

# **WORLD TRADE ORGANIZATION**

**G/ADP/N/1/MDA/1**  
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**Committee on Anti-Dumping Practices**  
**Committee on Subsidies and Countervailing Measures**  
**Committee on Safeguards**

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## **NOTIFICATION OF LAWS AND REGULATIONS UNDER ARTICLES 18.5, 32.6 AND 12.6 OF THE AGREEMENTS**

**MOLDOVA**

The following communication, dated 7 February 2002, has been received from the Permanent Mission of Moldova.

With reference to Article 18.5 of the Agreement on Implementation of Article VI of the GATT 1994, Moldova has the honour to notify the Committee on Anti-Dumping Practices that the provisions of the said Agreement were implemented in the Republic of Moldova by the Law on Anti-Dumping Measures, Countervailing Duties and Safeguards, No. 820 - XIV of 17 February 2000.

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## **LAW ON ANTIDUMPING MEASURES, COUNTERVAILING DUTIES AND SAFEGUARDS**

Nr. 820 – XIV of 17.02.2000

Monitorul Oficial of the Republic of Moldova (Issue 5-7/13 of 18.01.2001)

The Parliament hereby adopts this organic law as hereafter:

### **CHAPTER I: GENERAL**

#### Article 1. The area of application for this law

This law shall establish the protection measures applicable to the imports, which are the object of a dumping action or are subventioned by their country of origin or their exporting country, as well as to the imports, which – because of their quantities or terms and conditions of delivery – are causing injury to domestic manufacturers of like or directly competing goods, or threaten to cause such injury.

#### Article 2. Principal terms

For the purposes of this law, the following terms shall have the meaning as hereafter:

Dumping (a dumping action) shall mean introduction of a product to the market at a price, which is lower than its normal value, or where the exports price of that product at the time of its exports from one country into another is lower than the comparable prices registered in normal trade transactions with like products, intended for domestic consumption in the exporting country;

A subsidy shall mean allocation of financial support to economic entities, performed directly or indirectly by any public authorities in order to make the exports operations more profitable;

An anti-dumping duty shall mean a special duty payable on the imports of products at a price lower than their normal value in the exporting country at the time of imports;

A countervailing duty shall mean a special duty payable in order to neutralise any financial contributions paid directly or indirectly for the stimulation of the production or the export of a product;

Safeguard measures shall mean the measures to be applied where a product is imported in the quantities and/or on terms and conditions, which cause or might cause a serious injury to a national industry;

A country of exports shall normally be the country of goods origin. However, it might be an intermediary country, excepting the cases where the products have been brought into it for transit purposes, or where the products have not been produced in that country, or where a comparable price for the respective products can not be found in that country;

A national industry shall be interpreted as referring to the Moldovan producers as a whole of the like products or to those of them whose collective output of the products constitutes a major proportion of the total national production of those products;

Fair value shall mean the value that corresponds to the actually paid price, or the price that could be paid for like products in an arms-length commercial transaction by consumers in the exporting country;

A dumping margin shall mean the difference between the exports price and the fair value of the investigated products;

The term "injury" shall, unless otherwise specified, be taken to mean material injury to the National industry, threat of material injury to the Moldovan industry or material retardation of the establishment of such an industry;

Investigated products shall mean the products that are the object of an investigation;

The term "like product" shall be interpreted to mean a product which is identical, that is to say, alike in all respects to the product under investigation, or in the absence of such a product, another product which although not alike in all respects, has characteristics closely resembling those of the product under investigation. In determination of like products, quality and reputation of the products, the existence of a brandname or a trademark should also be taken into account;

The interested parties shall mean:

- foreign exporters or manufacturers, or importers of the investigated products, or a trade or business association where the overwhelming majority of members are producers, exporters or importers of the investigated products;
- the government of the exporting country,
- manufacturers of like products in the Republic of Moldova, or a trade or business association where the overwhelming majority of members manufacture like products in the Republic of Moldova;

The Investigating Authority shall mean a public authority in the Republic of Moldova, responsible for the elaboration, regulation and supervision of the anti-dumping measures, countervailing duties and safeguards.

## **CHAPTER II: ANTI-DUMPING MEASURES**

### **Article 3. General principles**

(1) An anti-dumping duty may be applied to any dumped product, which causes injury to domestic producers, subject to the existence of a causal link between the dumping action and such injury.

(2) A product should be considered dumped only where its exports price – at the time of its introduction to Moldova - is lower than the usual price charged in the ordinary course of trade for like products intended for consumption at the domestic market of the exporting country.

Article 4. Determination of dumping activities

(1) Where the exporter does not produce or sell like products in the exporting country, the product's fair value may be established based on the prices charged by other sellers or producers.

The prices charged in transactions between the parties, which appear to be associated or which have entered into a compensatory arrangement with each other, may not be considered usual prices charged in the ordinary course of trade and they must not be used to establish fair value, unless it has been established that they are not affected by the existing relationships.

(2) The sales of like products, intended for domestic consumption in the exporting country, shall normally be considered sufficient to determine fair value, where such sales account for at least 5 per cent of the total sales of the investigated product in the Republic of Moldova. However, a lower percentage of the total sales may be used where it is sufficient for the purposes of an adequate comparison.

(3) Where the sales of like products are non-existent or very insignificant in the ordinary course of trade at the domestic market of the exporting country, or where - due to the specifics of the exporting country's domestic market - such sales do not allow to perform a proper comparison, the fair value of like products shall be calculated based on:

- (a) the production costs in the country of origin, plus a reasonable amount to cover the sales costs, general and administrative costs, and to allow a profit; or
- (b) the export prices used in the ordinary course of trade with a relevant third country, provided those prices are representative.

(4) The sales of like products at the exporting country's domestic market, or export sales to a third country at a price below the total of production costs (fixed or variable) per unit and sales costs as well as general and administrative costs shall be considered deviations from the ordinary course of trade due to the price level, and they shall be disregarded in determining fair value, but only where such sales have been practiced in substantial amounts for a long time and at a price, which does not ensure the recovery of all costs within a reasonable period of time.

Where at the time of sale the price is lower than the product costs per unit, but it is however higher than the weighted average product costs per unit for the period under investigation, such price shall be deemed able to ensure the recovery of product costs within a reasonable period of time.

'A long time' shall normally mean one year, but in no case less than six months.

The sales below product costs per unit shall be considered to have been practiced in substantial amounts where the investigating authority establishes that the weighted average sales price is below the weighted average product costs per unit or that the amount of sales below cost per unit accounts for at least 20 per cent of the total sales taken into account for the purposes of fair value determination.

(5) The costs shall normally be calculated on the basis of the records maintained by the party under investigation, provided such records are maintained in accordance with the generally accepted accounting principles of the exporting country and those records veritably reflect the associated production and sales costs of the product under investigation.

Consideration shall be given to the submitted evidence concerning the correct cost breakdown, provided such cost breakdown has a tradition of usage. In the absence of a more appropriate method, preference shall be given to the cost breakdown based on the amounts of sales. Unless already reflected in the cost breakdown according to the requirements of this subparagraph, the costs shall be adjusted appropriately for the non-reimbursable expense intended to benefit future and/or current production.

