidy programme by a limited number of certain enterprises;
- (b) predominant use of a subsidy by certain enterprises;
- (c) the granting of disproportionately large amount of subsidy to certain enterprises, and
- (d) the manner in which discretion may be exercised by the granting authority in the decision to grant a subsidy.

4. In applying the provisions of sub-paragraph 3, account shall be taken of the extent of diversification of economic activities within the jurisdiction of the granting authority, as well as of the length of time during which the subsidy programme has been in operation.

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

(4) Irrespective of the provisions of paragraph (2) and (3), the following subsidies shall be deemed to be specific:

1. Subsidies contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance, including those illustrated in Annex 1 to the Agreement on subsidies and countervailing measures, and the subsidies, without having been made legally contingent upon export performance, is in fact tied to actual or anticipated exportation or export earnings;

2. Subsidies contingent upon the use of domestic over imported goods.

(5) Any determination of specificity shall be clearly substantiated on the basis of positive evidence.

Article 10.(1) The following subsidies shall not be subject to countervailing measures:

1. Subsidies which are not specific within the meaning of Article 9, paragraph (2) and (3);

2. Subsidies which are specific, within the meaning of Article 9, paragraph (2) and (3), but which meet the conditions provided for in paragraphs (2), (3) and (4);

3. The element of subsidy which may exist in any of the measures listed in Annex 2 to the Agreement on Agriculture.

(2) Subsidies for research activities conducted by firms or by higher education or research establishments on a contract basis with firms shall not be subject to countervailing measures, if the subsidy cover not more than 75% of the costs of industrial research or 50% of the costs of pre-competitive development activity, and provided that such subsidies are limited exclusively to:

1. Personnel costs (research, technicians and other supporting staff employed exclusively in the research activity);

2. Costs of instruments, equipment, land and buildings used exclusively and permanently (except when disposed of on a commercial basis) for the research activity;

3. Costs of consultancy and equivalent services used exclusively for the research activity, including bought-in research, technical knowledge, patents, etc.;

4. Additional overhead costs incurred directly as a result of the research activity;

5. Other running costs (such as those of materials, supplies and the like), incurred directly as a result of the research activity.

(3) Subsidies to disadvantaged regions within the territory of the country of origin and/or export, given pursuant to a general framework of regional development, and which would be non-specific if the criteria laid down in Article 9, paragraph (2) and (3) were applied to each eligible region concerned, shall not be subject to countervailing measures provided that:

1. Each disadvantaged region is a clearly designated contiguous geographical area with a definable economic and administrative identity;

2. The region is considered as disadvantaged on the basis of neutral and objective criteria, indicating that the region's difficulties arise out of more than temporary circumstances; such criteria must be clearly spelled out by law, regulations, or other official document, so as to be capable of verification;

3. The criteria include a measurement of economic development which shall be based on at least one of the following factors:

(a) one of either income per capita, or GDP per capita, which must not be above 85% of the average for the territory of the country of origin or export concerned,

(b) unemployment rate, which must be at least 110% of the average for the territory of the country of origin or export concerned;

(4) Subsidies to promote adaptation of existing facilities to new environmental requirements imposed by law and/or regulations which result in greater constraints and financial burden on firms, shall not be subject to countervailing measures, provided that the subsidy:

1. is a one-time non-recurring measure; and
2. is limited to 20% of the cost of adaptation; and
3. does not cover the cost of replacing and operating the subsidized investment, which must be fully borne by firms; and
4. is directly linked to and proportionate to a firm's planned reductions of nuisances and pollution, and does not cover any manufacturing cost savings which may be achieved; and
5. is available to all firms which can adopt the new equipment and/or production processes.

Article 11.(1) The amount of countervailing subsidies, for the purposes of this Regulation, shall be calculated in terms of the benefit conferred to the recipient which is found to exist during the investigation period for subsidization. Normally this shall be the most recent accounting year of the beneficiary, but may be any other period of at least six months prior to the initiation of the investigation for which reliable financial and other relevant data are available.

(2) As regards the calculation of benefit to the recipient, the following rules shall be applied:

1. Government provision of equity capital shall not be considered as conferring a benefit, unless the investment can be regarded as inconsistent with the usual investment practice (including for the provision of risk capital) of private investors in the territory of the country of origin and/or export.
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 on the government loan and the amount that the firm would pay for a comparable commercial loan which the firm could actually obtain on the market. In this case the benefit shall be the difference between the 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 for a comparable commercial loan in the absence of 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 purchases of goods by a government shall not be considered as conferring a benefit unless the provision is made for less than adequate remuneration, or the purchase is made for more than adequate remuneration. The adequacy of remuneration shall be determined in relation to prevailing market conditions for the product or service in question in the country of provision or purchase (including price, quality, availability, marketability, transportation and other conditions of purchase or sale).

(3) The amount of the subsidy shall be determined according to the following provisions:

1. The amount of the countervailing subsidy shall be determined per unit of the subsidized product exported to the Republic of Bulgaria.
2. In establishing the amount of any subsidy the following elements may be deducted from the total subsidy:

(a) Any application fee, or other costs necessarily incurred in order to qualify for, or to obtain, the subsidy;

(b) Export taxes, duties or other charges levied on the export of the product to the Republic of Bulgaria specifically intended to offset the subsidy;

3. Where the subsidy is not granted by reference to the quantities manufactured, produced, exported or transported the amount of countervailing subsidy shall be determined by allocating the value of the subsidy, as appropriate, over the level of production, sales or exports of the products concerned during the investigation period for subsidization.