Where for a certain part of the cost recovery period the costs have been affected by the use of new production techniques, intended to expand the production and requiring substantial additional investment, or by low capacity utilization rates due to the adjustment and working-in within the period under investigation, the relevant average working-in costs shall be applied - in conformity with the above cost breakdown rules - to the end of such a phase, and they shall be included - at the relevant level for the period concerned - in the weighted average costs referred to in Paragraph (4), Subparagraph 2. The length of the working-in phase shall be determined depending on the particular circumstances of the producer or exporter concerned, but they shall not exceed the reasonable initial portion of the cost-recovery period. For the purposes of such adjustment of the costs applicable to the period under investigation, the information shall be taken into account, which relates to the working-in phase extending beyond the period under investigation, provided such information has been submitted prior to the verification visit and within three months after the start of the investigation.

(6) The sales costs, general and administrative costs and profits shall be determined based on the actual data on production and sales of like products by the exporter or producer under investigation in the ordinary course of trade. When such costs cannot be determined as above, they shall be calculated on the basis of:

- (a) the weighted average of the actual manufacture and sale costs of like products at the domestic market of the country of origin, as calculated for other exporters or producers under investigation;
- (b) the actual production and sale costs of the same general category of products borne by the exporter or producer in question at the domestic market of the country of origin in the ordinary course of trade;
- (c) any other reasonable method, provided the profits so established do not exceed the profit normally obtainable by other exporters or producers on the sales of products in the same general category at the domestic market of the country of origin.

(7) In the case of imports from non-market economies, fair value shall be determined on the basis of the price or constructed value of like products in a third country, which has market economy, or the export price from such a third country to other countries, or – should the above be impossible - on any other reasonable basis, including the price actually paid or payable for like products at the Moldovan market, duly adjusted where necessary to include a reasonable profit margin.

For reference purposes, a third country, which has market economy, shall be selected in a reasonable manner, taking into account any relevant information available at the time of such selection. Due account shall also be taken of time limits. Where possible, a third country with market economy should be selected, which is subject to a similar investigation.

The parties involved in the investigation shall be informed shortly after its beginning about the eventual selection for the purposes of reference of a third country with market economy, giving them 10 days to submit their comments.

(8) The export price shall be the price actually paid or payable for a product sold to be exported to the Republic of Moldova.

(9) Where there is no export price or where the investigating authority believes in the existence of an alliance or compensatory arrangement between the exporter and the importer or a third country, or where the price actually paid for the sold exported product cannot be used as the reference price for any other reason, the export price may be construed on the basis of the price at which the imported products have been sold to an independent buyer for the first time, or on any other reasonable basis - where the products have not been resold to an independent buyer or they have not been sold in the same state, in which they had been originally imported.

In such cases, adjustments should be made for all the costs, including the duties and taxes paid in the time between the imports and resale, and for the accrued profits. Such costs shall include all the costs normally incurred by the importer, and paid by the partners operating in Moldova or abroad, and provided for in the alliance agreement or a compensatory arrangement with the importer or exporter.

Adjustments shall be made for the costs of transport, insurance, handling, loading and unloading, auxiliary costs; customs duties, anti-dumping duties, other taxes payable in Moldova, and reasonable general costs and profits, as well as all the usual or agreed commission fees.

(10) A fair comparison shall be made of the exports price and fair value. Such comparison shall be made at the same level of trade and for the sales that have taken place within the possibly closest period of time.

Where the established fair value and the export price are not quite comparable, due account shall be taken in each particular case of the differences affecting the extent of their comparability, including the difference in terms and conditions of sale, taxation, trade levels, quantities and physical characteristics.

Adjustments shall be made in such a way, so as to prevent any duplication, in particular in relation to discounts, reductions, quantities or level of trade. Where such conditions are observed, adjustments should be made for the following:

(a) *Physical characteristics*

An adjustment shall be made for differences in physical characteristics of the product under investigation. The extent of the adjustment shall reflect a reasonable estimate of the difference in open market values.

(b) *Import taxes and indirect taxes*

The fair value shall be adjusted for an amount corresponding to any import taxes or indirect taxes applicable to like products and materials physically incorporated therein, where they are intended for consumption in the exporting country, provided such taxes are not applicable or they are refunded in respect of the products exported to the Republic of Moldova.

(c) *Discounts, reductions and quantities*

An adjustment shall be made for differences in discounts and reductions, including those given for difference in quantities, where those amounts have been substantiated and proven as

properly quantified and directly linked to the sales under consideration. An adjustment may also be made for the deferred discounts and reductions where the claim is based on consistent practices in prior periods, including compliance with the conditions required to qualify for the discount or reductions.

(d) *Level of trade*

An adjustment shall be granted for differences in levels of trade, including any differences which may arise in OEM (Original Equipment Manufacturer) sales, where, in relation to the distribution chain in both markets, it is shown that the export price (including the constructed export price) is at a different level of trade to the fair value and the difference, which has affected price comparability, is demonstrated by consistent and distinct differences in functions and prices of the sellers for different levels of trade in the domestic market of the exporting country. The amount of the adjustment shall be based on the reasonably assessed market value of the difference.

(e) *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. Those costs shall include transport, insurance, handling, loading and ancillary costs.

(f) *Packing*

An adjustment shall be made for differences in the packing costs for the product under investigation.

(g) *Credit*

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

(h) *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.

(i) *Commissions*

An adjustment shall be made for differences in commissions (fees) paid in respect of the sales under investigation.

(j) *Currency conversions*

Where the price comparison requires conversion of currencies, such conversion shall be made using the rate of exchange on the date of sale, except that when a sale of foreign currency on forward markets is directly linked to the export sale involved, the rate of exchange in the forward sale shall be used. Normally, the date of sale shall be the date of invoice, but the date of contract, purchase order 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 adjust export prices, in order to reflect a sustained movement in exchange rates during the investigation period.

(11) The amount (extent) of the adjustment shall be calculated based on the relevant data for the investigation period or for the period of the last available financial operation. Account shall not be taken of the requests for adjustments with negligible influence upon the price or transaction value under consideration, such as the influences not exceeding 0.5 per cent of the price or transaction value.

(12) The existence of margins of dumping during the investigation period shall normally be established on the basis of:

- (a) comparison of individual fair values and individual export prices to the Republic of Moldova on a transaction-to-transaction basis; or
- (b) comparison of a weighted average fair value with a weighted average of prices of all export transactions to the Republic of Moldova.

For the cases, where it is impossible to use the methods specified in Clauses (a) and (b) hereof, comparison shall be applied of a weighted average fair value with the prices of all individual export transactions to the Republic of Moldova. However, a fair value established on a weighted average basis may be compared to prices of all individual export transactions to the Republic of Moldova, if there is a pattern of export prices which differs significantly among different purchasers, regions or time periods, and if the methods specified in Clauses (a) and (b) hereof would not reflect the full degree of dumping being practised.

This paragraph shall not preclude the use of sampling in accordance with Article 19.

(13) Where dumping margins vary, a weighted average dumping margin may be established.

#### Article 5: Determination of injury

(1) A determination of injury shall be based on positive evidence and shall involve an objective examination of both:

- (a) the volume of the dumped imports and the effect of the dumped imports on prices in the Moldovan market for like products; and
- (b) the impact of the dumped imports on the national industry.

(2) With regard to the volume of the dumped imports, consideration shall be given to whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in the Republic of Moldova. With regard to the effect of the dumped imports on prices, consideration shall be given to whether there has been significant price undercutting by the dumped imports as compared with the price of a like product of the national industry, or whether the effect of such imports is otherwise to depress prices to a significant degree or prevent price increases, which would otherwise have occurred, to a significant degree. No one or more of these factors can necessarily give decisive guidance.



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

- (a) the margin of dumping established in relation to the imports from each country is more than *de minimis* as defined in Article 11 (2) and that the volume of imports from each country is not negligible; and
- (b) a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between imported products and the conditions of competition between the imported products and the like domestic product.

(4) The examination of the impact of the dumped imports on the national industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including the fact that an industry is still in the process of recovering from the effects of past dumping or subsidization, the magnitude of the actual margin of dumping, actual and potential decline in sales, profits, output, market share, productivity, return on investments, utilization of capacity; factors affecting Moldovan market prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments. This list is not exhaustive, nor can any one or more of these factors necessarily give decisive guidance.

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

(6) Known factors other than the dumped imports, which at the same time are injuring the national industry, shall also be examined to ensure that injury caused by these other factors is not attributed to the dumped imports under paragraph 6. Factors which may be considered in this respect include 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 Moldovan producers, developments in technology and the export performance and productivity of the Moldova's industry.

(7) The effect of the dumped imports shall be assessed in relation to the production of the national industry of the like products when available data permit the separate identification of that production on the basis of such criteria as the production process, producers' sales and profits. If such separate identification of that production is not possible, the effects of the dumped imports shall be assessed by 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.

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

In making a determination regarding the existence of a threat of material injury, consideration should be given to such factors as:

- (a) a significant rate of increase of dumped imports into the Moldovan market indicating the likelihood of substantially increased imports;

- (b) sufficient freely disposable capacity of the exporter or an imminent and substantial increase in such capacity indicating the likelihood of substantially increased dumped exports to the Republic of Moldova, account being taken of the availability of other export markets to absorb any additional exports;
- (c) whether imports are entering at prices that would, to a significant degree, depress prices or prevent price increases which otherwise would have occurred, and would probably increase demand for further imports; and
- (d) inventories of the product being investigated.

No one of the factors listed above by itself can necessarily give decisive guidance but the totality of the factors considered must lead to the conclusion that further dumped exports are imminent and that, unless protective action is taken, material injury will occur.

#### Article 6: Definition of the National Industry

(1) In addition to the definition of the term provided for in Article 2 hereof, when domestic producers are related to the exporters or importers or are themselves importers of the allegedly dumped product, the term "national industry" may be interpreted as referring to the rest of the producers.

(2) In exceptional circumstances the total market of the Republic of Moldova may, for the production in question, be divided into two or more competitive market segments and the producers within each segment may be regarded as a separate industry if:

- (a) the producers within such a segment sell all or almost all of their manufacture of the product in question in that segment; and
- (b) the demand in that segment is not to any substantial degree supplied by producers of the product under investigation located elsewhere in the Republic of Moldova.

In such circumstances, injury may be found to exist even where a major portion of the total national industry is not injured, provided there is a concentration of dumped imports into such an isolated market and provided further that the dumped imports are causing injury to the producers of all or almost all of the production within such a segment.

(3) For the purposes of Paragraph (1), producers shall be considered to be related to exporters or importers only if:

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

The provisions hereof shall apply, provided 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. For the purpose of this paragraph, 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.

(4) Where the national industry has been interpreted as referring to the producers in a certain region, the exporters shall be given an opportunity to offer undertakings pursuant to Article 10 in respect of the region concerned. In such cases, when evaluating the national interest of the measures, special account shall be taken of the interest of the region concerned. If an adequate undertaking is not offered promptly or the situations set out in Article 10 (5) and (6) apply, a provisional or definitive anti-dumping duty may be imposed in respect of the country as a whole. In such cases, the duties may, if practicable, be limited to specific producers or exporters.

#### Article 7: Initiation of proceedings

(1) Any natural or legal person, or any association not having legal personality, acting on behalf of the national industry, which is believed to be injured or threatened by the dumped imported goods, and having evidence of the existence, degree and effect of such alleged dumping, may lodge a written complaint requesting to initiate an investigation. The complaint shall be considered lodged on the day it is received by the Investigating Authority. The Investigating Authority must register the received complaint and give the complainant party a confirmation of its receipt.

(2) A complaint shall include sufficient evidence of dumping, injury and a causal link between the allegedly dumped imports and the alleged injury. The complaint shall contain information on the following:

- (a) identity of the complainant and a description of the volume and value of the national production of the like product. Where a written complaint is made on behalf of the national industry, the complaint shall identify the industry on behalf of which the complaint is made by a list of all known domestic producers of the like products (or associations of domestic producers of the like products) and a description of the volume and value of the national production of the like product accounted for by such producers;
- (b) 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 and a list of known persons importing the product under investigation;
- (c) information on prices at which the product in question is sold when destined for consumption in the domestic markets of the country or countries of origin or export, or, where appropriate, information on the prices at which the product is sold from the country or countries of origin or export to a third country or countries or on the constructed value of the product, and 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 Moldova;
- (d) information on changes in the volume of the allegedly dumped imports, the effect of those imports on prices of the like product on the Moldovan market and the consequent impact of the imports on the national industry, as demonstrated by relevant factors and indices having a bearing on the state of that national industry, such as those listed in Article 5 (2) and (4).

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

(4) 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 domestic producers of the like product, that the complaint has been made by or on behalf of the national industry. The complaint shall be considered to have been made by or on behalf of the national industry if it is supported by those domestic producers whose collective output constitutes over 50 per cent of the total production of the like product produced by that portion of the national industry expressing either support for or opposition to the complaint. However, no investigation shall be initiated when domestic producers expressly supporting the complaint account for less than 25 per cent of the total production of the like product produced by the national industry.

(5) The Investigating Authority shall avoid, unless a decision has been made to initiate an investigation, any publicising of the complaint seeking the initiation of an investigation. However, after receipt of a properly documented complaint and before proceeding to initiate an investigation, the government of the country of origin or the exporting country concerned shall be notified.

(6) The evidence of both dumping and injury shall be considered simultaneously in the decision on whether or not to initiate an investigation. A complaint shall be rejected where there is insufficient evidence of either dumping or of injury to justify proceeding with the case. Proceedings shall not be initiated against countries whose imports represent a market share of below 1 per cent in the Republic of Moldova, unless such countries collectively account for 3 per cent or more of the national consumption in Moldova.

(7) The complaint may be withdrawn prior to the start of the investigation, in which case the proceedings shall be terminated, provided that such termination of the investigation is in the interests of the Republic of Moldova.

(8) Where, in the absence of any complaint, the Investigating Authority is in possession of sufficient evidence of dumping and of resultant injury to the national industry, it may initiate an investigation without having received a complaint.

(9) Where, it is apparent that there is sufficient evidence to justify initiating a proceeding, the Investigating Authority shall do so within 45 days of the lodging of the complaint and shall publish a notice in the Official Monitor of the Republic of Moldova. Where insufficient evidence has been presented, the complainant shall be so informed within 45 days of the date on which the complaint is lodged with the Investigating Authority.