4. Where the subsidy can be linked to the acquisition or future acquisition of fixed assets, the amount of countervailing subsidy shall be calculated by spreading the subsidy across a period which reflects the normal depreciation of such assets in the industry concerned. The amount so calculated which is attributable to the investigation period, including that which derives from fixed assets acquired before this period, shall be allocated as described in sub-paragraph 3. Where the assets are non-depreciating, the subsidy shall be valued as an interest-free loan, and be treated in accordance with paragraph (2), sub-paragraph 2.

5. Where a subsidy cannot be linked to the acquisition of fixed assets, the amount of the benefit received during the investigation period shall in principle be attributed to this period, and allocated as described in sub-paragraph 3, unless special circumstances arise justifying attribution over a different period.

Article 12.(1) Pursuant to this Regulation, the term “injury” from dumping or subsidized import shall be taken to mean:

1. Material injury to the Bulgarian industry;
2. Threat of material injury to the Bulgarian industry;
3. Material retardation of the establishment of such an industry.

(2) A determination of injury shall be based on positive evidence and shall involve an objective examination of the following factors

1. Volume of dumped or subsidized imports and the effect of the dumped imports on prices in the Bulgarian market for like products; and
2. The consequent impact of those imports on the Bulgarian industry.

Article 13.(1) With regard to the examination of the factors under the provisions of Article 12 paragraph (2) sub-paragraph 2 shall be considered the following:

1. Whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the Republic of Bulgaria;
2. Whether there has been a significant price undercutting by the dumped imports as compared with the price of a like product in the Republic of Bulgaria, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increase, which would otherwise have occurred, to a significant degree.

(2) No one or more of the factors under paragraph (1) can necessarily give decisive guidance.

(3) Where imports of a product from more than one country are simultaneously subject to anti-dumping investigation, the effects of such imports shall be cumulatively assessed only if it is determined that:

1. The margin of dumping established in relation to the imports from each country is more than *de minimus* as defined in Article 30 paragraph (1) sub-paragraph 2(e), and respectively the amount of the subsidy established in relation to the imports from each country is more than *de minimus* as defined in Article 30 paragraph (1) sub-paragraph 2(e), and that the volume of imports from each country is not negligible, and

2. A cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between imported products and the conditions of competition between the imported products and the like Bulgarian products.

(4) The exemption of the impact of the dumped and subsidized imports on the Bulgarian industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including:

1. The fact that an industry is still in the process of recovering from the effects of past subsidization or dumping;

2. The magnitude of the amount of countervailable subsidies;

3. Actual and potential decline in sales, profits, output, market share, productivity, return on investments, utilization of capacity;

4. Factors affecting the prices on the domestic market;

5. Actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments.

(5) No one or several of the factors under paragraph (4) necessarily give decisive guidance.

Article 14.(1) It must be demonstrated, from all the relevant evidence presented in relation to Article 12 paragraph (2), that the dumped and subsidized imports are causing injury within the meaning of this Regulation. Specifically, this shall entail a demonstration that the volume and/or price levels identified pursuant to Article 13 paragraph (1) and (4) are responsible for an impact on the Bulgarian industry, and that this impact exists to a degree which enables it to be classified as material.

(2) Known factors other than the dumped or subsidized imports which at the same time are injuring the Bulgarian industry shall also be examined to ensure that injury caused by these other factors is not attributed to the dumped or subsidized imports. Such factors are: the volume and prices of imports not sold at dumping prices, contraction in demand or changes in the patterns of consumption, restrictive trade practices of, and competition between, third country and the Bulgarian producers, developments in technology and the export performance and productivity of the Bulgarian industry.

(3) The effect of the dumped and subsidized imports shall be assessed in relation to the production of the Bulgarian industry of like product when available data permit the separate identification of that production on the basis of such criteria as the production process, producers' sales and profits.

(4) If such separate identification as provided in paragraph (3) is not possible, the effects of the dumped and subsidized imports shall be assessed by the examination of the production of the narrowest group or range of products, which includes the like product, for which the necessary information can be provided.

Article 15.(1) A determination of a threat of material injury shall be based on facts on not merely on allegation, conjecture or remote possibility. The change in circumstances which would create a situation in which the subsidy would cause injury must be clearly foreseen and imminent.

(2) In making a determination regarding the existence of a threat of material injury, consideration should be given to, *inter alia*, such factors as:

1. A significant rate of increase of dumped and subsidized imports into the domestic market indicating the likelihood of substantially increased imports;

2. Sufficient freely disposable or an imminent, substantial increase in capacity of the exporter indicating the likelihood of substantially increased subsidized imports to the Republic of Bulgaria, taking into account the availability of other export markets to absorb any additional exports;

3. Whether imports are entering at prices that would, to a significant degree, depress prices or prevent price increase which otherwise would have occurred, and would likely increase demand for further import; and

4. Inventories of the product being investigated.

(3) In making a determination regarding the existence of a threat of material injury, consideration should be given to also to the nature of the subsidy or subsidies in question and the trade effects likely to arise therefrom.

(4) No one of the factors under paragraphs (2) and (3) can necessarily give decisive guidance but the totality of the factors considered must lead to the conclusion that further subsidized exports are imminent and that, unless protective action is taken material injury would occur.

Article 16.(1) For the purposes of this Regulation the term “ Bulgarian production” shall be interpreted as a referring to:

1. The Bulgarian producers as a whole to the like products, or

2. Those of them whose collective output of the products constitute a major proportion, as defined in Article 18 paragraph (2), of the total domestic production of those products.

(2) The provisions of paragraph (1) shall not be applied when:

1. Producers are related to the exporters or importers or are themselves importers of the allegedly dumped or subsidized product, the term “ Bulgarian production” shall be interpreted as a referring to the rest of the producers;

2. In exceptional circumstances the territory of the Republic of Bulgaria may, for the production in question, be divided into two or more competitive markets and the producers within each market may be regarded as a separate industry if:

(a) the producers within such market sell all or almost all of their production of the product in question in that market, and

(b) the demand on that market is not to any substantial degree supplied by producers of the product in question located elsewhere in the Republic of Bulgaria.

(3) In cases under paragraph (2) sub-paragraph 2 injury may be found to exist even where a major proportion of the total Bulgarian production is not injured, provided there is a concentration of dumped or subsidized imports into such an isolated market and provided further that the dumped and subsidized imports are causing injury to the producers of all or almost all of the production within such market.

(4) For the purposes of paragraph (2) sub-paragraph 1 of this Regulation, producers shall be considered to be related to exporters or importers only if:

1. One of them directly or indirectly controls the other, or
2. Both of them are directly or indirectly controlled by a third person, or
3. 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.

(5) For the purposes of paragraph (4), 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.

(6) When the “Bulgarian production” has been interpreted as referring to the producers in a certain region, the exporters shall be given the opportunity to offer undertakings pursuant to Article 29 in respect of the region concerned. In such cases measures are in the Bulgarian production interest, special account shall be taken of the interest of the region. If an adequate undertaking is not offered promptly or the situation set out in Article 29 paragraph (9) apply, a provisional or definitive countervailing duty may be imposed to a limited specific producers or exporters.

(7) The provisions of paragraphs (3) and (4) of Article 14 shall apply to this Article.

(8) The interest of the Bulgarian industry is determined by taking account of:

1. The interest of the Bulgarian producers, traders and consumers as a whole;
2. The necessity of eliminating the negative effect of dumping and subsidies on trade, and the need of recovering the terms of concurrence.

(9) Anti-dumping and countervailing measures shall be applied in case of interest for the “Bulgarian industry”.

Article 17.(1) An investigation to determine the existence, degree and effect of any alleged dumping or subsidy shall be initiated upon a written complaint by any natural or legal person, or any association not having legal personality, acting on behalf of a Bulgarian industry, except the cases under the provisions of Article 18 paragraph (2).

(2) The complaint referred to in (1) above shall be submitted to the minister of trade and shall contain sufficient evidence of the existence of dumping or subsidization as well as the injury resulting therefrom.

(3) The complaint shall contain the information possessed by the complainant about the following:

1. Identity and address of the complainant;
2. A complete description of the volume and value of the domestic production of the like product by the applicant.
3. Where a written application is made on behalf of the domestic industry, the application shall identify the industry on behalf of which the application is made by a list of all known domestic producers of the like product (or associations of domestic producers of the like product) and, to the extent possible, a description of the volume and the value of domestic production of the like product accounted for by such producers.
4. A complete description of the allegedly dumped product, the names of the country or countries of origin or export in question, the identity of each known exporter or foreign producer as well as a list of known persons importing the product in question.
5. Information on the development of the volume of the allegedly dumped import, its influence on these imports on prices of the like product in the domestic market and the consequent impact of the imports on the domestic industry as demonstrated by relevant factor and indices having a bearing on the state of the domestic industry such as those in Article 13 paragraphs (1), (2), (4) and (5).

(4) In cases of any alleged dumping the complaint shall also contain the following:

1. Information on prices at which the product in question is sold, when destined for consumption in the domestic market of the country or countries of origin or export, or
2. Information on the prices at where the product is sold country or countries of origin or export to a third country or countries or on the constructed value of the product, and
3. Information on export prices or, where appropriate on the prices at which the product is first resold to an independent buyer in the Republic of Bulgaria.

(5) In cases of alleged countervailable subsidy the complaint under paragraph (1) shall also contain evidence with regard to the existence, amount and nature of the subsidy in question.

(6) An investigation may be initiated when there is sufficient evidence and after examination of their accuracy and adequacy.

Article 18.(1) An investigation shall not be initiated unless it has been determined, on the basis of an examination as to the degree of support for, or opposition to, the complaint expressed by the Bulgarian producers of the like product, that the complaint has been made by or on behalf of the Bulgarian industry.

(2) The complaint shall be considered to have been made by or on behalf of the Bulgarian industry if it is supported by those Bulgarian producers whose collective output constitutes more than 50% of the total production of the like product produced by that portion of the Bulgarian industry expressing either support for or opposition to the complaint.

(3) No investigation shall be initiated when Bulgarian producers expressly supporting the complaint account for less than 25% of total production of the like product produced by the Bulgarian industry.