(10) The notice of initiation of the investigation shall indicate the product and countries concerned, give a summary of the information received, and provide that all relevant information is to be communicated to the Investigating Authority; it shall state the periods within which interested parties may present their views in writing or apply to be heard by the Investigating Authority in accordance with Article 8 (3).

(11) The Investigating Authority shall formally advise the exporters and importers concerned, as well as representatives of the exporting country and the complainants, of the initiation of the proceedings.

(12) An anti-dumping investigation shall not hinder the procedures of customs clearance of the allegedly dumped product.

Article 8: Anti-dumping investigation

(1) The initiated anti-dumping investigation shall cover both dumping and injury and these shall be investigated simultaneously. An investigation period shall be selected which, in the case of dumping shall, normally, cover a period of not less than six months immediately prior to the initiation of the proceeding. Information relating to a period subsequent to the investigation period shall, normally, not be taken into account.

(2) Parties receiving questionnaires used in an anti-dumping investigation shall be given at least 30 days to reply. 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 day on which it was sent to the exporter or transmitted to the appropriate diplomatic representative of the exporting country. An extension of 30 days may be granted, due account being taken of the time limits of the investigation, provided that the party shows due cause for such extension, in terms of its particular circumstances.

(3) The interested parties shall be heard if they have, within the period prescribed in the notice published in the Official Monitor of the Republic of Moldova, made a written request for a hearing showing that they are an interested party likely to be affected by the result of the proceeding and that there are particular reasons why they should be heard.

(4) The Investigating Authority shall, upon request of the parties, which have made themselves known in accordance with Article 7 (10), provide an opportunity to meet the parties with adverse interests, so that opposing views may be presented and rebuttal arguments offered. Provision of such opportunities must take account of the need to preserve confidentiality and of the convenience to the parties. There shall be no obligation on any party to attend such 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 complainants, importers and exporters and their representative associations, user and consumer organizations, which have made themselves known in accordance with Article 7 (10), as well as the representatives of the exporting country may, upon request, inspect all information made available by any party to an investigation (excepting internal documents prepared by the authorities of the Republic of Moldova), which is relevant to the presentation of their cases and not confidential within the meaning of Article 21, and that it 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.

(6) Excepting the cases provided for in Article 20, information provided by the interested parties and forming a basis for their statements shall be verified, to the extent possible, for its exactness.

(7) An investigation shall be concluded either by its termination or by a ruling to impose an anti-dumping duty. An investigation shall normally be concluded within one year. In the cases provided for in Articles 10 and 11, such investigation shall be concluded within 15 months of its initiation.

#### Article 9: Provisional anti-dumping measures

(1) Provisional duties may be imposed if proceedings have been initiated in accordance with Article 7, if a notice has been given to that effect and interested parties have been given adequate opportunities to submit information and make their opinion known, if a provisional affirmative determination has been made of dumping and consequent injury to the national industry. The provisional duties shall be imposed no earlier than 60 days from the initiation of the proceedings but not later than nine months from the initiation of the proceedings.

(2) The amount of the provisional anti-dumping duty shall not exceed the margin of dumping as provisionally established, but it should be less than the margin if such lesser duty would be adequate to remove the injury to the national industry.

(3) Provisional duties may be secured by a guarantee, and the release of the products under investigation for free circulation in the Republic of Moldova shall be conditional upon the provision of such guarantee.

(4) Provisional duties may be imposed for six months and extended for a further three months or they may be imposed for nine months. However, they may only be extended, or imposed for a nine-month period, where exporters representing a significant percentage of the trade involved so request or do not object.

(5) Provisional anti-dumping duties shall be applied with observance of the relevant provisions of Article 11.

#### Article 10: Undertakings

(1) Investigations may be terminated without the imposition of provisional or definitive duties upon receipt by the Investigating Authority of satisfactory voluntary undertakings from any exporter to revise its prices to an extent, which eliminates the dumping margin or injurious effect of the dumping. Price increases under such undertakings shall not be higher than necessary to eliminate the provisionally calculated margin of dumping and they should be less than the margin of dumping if such increases would be adequate to remove the injury to the national industry.

(2) Undertakings may be suggested by the Investigating Authority, but no exporter shall be obliged to enter into such an undertaking. The fact that exporters do not offer such undertakings, or do not accept an invitation to do so, shall in no way prejudice investigation of the case. However, it may be determined by the Investigating Authority that a threat of injury is more likely to be realized if the dumped imports continue. Undertakings shall not be sought or accepted from exporters unless a provisional affirmative determination of dumping and injury caused by such dumping has been made. Save in exceptional circumstances, undertakings may not be offered later than the end of the period during which representations may be made pursuant to Article 22 (5).

(3) The exporter concerned shall be given the reasons for the rejection of the offered undertaking and shall be given an opportunity to make comments thereon. The reasons for rejection shall be set out in the definitive decision.

(4) The Investigating Authority shall have consultations with the Moldovan Government regarding the acceptability of the undertakings offered by exporters, and based on those it shall submit a report to the Government, suggesting to conclude the investigation. The investigation shall be deemed concluded, unless the Government decides otherwise within one month's time.

(5) If the undertakings are accepted, the investigation of dumping and injury shall normally be completed. In such a case, if a negative determination of dumping or injury is made, the undertaking shall automatically lapse, except in cases where such a determination is due in large part to the existence of an undertaking. In such cases it may be required to maintain the undertaking for a reasonable period of time. Where a final determination as to dumping or injury is made, the undertaking shall stand valid in conformity with its terms and conditions and provisions of this chapter.

(6) The Investigating Authority shall require any exporter from which an undertaking has 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 breach of the undertaking.

(7) In case of breach or withdrawal of undertakings by any party, a definitive duty shall be imposed in accordance with Article 11, on the basis of the facts established within the context of the investigation which led to the undertaking, provided that such investigation was concluded with a dumping and injury and that the exporter concerned has, except where he himself has withdrawn the undertaking, been given an opportunity to comment.

(8) A provisional duty may be imposed in accordance with Article 9 on the basis of the information available, where there is reason to believe that an undertaking is being breached, or in case of breach or withdrawal of an undertaking where the investigation which led to the undertaking has not been concluded.

#### Article 11: Termination without measures, imposition of definitive duties

(1) Where the complaint is withdrawn, the proceeding shall be terminated unless such termination would not be in the Moldova's interest. The investigation or procedures shall be also terminated where protectionist measures are unnecessary.

(2) For a proceeding initiated pursuant to Article 7(9), injury shall normally be regarded as negligible where the imports concerned represent less than the volumes set out in Article 7(6). For the same proceeding, there shall be immediate termination where it is determined that the margin of dumping is less than 2 per cent, expressed as a percentage of the export price, provided that it is only the investigation that shall be terminated where the margin is below 2 per cent for individual exporters and they shall remain subject to the proceeding and may be automatically reinvestigated in any subsequent review carried out for the country concerned pursuant to Article 13.