Article 19.(1) An investigation may be initiated in order to:

1. Determine whether or not the alleged subsidies are specific within the meaning of Article 9 paragraphs (1), (2) and (3);

2. In respect of subsidies non-countervailable according to Article 10 paragraphs (2), (3) and (4) in order to determine whether or not the conditions laid down in those paragraphs have been met;

3. In respect of measures of the type listed in Annex 2 of the WTO Agreement on Agriculture to the extent that they contain an element of subsidy as defined by Article 8, in order to determine whether the measures in question fully conform to the provisions of Annex 2.

(2) If a subsidy is granted pursuant to a subsidy programme which has been notified in advance of its implementation to the WTO Committee on Subsidies and Countervailing Measures in accordance with the provisions of Article 8 of the Subsidies Agreement, and in respect of which the Committee has failed to determine that the relevant conditions laid down in Article 8 of the Subsidies Agreement have not been met, an investigation shall not be initiated.

(3) Paragraph (2) of this Regulation shall not be applied when a violation of Article 8 of the Subsidies Agreement has been ascertained by the competent WTO Dispute Settlement Body or through arbitration as provided in Article 8 (5) of the Subsidies Agreement.

Article 20.(1) Until a decision has been made to initiate an investigation, any publicizing of the complaint for the initiation of an investigation shall be avoided. However, as soon as possible after the receipt of a properly documented complaint and in any event before the initiation of an investigation a notification shall be given to:

1. The government of the country of export alleged to be dumped import;

2. In cases of alleged subsidized import - the government of the country of origin and/or export, and this government shall be invited for consultations with the aim of clarifying the situation and arriving at a mutually agreed solution.

(2) If in special circumstances it is decided to initiate an investigation without having received a written complaint for the initiation of such investigation, this shall be done on the basis of sufficient evidence of the existence of dumping or countervailable subsidy, injury and causal link, as described in Article 17 paragraphs (2) and (3), to justify the initiation of the investigation.

(3) The evidence of both dumping or subsidy and injury shall be considered simultaneously in the decision whether or not to initiate an investigation.

Article 21.(1) When the complaint not suit the requirements under Article 17 paragraphs (2), (3) and (4), the complainant shall be noticed for clearing the irregularities in 30 days period. Otherwise the complaint shall not be considered and send back to the complainant.

(2) A complaint shall be rejected where there is insufficient evidence of either dumped and subsidized import or of injury to justify initiating proceedings, for which the complainant shall be informed within 45 days period of the date on which the complaint is lodged.

(3) Proceedings shall not be initiated against countries the dumped or subsidized import from which is considered negligible as it is below 3% of the total import of like product into the Republic of Bulgaria, unless such countries the import of each one of them is below 3% but collectively accounts more than 7% of the total import of like product into the Republic of Bulgaria.

(4) The complaint may be withdrawn prior to initiation of the investigation, in which case it shall be considered not to have been lodged.

Article 22.(1) The procedure on investigation of dumped or subsidized imports, hereinafter referred to as “investigation”, shall be initiated upon Decision of the Council of Ministers following Proposal of the Minister of trade in 45 days period from the date of the complaint.

(2) This decision shall be published in the State Gazette which:

1. Notify the constitution of the procedure;
2. Specify the product and the country concerned;
3. Give summary of the information submitted and point out that the information related to the procedure shall be submitted to the Ministry of Trade and Foreign Economic Co-operation;
4. Determine the time limits for the respective interested parties to declare their participation in the procedure and to present in writing all commands and information to be considered in the investigation in question;
5. Determine the time-limits for the interested parties for making their views known in accordance with Article 25 paragraph (5).

(3) After publishing the notice under paragraph (2) and suiting the requirements for confidential information the full text of the complaint under Article 17 paragraph (1) shall be submitted to the known exporters and bodies in the country of export or/and origin, and to the interested parties on their explicit request.

(4) An anti-dumping or countervailing investigation shall not hinder the procedures of customs clearance of the product concerned.

Article 23.(1) For the carrying out of the investigation, the Minister of trade shall authorize a Commission, upon proposals by ministers and directors of administrative bodies, which is to determine the existence of dumping or subsidization and referred hereinafter as “The Commission”.

(2) The Commission shall:

1. Seek evidence and information it deems to be necessary for the carrying out of the investigation;
2. Examine and verify the data supplied by the interested parties;
3. Where necessary, carry out investigation and inspection including those under Article 25 paragraph (8);
4. Inspect the records kept by the importers, exporters, traders, agents, producers, trade organizations and associations;
5. Verify the accuracy of the information for dumping or subsidies and injury from them.

(3) Decisions of the Commission providing provisional and final duties, acceptance of guarantees under Article 29 or preclusion of the proceedings under Article 30, shall be affirmed by Ordinance of the Minister of trade.

(4) Officials of the interested ministries and bodies shall assist the commission in execution of its functions referred to in paragraph (2) above.

Article 24.(1) Subject to such investigation shall be simultaneously the dumping or subsidization and the injury therefrom.