(3) Where the facts as finally established show that there is dumping and injury caused thereby, a definitive anti-dumping duty shall be imposed by the Investigating Authority. The amount of the anti-dumping duty shall not exceed the margin of dumping established but it should be less than the margin if such lesser duty would be adequate to remove the injury to the national industry.

(4) A definitive anti-dumping duty shall be imposed in the appropriate amounts in each case, on a non-discriminatory basis on imports of a product from all sources found to be dumped and causing injury, except as to imports from those sources from which undertakings under the terms of this chapter have been accepted. The decision of the Investigating Authority imposing the duty shall specify the duty for each supplier or, if that is impracticable, and as a general rule in the cases referred to in Article 4(7), the supplying country concerned.

(5) When the Investigating Authority has limited its examination in accordance with Article 19, any anti-dumping duty applied to imports from exporters or producers, which have made themselves known in accordance with Article 19 but were not included in the examination, shall not exceed the weighted average margin of dumping established for the parties in the sample. For the purpose of this paragraph, the Investigating Authority shall disregard any zero and *de minimis* margins, and margins established in the circumstances referred to in Article 20. Individual duties shall be applied to imports from any exporter or producer, which is granted individual treatment, as provided for in Article 19.

#### Article 12: Retroactivity

(1) Provisional anti-dumping measures and definitive anti-dumping duties shall only be applied to products, which enter free circulation in the Republic of Moldova after the time when the decision taken pursuant to Article 9(1) enters into force, subject to the exceptions set out in this chapter.

(2) A definitive 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 but not prior to the initiation of the investigation, provided that imports have been registered in accordance with Article 17(5), the Investigating Authority has allowed the importers concerned an opportunity to comment, and:

- (a) there is, for the product in question, a history of dumping over an extended period, or the importer was aware of, or should have been aware of, the dumping as regards the extent of the dumping and the injury alleged or found; and
- (b) in addition to the level of imports which caused injury during the investigation period, there is a further substantial rise in imports which, in the light of its timing and volume and other circumstances (such as a swift increase in the imported product inventories), is likely to seriously undermine the remedial effect of the definitive anti-dumping duty to be applied.

(3) Where the facts as finally established show that there is an injury (however, not a threat of injury or a material retardation of the establishment of an industry), or that there is a threat of injury, where in the absence of provisional measures the effect of the dumped imports might lead to an injury, anti-dumping duties may be levied retroactively for the period to which the provisional measures have been applied.

(4) If the definitive anti-dumping duty is higher than the provisional duty paid or payable, or higher than the amount of the guarantee, the difference shall not be collected. If the definitive duty is lower than the provisional duty paid or payable, or higher than the amount of the guarantee, the duty shall be recalculated.

(5) Excepting the cases provided for in (3) hereof, where a threat of injury or of a material retardation of the establishment of an industry is established but no actual injury has yet been caused, definitive anti-dumping duties may be levied only starting from the day on which a threat of injury or of a material retardation is established.

(6) Where a final determination of the Investigating Authority is negative, any guarantees provided for the period of application of provisional measures, shall be repaid within 45 working days.



Article 11: Duration, reviews and refunds

(1) An anti-dumping measure shall remain in force only as long as, and to the extent that, it is necessary to counteract the dumping which is causing injury.

(2) A definitive anti-dumping measure shall expire five years from its imposition or five years from the date of the conclusion of the most recent review which has covered both dumping and injury, unless it is determined in a review that the expiry would be likely to lead to a continuation or recurrence of dumping and injury. In such cases the measure shall remain in force pending the outcome of such review.

An expiry review shall be initiated where the request contains sufficient evidence that the expiry of the measures would be likely to result in a continuation or recurrence of dumping and injury. Such a likelihood may, for example, be indicated by evidence of continued dumping and injury or evidence that the removal of injury is partly or solely due to the existence of measures or evidence that the circumstances of the exporters, or market conditions, are such that they would indicate the likelihood of further injurious dumping.

In carrying out investigations under this paragraph, the exporters, interested parties shall be provided with the opportunity to comment on the matters set out in the review request. Conclusions shall be reached with due account taken of all relevant and duly documented evidence presented in relation to the question as to whether the expiry of measures would be likely, or unlikely, to lead to the continuation or recurrence of dumping and injury.

A notice of impending expiry shall be published in the Official Monitor of the Republic of Moldova at an appropriate time in the final year of the period of application of the measures as defined in this paragraph.

(3) The need for the continued imposition of measures may also be reviewed, provided that a reasonable period of time of at least one year has elapsed since the imposition of the definitive measure, upon a request by any exporter or importer or by the Domestic producers which contains sufficient evidence substantiating the need for such an interim review.

An interim review shall be initiated where the request contains sufficient evidence concerning the need to remove or vary the measure to offset dumping and/or injury.

In carrying out investigations pursuant to this paragraph, the Investigating Authority shall consider whether the circumstances with regard to dumping and injury have changed significantly, or whether existing measures are achieving the intended results in removing the injury previously established under Article 5. In these respects, account shall be taken in the final determination of all relevant and duly documented evidence.

(4) A review shall also be carried out for the purpose of determining individual margins of dumping for new exporters in the exporting country in question, which have not exported the product during the period of investigation on which the measures were based. The review shall be initiated where a new exporter or producer can show that it is not related to any of the exporters or producers in the exporting country which are subject to the anti-dumping measures on the product, or where it can demonstrate that it has entered into an irrevocable contractual obligation to export a significant quantity to the Republic of Moldova.

The Investigating Authority's decision initiating a review shall repeal the duty in force with regard to the new exporter concerned by amending the decision which has imposed such duty, and by making imports subject to registration in accordance with Article 17(4) in order to ensure that, should the review result in a determination of dumping in respect of such an exporter, anti-dumping duties can be levied retroactively to the date of the initiation of the review.

The provisions of this paragraph shall not apply where duties have been imposed under Article 11(5).

(5) The relevant provisions of this chapter with regard to procedures and the conduct of investigations, excluding those relating to time limits, shall apply to any review carried out pursuant to paragraphs (2), (3) and (4). Any such review shall be carried out expeditiously and shall normally be concluded within 12 months of the date of initiation of the review.

(6) Reviews pursuant to this article shall be initiated by the Investigating Authority. Where warranted by reviews, measures shall be repealed or maintained pursuant to paragraph (2), or repealed, maintained or amended pursuant to paragraphs (3) and (4). Where measures are repealed for individual exporters, but not for the country as a whole, such exporters shall remain subject to the proceeding and may, automatically, be reinvestigated in any subsequent review carried out for that country pursuant to this article.

(7) Where a review of measures pursuant to paragraph (3) is in progress at the end of the period of application of measures as defined in paragraph (2), such review shall also cover the circumstances set out in paragraph (2).

(8) In all review or refund investigations carried out pursuant to this article, the Investigating Authority shall apply the same methodology as in the investigation which led to the duty, with due account being taken of Article 4 (12) and (13) of Article 19.

(10) In any investigation carried out pursuant to this article, the Investigating Authority shall examine the reliability of export prices in accordance with article 4. However, where it is decided to construct the export price in accordance with article 4(9), it shall calculate it with no deduction for the amount of anti-dumping duties paid when conclusive evidence is provided that the duty is duly reflected in resale prices and the subsequent selling prices in the Republic of Moldova.