(2) In order to be representative the result of the investigation the following periods for the investigation shall be determined:

1. In cases of dumping the period shall be not less than 6 months before the initiating the proceedings;
2. In cases of subsidization the period referred to in Article 11 paragraph (1) is applied.
- (3) No information from the period after the investigation period shall be taken into account.
- (4) The Council of Ministers may impose a special automatic licensing regime on import in regard to the conduction of the investigation procedure on dumped and subsidized imports.

Article 25.(1) Interested parties shall be given notice of the information which the authorities require and ample opportunity to present in writing all evidence which they consider relevant in respect of the investigation in question.

(2) Exporters or foreign producers, or in cases of subsidized import-the corresponding party shall be given at least 30 days to reply to the questionnaires used in the investigation procedures. As a general rule the time-limit for exporters shall be counted from the date of receipt of the questionnaire, which for this purpose shall be deemed to have been received one week from the date on which it was sent to the respondent or transmitted to the appropriate diplomatic representatives of the exporting country or the country of origin. Due consideration should be given to any request for an extension of the 30-day period and, upon cause shown, such an extension should be granted whenever practicable.

(3) Subject to the requirement to protect confidential information, evidence presented in writing by one interested party shall be made available promptly to other interested Members, participating in the investigation.

(4) Opportunities shall, on request, be provided for the interested parties which have made themselves known in accordance with Article 22, paragraph (2), sub-paragraph 4, to meet those parties with adverse interests, so that opposing views may be presented and rebuttal arguments offered. There shall be no obligation of any party to attend a meeting, and failure to do so shall not be prejudicial to that party's case. Oral information provided under this paragraph shall be taken into account in so far as it is subsequently confirmed in writing.

(5) The interested parties which have made themselves known in accordance with Article 22, paragraph (2), sub-paragraph 4 shall be heard if they have, within the period prescribed in the notice, have made a written request for that (a hearing showing that they are an interested party likely to be affected by a result of the proceeding and that there are particular reasons why they should be heard).

(6) The interested parties may, upon request, inspect all information made available by any party to an investigation, as distinct from internal documents, which is relevant to the presentation of their cases and not confidential and that is used in the investigation. Such parties may respond to such information and their comments shall be taken into consideration, wherever they are sufficiently substantiated in the response.

(7) Except in the circumstances provided for in paragraphs (9) and (10), the information which is supplied by interested parties and upon which findings are based shall be examined for accuracy as far as possible.

(8) The investigating authorities may carry out all necessary checks and inspections on the territory of a third country, provided that the concerned parties in question give their consent and that the government of the country in question has been officially notified and raises no objection.

(9) In cases in which any interested party concerned refuses access to, or otherwise does not provide, necessary information within a reasonable period or significantly impedes the investigation, preliminary and final determinations, affirmative or negative, may be made on the basis of the facts available. Where it is found that any interested party has supplied false or misleading information the information shall be disregarded and use may be made of the facts available.

(10) Interested parties should be made aware of the consequences of non-cooperation. If an interested party does not cooperate, or only cooperates partially, and thus relevant information is being withheld, the result could be less favourable to the party than if it had cooperated.

(11) If determinations, including those with respect to the amount of the normal value or the value of the subsidy, are based on the provisions of paragraphs (9) and (10), including the information supplied in the complaint, it should, where practicable and with due regard to the time limits of the investigation, be checked by reference to information from other independent sources which may be available such as published price lists, official import statistics and customs returns, or information obtained from other interested parties during investigation.

(12) The authorities shall, before a final determination is made, inform all interested parties of the essential facts under consideration which form the basis for the decision whether to apply provisional or final measures, or termination of the investigation procedure.

(13) Final disclosure shall be given in writing to the interested parties not later than 1 month prior to the date of determination of the duty or the termination of the investigation without imposition of a duty.

Article 26.(1) For the purpose of this Regulation “interested parties” are:

1. An exporter or foreign producer or the importer of a product subject to investigation, or a trade or business association a majority of the members of which are producers, exporters or importers of such product; and
2. A Bulgarian producer of the like product or a trade or business association a majority of the members of which produce the like product in Bulgaria.

(2) In anti-dumping investigation procedures an interested party may be the Government of the exporting country.

Article 27.(1) For proceedings initiated pursuant to Article 22, paragraph (1), an investigation shall be concluded within one year.

(2) Where the circumstances so require the Council of Ministers may prolong the time limit under paragraph (1) up to 18 months.

Article 28.(1) Provisional anti-dumping and countervailing measures may be applied, if:

1. Proceedings have been initiated in accordance with the provisions of Article 22, paragraph (1);
2. A public notice have given adequate opportunities to submit information under Article 22, paragraph (2);
3. Interested parties have been given adequate opportunities to submit information and make comments;
4. Preliminary affirmative determination has been made that the imported product benefits from countervailing subsidies or is being dumped and of consequent injury to the Bulgarian industry;
5. The authorities concerned judge such measures necessary to prevent injury being caused during the investigation.

(2) Anti-dumping or countervailing duties shall be imposed upon Decision of the Council of Ministers following Proposal of the Minister of trade and foreign economic cooperation.

(3) Provisional measures may take the form of a provisional duty or a security- by cash deposit or bond. The amount of the provisional duty shall not exceed:

1. The total amount of the provisionally estimated margin of dumping, which may be less than that amount, if it is an adequate provisional measure to remove the injury to the Bulgarian industry;
2. The preliminary calculated amount of subsidization, subject to countervailing, if it is adequate to remove the injury, caused to the Bulgarian industry.