#### Article 14: Reimbursement of anti-dumping duties

(1) Notwithstanding Article 13 (2), an importer may request reimbursement of duties collected where it is shown that the dumping margin, 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) In requesting a refund of anti-dumping duties, the importer shall submit an application to the Investigating Authority. Such application should be submitted within 6 months after the day on which the amount of the definitive anti-dumping duties is defined or on which a definitive decision is made concerning the provision of guarantees in respect of the levying of provisional duties.

(3) An application for refund shall only be considered to be duly supported by evidence where it contains precise information on the amount of refund of anti-dumping duties claimed and all customs documentation relating to the calculation and payment of such amount. It shall also include evidence, for a representative period, of fair values and export prices to the Republic of Moldova for the exporter or producer to which the duty applies. In cases where the importer is not associated with the

exporter or producer concerned and such information is not immediately available, or where the exporter or producer is unwilling to release it to the importer, the application shall contain a statement from the exporter or producer that the dumping margin has been reduced or eliminated, as specified in this article, and that the relevant supporting evidence will be provided to the Investigating Authority. Where such evidence is not forthcoming from the exporter or producer within a reasonable period of time the application shall be rejected.

(4) Based on the evidence, the Investigating Authority shall decide whether and to what extent the application should be granted, or it may decide at any time to initiate an interim review, where upon the information and findings from such review carried out in accordance with the provisions applicable for such reviews, shall be used to determine whether and to what extent a refund is justified. Refunds of duties shall normally take place within 12 months, and in no circumstances more than 18 months after the date on which a request for a refund, duly supported by evidence, has been made by an importer of the product subject to the anti-dumping duty. Authorised reimbursement shall be performed within 90 days after the day of the above decision.

#### Article 15: Reinvestigation

(1) Where the national industry submits sufficient information showing that anti-dumping measures have led to no movement, or insufficient movement, in resale prices or subsequent selling prices in the Republic of Moldova, the investigation may be reopened to examine whether the measure has had effects on the above mentioned prices.

(2) During a reinvestigation pursuant to this article, exporters, importers and domestic producers shall be provided with an opportunity to clarify the situation with regard to resale prices and subsequent selling prices: if it is concluded that the measure should have led to movements in such prices, then, in order to remove the injury, export prices shall be reassessed in accordance with Article 4 and dumping margins shall be recalculated to take account of the reassessed export prices. Where it is considered that a lack of movement in the prices in the Republic of Moldova is due to a fall in export prices, which has occurred prior to or following the imposition of measures, dumping margins may be recalculated to take account of such lower export prices.

(3) Where a reinvestigation pursuant to this article shows increased dumping, the measures in force shall be amended by the Investigating Authority in accordance with the new findings on export prices.

(4) The relevant provisions of Articles 7 and 8 shall apply to any review carried out pursuant to this article, except that such review shall be carried out expeditiously and shall normally be concluded within six months of the date of initiation of the reinvestigation.

(5) Alleged changes in fair value shall only be taken into account under this article where complete information on revised fair values, duly substantiated by evidence, is made available to the Investigating Authority within the time limits set out in the notice of initiation of an investigation. Where an investigation involves a re-examination of fair values, imports may be made subject to registration in accordance with Article 17(4) pending the outcome of the reinvestigation.

#### Article 16: Circumvention

(1) Anti-dumping duties imposed pursuant to this regulation may be extended 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 a change in the pattern of trade between third

countries and the Republic of Moldova which stems from a practice, process or work for which there is insufficient due cause or economic justification other than the imposition of the duty, and where there is evidence that the remedial effects of the duty are being undermined in terms of the prices and/or quantities of the like products and there is evidence of dumping in relation to the fair values previously established for the like or like products.

(2) Investigations shall be initiated pursuant to this Article where the request contains sufficient evidence regarding the factors set out in paragraph (1). Initiations shall be made by Investigating Authority's decision, which shall also instruct the customs authorities to make imports subject to registration in accordance with Article 17(4) or to request guarantees. Investigations shall be carried out by the Investigating Authority, which may be assisted by customs authorities, and shall be concluded within nine months. Where the established facts justify the extension of measures, the Investigating Authority shall decide on their application beginning on the day, on which registration was introduced in accordance with Article 17(4) or the guarantees were requested.

(3) Products shall not be subject to registration pursuant to Article 17(4) or anti-dumping measures where they are accompanied by a customs certificate declaring that the importation of the goods does not constitute circumvention. These certificates may be issued to importers, upon application, by decision of the Investigating Authority. Such certificates shall remain valid for the period, and under the conditions, set down therein.

(4) Nothing in this article shall preclude the normal application of the provisions in force concerning customs duties.

#### Article 17: General provisions concerning anti-dumping duties

(1) Provisional or definitive anti-dumping duties shall be imposed by an Investigating Authority Decision, and collected in the form, at the rate specified and according to the other criteria laid down in the Decision imposing such duties. Such duties shall be collected independently of the customs duties, taxes and other charges normally imposed on imports. No product shall be subject to both anti-dumping and countervailing duties at the same time.

(2) Decisions imposing provisional or definitive anti-dumping duties, and Decisions accepting undertakings or terminating investigations or proceedings, shall be published in the Official Monitor of the Republic of Moldova. Such Decisions shall contain, due regard being had to the protection of confidential information, the names of the exporters or of the countries involved, a description of the product and a summary of the material facts and considerations relevant to the dumping and injury determinations. In each case, a copy of the decision shall be sent to known interested parties. The provisions of this paragraph shall apply *mutatis mutandis* to reviews.

(3) In Moldova's interests, measures imposed pursuant to this Chapter may be suspended by a decision of the Investigating Authority for a period of nine months. The suspension may be extended for a further period, not exceeding one year. Measures may only be suspended where market conditions have temporarily changed to an extent that injury would be unlikely to resume as a result of the suspension, and provided that the comments of the national industry have been taken into account. Measures may, at any time, be reinstated if the reason for suspension is no longer applicable.

(4) The Investigating Authority may direct the customs authorities to take the appropriate steps to register imports, so that anti-dumping measures may subsequently be applied against those imports from the date of such registration. Imports may be made subject to registration following a request from the national industry, which contains sufficient evidence to justify such action. Registration shall

be introduced by decision of the Investigating Authority, which shall specify the purpose of the action and, if appropriate, the estimated amount of possible future liability. Imports shall not be made subject to registration for a period longer than nine months.

#### Article 18: Verification visits

(1) The Investigating Authority shall, where it considers appropriate, carry out visits to examine the records of importers, exporters, traders, agents, producers, trade associations and organizations and to verify information provided on dumping and injury. In the absence of a proper and timely reply, a verification visit may not be carried out.

(2) The Investigating Authority may carry out investigations in third countries as required, provided that it obtains the agreement of the firms concerned, that it notifies the representatives of the government of the country in question and that the latter does not object to the investigation. As soon as the agreement of the firms concerned has been obtained the Investigating Authority should notify the authorities of the exporting country of the names and addresses of the firms to be visited and the dates agreed.

(3) The firms concerned shall be advised of the nature of the information to be verified during verification visits and of any further information, which needs to be provided during such visits. This should not preclude requests made during the verification for further details to be provided in the light of information obtained.