(4) Import of product, subject to provisional anti-dumping or countervailing duty in Bulgaria shall be conditional upon the provision of a form of security.

(5) Provisional measures shall not be applied sooner than 60 days from the date of initiation of the investigation.

(6) The application of provisional measures shall be limited to as short period as possible, not exceeding 4 months, or on decision of the authorities concerned, upon request by exporters representing a significant percentage of the trade involved, to a period not exceeding six months. When authorities, in the course of an investigation, examine whether a duty lower than the margin of dumping would be sufficient to remove injury, these periods may be six and nine months respectively.

(7) Provisional countervailing duties shall be applied for a period not more than four months.

Article 29.(1) Investigation may be terminated without the imposition of provisional or definitive duties upon acceptance of satisfactory voluntary undertakings, accepted by the commission under which:

1. In cases of dumped import any exporter undertakes to revise its prices or to cease exports to the area in question as long as such exports are being dumped, so that the injurious effect of the dumping is eliminated.

2. In cases of subsidized import:

(a) the government of the country of origin and/or export agrees to eliminate or limit the subsidy or take other measures concerning its effects; or

(b) the exporter undertakes to revise its prices if the commission is satisfied that the injurious effect of the subsidy is removed.

(2) Price increases under paragraph (1), sub-paragraph 1 and paragraph (1), sub-paragraph 2 (b) shall not be higher than necessary to offset the amount of dumped margin, respectively the amount of countervailing subsidies, and should be less than the amount of the latter, if such increases would be adequate to remove the injury to the Bulgarian industry.

(3) Undertakings may be suggested by the commission, but no government or exporter shall be obliged to enter into such undertaking. However, the fact that the the commission may consider that a threat of injury is more likely to be realized if the dumped or subsidized imports continue.

(4) Undertakings shall not be sought or accepted from governments or exporters unless a provisional affirmative determination of subsidization or dumping and injury caused by them have been made.

(5) Undertakings offered need not be accepted if their acceptance is considered impractical, for example, if the number of actual or potential exporters is too great, or for other reasons, including reasons of general policy.

(6) In cases under paragraph (5) the exporters are informed for the refusal.

(7) Despite the acceptance of undertakings, the investigation of subsidization or dumping and the injury, caused by them shall be prolonged if required by exporters or by decision of the commission. In such cases:

1. If a negative determination of subsidization, dumping or injury is made, the undertakings shall automatically lapse except in cases where such a determination is due in large part to the existence of an undertaking; in such cases the commission may require that an undertaking be maintained for a reasonable period;

2. In case of affirmative determination the undertaking shall continue consistent with its terms and the provisions of this regulation.

(8) The Commission shall require any exporter from whom undertakings have been accepted to provide periodically information relevant to the fulfilment of such undertaking, and to permit verification of pertinent data. Non-compliance with such requirements shall be construed as a violation of the undertaking.

(9) In case of violation of undertakings by any party a definite duty shall be imposed on the basis of the facts led to the undertaking. In these cases final duties may be imposed on goods, which import for use is 90 days before the imposition of the provisional duty, but not for these, imported before the undertaking was not fulfilled.

Article 30.(1) Where the complaint is withdrawn, proceedings may be terminated unless there is:

1. Acceptance of the undertaking under the provisions of Art.29 or
2. Termination in case of:
 - (a) during the course of investigation it has been determined that the complaint does not include reasons for implementing any measures;
 - (b) withdrawal of the complaint unless such termination would not be in the Bulgarian industry interest;
 - (c) the investigation resulting in a lack of sufficient evidence under the provisions of Art. 21, paragraph (2);
 - (d) either the margin of dumping or the amount of countervailable subsidy *de minimis* - dumped margin no more than 2%, expressed as a percentage of the export price, respectively the amount of the subsidy - not more than 1% *ad valorem*;
 - (e) the volume of dumped or subsidized imports, actual or potential, under the provisions of Art.21, paragraph (3) is negligible.

(2) For all proceedings initiated pursuant to paragraph (1) investigation shall be terminated upon Decision of the Council of Ministers following Proposal of the Minister of trade and foreign economic cooperation. A public notice shall be given of this decision and published in State Gazette.

Article 31.(1) Where the facts as finally established show the existence of countervailable subsidies, dumping and injury caused thereby, a definitive countervailing or dumping duty shall be imposed.

(2) Anti-dumping and countervailing duty shall be imposed upon Decision of the Council of Ministers following Proposal of the Minister of trade and foreign economic cooperation and minister of finance.

(3) The Decision of the Council of Ministers shall define the type and volume of the duty, tariff item and tariff code, country of origin and/or country of export, application of the duty. The decision shall determine the duration of duty, applicable for:

1. Any supplier or suppliers,
2. In case of majority of suppliers from one or more countries and impossibility they to be identified - for the country or the countries suppliers.

(4) If provisional duties are applied, the proposition for determination of definitive duty shall be made not later than one month before the time limit of the applied provisional duty.

(5) The amount of definitive duties shall not exceed the dumping margin or the amount of the countervailing subsidy. Such duty shall be less than the amount referred to above if such lesser duty would be adequate to remove the injury to the Bulgarian industry.