#### Article 19: Sampling

(1) In cases where the number of complainants, exporters or importers, types of product or transactions is large, the investigation may be limited to a reasonable number of parties, products or transactions by using samples, which are statistically valid, on the basis of information available at the time of the selection, or to the largest representative volume of production, sales or exports which can reasonably be investigated within the time available.

(2) The final selection of parties, types of products or transactions made under these sampling provisions shall rest with the Investigating Authority, though preference shall be given to choosing a sample in consultation with, and with the consent of, the parties concerned, provided such parties make themselves known and make sufficient information available, within three weeks of initiation of the investigation, to enable a sample to be chosen.

(3) In cases where the examination has been limited in accordance with this article, an individual margin of dumping 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, except where the number of exporters or producers is so large that individual examinations would be unduly burdensome and would prevent completion of the investigation in good time.

(4) Where it is decided to sample and there is a degree of non-cooperation by some or all of the parties selected, which is likely to materially affect the outcome of the investigation, a new sample may be selected. However, if a material degree of non-cooperation persists or there is insufficient time to select a new sample, the relevant provisions of Article 20 shall apply.

#### Article 20: Non-cooperation

(1) In cases in which any interested party refuses access to, or otherwise does not provide necessary information within the time limits provided in this chapter, or significantly impedes the investigation, provisional or final findings, 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 facts available. Interested parties should be made aware of the consequences of non-cooperation.

(2) Failure to give a computerized response shall not be deemed to constitute non-cooperation, provided that the interested party shows that presenting the response as requested would result in an unreasonable extra burden or unreasonable additional cost.

(3) Where the information submitted by an interested party is not ideal in all respects it should nevertheless not be disregarded, provided that any deficiencies are not such as to cause undue difficulty in arriving at a reasonably accurate finding and that the information is appropriately submitted in good time and is verifiable, and that the party has acted to the best of its ability.

(4) If evidence or information is not accepted, the supplying party shall be informed forthwith of the reasons therefor and shall be granted an opportunity to provide further explanations within the time limit specified. If the explanations are considered unsatisfactory, the reasons for rejection of such evidence or information shall be disclosed and given in published findings.

(5) If determinations, including those regarding fair value, are based on the provisions of paragraph (1), including the information supplied in the complaint, it shall, with due regard to the time limits of the investigation, be checked by the Investigating Authority 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 the investigation.

#### Article 21: Confidentiality

(1) Any information supplied by any interested party during the investigation or after its conclusion shall be treated as confidential by the Investigating Authority in accordance with paragraph (2) hereof.

(2) Any information which is by nature confidential, (for example, because its disclosure would be of significant competitive advantage to a competitor or would have a significantly adverse effect upon a person supplying the information or upon a person from whom he has acquired the information) or which is provided on a confidential basis by parties to an investigation shall, if good cause is shown, be treated as such by the Investigating Authority.

(3) Interested parties providing confidential information shall be required by the Investigating Authority to furnish non-confidential summaries thereof. Those 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, and a statement of the reasons why summarization is not possible must be provided.

(4) If the Investigating Authority considers that a request for confidentiality is not warranted and if the supplier of the information is unwilling to authorize its disclosure, such information may be disregarded by the Investigating Authority.

(5) This Article shall not preclude the disclosure of general information by the Moldovan authorities and in particular of the reasons on which decisions taken pursuant to this Chapter are based, or disclosure of the evidence relied on by the Moldovan authorities in so far as is necessary to explain those reasons in court proceedings. Such disclosure must take into account the legitimate interests of the parties concerned that their business secrets should not be divulged.

(6) The Investigating Authority shall not reveal, without specific permission from the supplier, any information received pursuant to this Chapter, for which confidential treatment has been requested by its supplier.

(7) Information received pursuant to this Chapter shall be used only for the purpose for which it was requested.

#### Article 22: Disclosure

1. The complainants, importers and exporters and their representative associations, and representatives of the exporting country, may request disclosure of the details underlying the essential facts and considerations on the basis of which provisional measures have been imposed. Requests for such disclosure shall be made in writing immediately following the imposition of provisional measures, and the disclosure shall be made in writing as soon as possible thereafter.

2. The parties mentioned in paragraph (1) may request final disclosure of the essential facts and considerations on the basis of which it is intended to recommend the imposition of definitive measures, or the termination of an investigation or proceedings without the imposition of measures.

3. Requests for final disclosure, as defined in paragraph (2), shall be addressed to the Investigating Authority in writing and be received, in cases where a provisional duty has been applied, not later than one month after publication of the imposition of that duty. Where a provisional duty has not been applied, parties may request final disclosure within time limits set by the Investigating Authority.

4. Final disclosure shall be given in writing. It shall be made, due regard being had to the protection of confidential information, not later than one month prior to a definitive decision or the submission by the Investigating Authority of any proposal for final action pursuant to Article 11. Where the Investigating Authority is not in a position to disclose certain facts or considerations at that time, these shall be disclosed as soon as possible thereafter. Disclosure shall not prejudice any subsequent decision, which may be taken by the Investigating Authority but where such decision is based on any different facts and considerations, these shall be disclosed as soon as possible.

5. Representations made after final disclosure is given shall be taken into consideration only if received within a period to be set by the Investigating Authority in each case, which shall be at least 10 days, due consideration being given to the urgency of the matter.

#### Article 23: National interests

1. A determination pursuant to this Article as to whether the national interest calls for intervention shall be based on an appreciation of all the various interests taken as a whole, including the interests of the domestic industry and users and consumers; and a determination shall be made only where all parties have been given the opportunity to make their views known pursuant to paragraph (2). In such an examination, the need to eliminate the trade distorting effects of injurious

dumping and to restore effective competition shall be given special consideration. Measures, as determined on the basis of the dumping and injury found, may not be applied where the Investigating Authority, on the basis of all the information submitted, can clearly conclude that it is not in the national interest to apply such measures.

2. In order to provide a sound basis on which the authorities can take account of all views and information in the decision as to whether or not the imposition of measures is in the national interest, the complainants, importers and their representative associations, representative users and representative consumer organizations may, within the time limits specified in the notice of initiation of the anti-dumping investigation, make themselves known and provide information to the Investigating Authority.

3. The parties, which have acted in conformity with paragraph (2), may request a hearing. Such requests shall be granted when they are submitted within the time limits set in paragraph (2), and when they set out the reasons, in terms of the national interest, why the parties should be heard.

4. The parties, which have acted in conformity with paragraph (2), may provide comments on the application of any provisional duties imposed. Such comments shall be received within one month of the application of such measures if they are to be taken into account and they, or appropriate summaries thereof, shall be made available to other parties who shall be entitled to respond to such comments.

5. The parties, which have acted in conformity with paragraph (2), may request the facts and considerations, on which final decisions are likely to be taken, to be made available to them. Such information shall be made available to the extent possible and without prejudice to any subsequent decision taken by the Investigating Authority.

6. Information shall only be taken into account where it is supported by actual evidence, which substantiates its validity.

### **CHAPTER III: COUNTERVAILING MEASURES**

#### Article 24: Principles

1. A product is considered as being subsidized if it benefits from a countervailable subsidy as defined in Articles 25 and 26.