(6) Where a product is imported into the Republic of Bulgaria from more than one country, anti-dumping or countervailing duty shall be levied at an appropriate amount on a non-discriminatory basis on all imports of such product found to be dumped or subsidized and causing injury, other than imports from those sources in respect of which undertakings have been accepted under the provisions of Art.29.

(7) Where investigation has been carried out pursuant to the provisions of Art.36, the following requirements shall be abided:

1. Any anti-dumping or countervailing duty applied on imports from exporters or producers not included in the shall not exceed:

- (a) the weighted average margin of dumping or the countervailing duty on imports established with respect to the selected exporters or producers, or;

- (b) where the liability for payment of anti-dumping or the countervailing duty is calculated on the basis of a prospective normal value, the difference between the weighted average normal value of the selected exporters or producers and the export prices of exporters or producers not individually examined.

2. The authorities shall apply individual duties or normal values to imports from any exporter or producer not included in the examination who has provided the necessary information during the course of investigation, as provided for in Art.36, paragraph (3).;

3. The authorities shall disregard for the purpose of this paragraph any zero and *de minimis* and margins established under the circumstances referred to in Art. 25, paragraph (9) and (10).

(8) Anti-dumping or countervailing duty shall be imposed on *ad valorem* basis simultaneously and independently of the customs duties, taxes and other charges.

(9) No product shall be subject to both anti-dumping and countervailing duties.

Article 32.(1) Provisional measures and anti-dumping or countervailing duties shall only be applied to products which enter in the Republic of Bulgaria for customs clearance for entry into consumption after the time when the decision taken for their determination, respectively, enters into force, subject to the exceptions set out in paragraph (2)-(6).

(2) Where a provisional duty has been applied and the facts as finally established show the existence of countervailing subsidy, anti-dumping and injury, the Council of Ministers shall decide, irrespective of whether a definite countervailing or anti-dumping duty is to be imposed, what proportion of the provisional duty is to be definitely collected.

(3) For this purpose “injury” shall not include material retardation of the establishment of the Bulgarian production of like product, nor threat of material injury, except where it is found that this would, in the absence of provisional measures, have developed into material injury to Bulgarian industry.

(4) If the definitive anti-dumping duty is higher than the provisional duty paid or payable, or the amount estimated of the purpose of the security, the difference shall not be collected. If the definitive duty is lower than the provisional duty paid or payable, or the amount estimated of the purpose of the security, the difference shall be reimburse or the duty recalculated , as the case may be.

(5) A definitive countervailing or anti-dumping duty may be levied on products which were entered for consumption not more than 90 days prior to the date of application of provisional measures, when the authorities determine:

1. In cases of dumped imports:

(a) there is a history of dumping which caused injury or that the importer was, or should have been aware that the exporter practices dumping and that such dumping would cause injury, and

(b) the injury is caused by massive dumped imports of a product in a relatively short time which in light of the timing and the volume of the dumped imports and other circumstances (such as a rapid build-up of inventories of the imported products) is likely to seriously undermine the remedial effect of the definitive anti-dumping duty to be applied.

2. In cases of subsidized imports:

(a) there exist critical circumstances where for the subsidized product in question injury which is difficult to repair is caused by massive imports in a relatively short period of a product benefiting from countervailable subsidies under the terms of this regulation; and,

(b) where it is deemed necessary, in order to preclude the recurrence of such injury, to assess countervailing duties retroactively on those imports.

(6) In cases of violation or withdrawal of undertakings definite duties may be levied in accordance with this regulation on goods entered for consumption not more than 90 days before the application of provisional measures provided that no such measures shall be applied prior to the date of initiation of the investigation or before the violation or withdrawal of undertaking.

Article 33.(1) A countervailing or anti-dumping measure shall remain in force only as long as and to the extent necessary to counteract the countervailable subsidies or anti-dumping duties which cause injury.

(2) Definite anti-dumping and countervailing duties are imposed and undertakings are accepted for a period not exceeding 5 years. In case of review, the period of validity shall be considered to begin from the date of the publication of Decision of the Council of Ministers by which the imposed duties are amended.

(3) Six months before the expiration of the period set out for the duration of duties, a public notice shall be published in a State Gazette.

(4) An “*expiry review*” shall be initiated where the duration of duties expire either ex officio or pursuant to a request by or on behalf of the Bulgarian industry, deposited after the public notice under paragraph (3), but not later than 3 months before the end of the final term and supported by evidence. Duties shall be actually in power until the end of investigation.

(5) Under this section, a public notice of impending expiry of anti-dumping or countervailing duties shall be published in State Gazette.

(6) The need for the continued imposition of measures on the circumstances under which they have been imposed may also be subject to an interim review (*interim review*).

(7) The review under paragraph (6) shall be carried out automatically, or provided that a reasonable period of time at least one year has elapsed since the imposition of the definite measure, upon a request by any exporter, importer or Bulgarian producers, supported by sufficient evidence sustaining the need for such an interim review.

(8) An interim review shall be initiated where the request contains sufficient evidence that:

1. The continued imposition of the measure is no longer necessary to offset and/or
2. The injury would be unlikely to continue or recur if the measure were removed or varied, or
3. The existing measure is not, or is no longer, sufficient to counteract the countervailing or anti-dumping duty, which is causing injury.

(9) Reviews for determination of individual dumping margin shall be initiated for initial exporters from the country of export, who have not exported the product for the time limit of investigation, if:

1. They are not related to the exporters or producers in the country of export, subject to anti-dumping duty, or
2. Their export for the Republic of Bulgaria is realized after the period of investigation; or,
3. Prove that they have undertaken an irrevocable contract obligation for export of great quantity of the related product in the Republic of Bulgaria.

(10) With initiation of the review procedures under paragraph (9), The Council of Ministers shall adopt regulations for amendments of the regulation for defining of the anti-dumping duty, where it is revoked for the initial exporters under paragraph (9).

(11) The review proceedings shall be initiated by a decision of the Council of Ministers following a proposal of the minister of trade and foreign economic cooperation and shall be carried out under general procedure. Dependent on the results, the regulations of the Council of Ministers may be amended or revoked.

(12) The review shall be carried out in the shortest terms acceptable, but not more than 12 months from the date of its initiation.

Article 34.(1) Anti-dumping or countervailing duties imposed pursuant to this regulation may be extended to apply to imports from third countries of like products, or parts thereof, when circumvention of the measures in force is taking place. Circumvention shall be defined as:

1. A change in the pattern of trade between third countries and the Republic of Bulgaria, the due cause for which is the imposed duty;
2. There is evidence that the remedial effects of the duty are being undermined, in terms of the prices;
3. The imported like products or parts thereof still benefit from the anti-dumping or subsidy.

(2) Investigation shall be initiated pursuant to this article upon a decision of the Council of Ministers where sufficient evidence exists for circumvention pursuant to paragraph (1). The investigation shall be carried out under the general procedure and concluded within 9 months.

Article 35.(1) The anti-dumping or countervailing duties shall be imposed under the general non-preferential rules of origin, where acting within the territory of the Republic of Bulgaria, unless the regulation for defining the relevant duty does not define special rules of origin.

(2) If the interest of the Bulgarian industry calls, the provisional or definite anti-dumping or countervailing duties may be suspended:

1. For 9 months, which term may be prolonged with one year;
2. If the economic circumstances have been changed so that it is unlikely the injury to reappear as a result of the suspension of duty.

(3) The application of duty shall be always renovated in case of disappearance of the circumstances under paragraph (2).

Article 36.(1) In cases where the number of complaints, exporters or importers, types of product or transactions is large, the investigation may be limited to:

1. Reasonable number of parties, products or transactions by using samples which are statistically valid on the basis of information available to it at the time of the selection or;
2. The largest representative volume of the production, sales or exports which can reasonably be investigated within the time limit available.

(2) The final selection of parties, types of products or transactions made under these sampling provisions shall rest with the Commission, though preference shall be given to choosing a sample in consultation with the parties concerned.

(3) In cases where the examination has been limited under the provisions of paragraph (1), an individual amount of countervailable subsidization or dumping margin shall, nevertheless, be calculated for any exporter or producer not initially selected who submits the necessary information within the time limits provided for in this regulation.

(4) The provisions of paragraph (3) shall not be applicable where the number of exporters or producers is so large that individual examination would be unduly burdensome and prevent the timely completion of the investigation.

Article 37.(1) Information received pursuant to this Regulation shall be used only for the purposes for which it has been requested.

(2) For the purposes of this Regulation, “confidential information” shall mean:

1. Any information disclosure of which will constitute a benefit for rivals or is likely to have a significantly aversive effect upon the supplier, or the source of such information;

2. Any information received pursuant to this Regulation for which confidential treatment has been requested by its supplier and shall not be revealed without specific permission from the supplier.

(3) Interested parties providing confidential information shall be required to furnish non-confidential summaries thereof. These summaries shall be in sufficient detail to permit a reasonable understanding of the substance of the information submitted in confidence. In exceptional circumstances, such parties may indicate that such information is not susceptible of summary. In such exceptional circumstances, a statement of the reasons why summarization is not possible must be provided.

(4) If the authorities find that a request for confidentiality is not warranted and if the supplier of the information is either unwilling to make the information public or to authorize its disclosure in generalized or summary form, the authorities may disregard such information unless it can be demonstrated to their satisfaction from appropriate source that the information is correct.

(5) Paragraph (1)-(4) shall not preclude the disclosure of general information by the competent authorities so far as is necessary to explain those reasons in court proceedings. Such disclosure must take into account the legitimate interest of the parties concerned that their business secrets should not be divulged.

(6) The information under paragraph (2), sub-paragraph 2 shall not be revealed without specific written permission from the supplier.

Article 38.(1) The administrative acts or activities related to the procedure, initiated and carried out pursuant to the provisions of that regulation, shall be appealed under the Law on administrative procedure.

(2) The legal acts of the council of Ministers, adopted under the provisions of this regulation, shall be appealed under the general procedure.

FINAL PROVISIONS

§1. This Regulation repeals Regulation No. 181 of the Council of Ministers of 1993 on protection of the domestic market against dumped or subsidized imports (State Gazette No. 81/ 1993).

§2. The control for the implementation of this Regulation is given to the Minister of Trade and Foreign Economic Cooperation and the Minister of Finance

§3. This Regulation shall enter into force 14 days after its publication in the State Gazette.