2. Such subsidy may be granted by the government of the country of origin of the imported product, or by the government of an intermediate country from which the product is exported to the Republic of Moldova. The term "government" is defined, for the purposes of this Chapter, as a government or any public body within the territory of the country of origin or export.

3. Where products are not directly imported from the country of origin but are exported to the Republic of Moldova from an intermediate country, the provisions of this Chapter 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 Moldova.

#### Article 25: Definition of a subsidy

1. A subsidy shall be deemed to exist if:



- (1) (a) there is a financial contribution by a government in the country of origin or export, that is to say, where:
- (i) a government practice involves a direct transfer of funds (for example, grants, loans, equity infusion), potential direct transfers of funds or liabilities (for example, loan guarantees);
  - (ii) government revenue that is otherwise due, is foregone or not collected (for example, fiscal incentives such as tax credits); in this regard, the exemption of an exported product from duties or taxes borne by the like product when destined for domestic consumption, or the remission of such duties or taxes in amount not in excess of those which have been accrued, shall not be deemed to be a subsidy;
  - (iii) a government provides goods or services other than general infrastructure, or purchases goods;
  - (v) a government:
    - makes payments to a funding mechanism, or
    - entrusts or directs a private body to carry out one or more of the type of functions illustrated in points (i) to (iii) which would normally be vested in the government, and the practice, in no real sense, differs from practices normally followed by governments; or
- (b) there is any form of income or price support within the meaning of Article XVI of the GATT 1994;
- (2) a benefit is conferred otherwise.

Article 26: Countervailable subsidies

(1) Subsidies shall be subject to countervailing measures only if they are specific, as defined in paragraphs (2), (3) and (4). Measures may be taken against prohibited or actionable subsidies only where a subvention (subsidy) is specific to an enterprise or industry or group of enterprises or industries.

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

- (a) where the granting authority or the legislation, pursuant to which the granting authority operates, explicitly limits access to a subsidy to certain enterprises, such subsidy shall be specific;
- (b) where the granting authority or the legislation, pursuant to which the granting authority operates, establishes objective criteria or conditions governing the eligibility for, and the amount of, a subsidy, specificity shall not exist, provided that the eligibility is automatic and that such criteria and conditions are strictly adhered to;

- (c) if, notwithstanding any appearance of non-specificity resulting from the application of the principles laid down in subparagraphs (a) and (b), there are reasons to believe that the subsidy may in fact be specific, other factors may be considered. Such factors are: use of a subsidy program by a limited number of certain enterprises, predominant use by certain enterprises, the granting of disproportionately large amounts of subsidy to certain enterprises, and the manner in which discretion has been exercised by the granting authority in the decision to grant a subsidy. In this regard, information on the frequency with which applications for a subsidy are refused or approved and the reasons for such decisions shall, in particular, be considered.
- (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 for the purposes of this Law.
- (4) Excepting the subsidies provided for paragraphs (2) and (3) as well as subsidies in agriculture, the following subsidies shall be deemed to be specific:
- (a) subsidies contingent, in law or in fact, whether solely or as one of several other conditions, upon export performance, including those illustrated in Annex hereto;
  - (b) subsidies contingent, whether solely or as one of several other conditions, upon the use of domestic over imported goods.
- (5) Any determination of specificity under the provisions of this article shall be clearly substantiated on the basis of positive evidence.

Article 27: Non-countervailable subsidies

- (1) The following subsidies shall not be subjected to countervailing measures:
- (a) subsidies which are not specific within the meaning of Article 26(2) and (3);
  - (b) subsidies which are specific, within the meaning of Article 26, but which meet the conditions provided for in paragraphs (2), (5) or (6) of this Article.
- (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 subsidies cover not more than 75 per cent of the costs of industrial research or 50 per cent of the costs of pre-competitive development activity, and provided that such subsidies are limited exclusively to:
- (a) personnel costs (researchers, technicians and other supporting staff employed exclusively in the research activity);
  - (b) costs of instruments, equipment, land and buildings used exclusively and permanently (except when disposed of on a commercial basis) for the research activity;
  - (c) costs of consultancy and equivalent services used exclusively for the research activity; including bought-in research, technical knowledge, patents, etc.;

- (d) additional overhead costs incurred directly as a result of the research activity;
- (e) other running costs (such as those of materials, supplies and the like), incurred directly as a result of the research activity.

The first subparagraph shall not apply to civil aircraft research, as such cases are regulated by the provisions of specific multilateral agreements.

(3) For the purpose of this article, the allowable levels of non-countervailable subsidy referred to in paragraph (2) shall be established by reference to the total eligible costs incurred over the duration of an individual project.

(4) In case of programs which span both "industrial research" and "pre-competitive development activity", the allowable level of non-countervailable subsidy shall not exceed the simple average of the allowable levels of non-countervailable subsidy applicable to the above two categories, calculated on the basis of all eligible costs as set forth in paragraph (2) (a) to (e).

(5) 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 26(2) and (3) were applied to each eligible region concerned, shall not be subject to countervailing measures provided that:

- (a) each disadvantaged region is a clearly designated contiguous geographical area with a definable economic and administrative identity;
- (b) 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;
- (c) the criteria include a measurement of economic development which shall be based on at least one of the following factors:
  - either income per capita, or household income per capita, or GDP per capita, which must not be above 85 per cent of the average for the territory of the country of origin or export concerned,
  - unemployment rate, which must be at least 110 per cent of the average for the territory of the country of origin or export concerned;

as measured over a three-year period; such measurement, however, may be a composite one and may include other factors.

(6) 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:

- (a) is a one-time non-recurring measure; and
- (b) is limited to 20 per cent of the cost of adaptation; and

- (c) does not cover the cost of replacing and operating the subsidized investment, which must be fully borne by firms; and
- (d) is directly linked to and proportionate to a firm's planned reduction of nuisances and pollution, and does not cover any manufacturing cost savings which may be achieved; and
- (e) is available to all firms which can adopt the new equipment and/or production processes.

Article 28: Calculation of the amount of the countervailable subsidy

(1) The amount of countervailable subsidies, for the purpose of this Chapter, 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 period 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) The Investigating Authority shall determine the approaches to calculation of benefit to the recipient. In each specific case the application of the selected method shall be transparent and explained to a sufficient degree, provided that the following rules shall apply in respect of the selected approach:

- (a) 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 of private investors in the territory of the country of origin and/or export;
- (b) 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;
- (c) a loan guarantee by a government shall not be considered as conferring a benefit, unless there is a difference between the amount that the 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 that case the benefit shall be the difference between these two amounts adjusted for any differences in fees;
- (d) 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 countervailable subsidies shall be determined per unit of the subsidized product exported to the Republic of Moldova.

- (4) In establishing this amount 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 Moldova specifically intended to offset the subsidy.
- (5) Where the subsidy is not granted by reference to the quantities manufactured, produced, exported or transported, the amount of countervailable subsidy shall be determined by allocating the value of the total subsidy, as appropriate, over the level of production, sales or exports of the products concerned during the investigation period for subsidization.
- (6) Where the subsidy can be linked to the acquisition or future acquisition of fixed assets, the amount of the countervailable 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 paragraph (5).
- (7) 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 paragraph (5), unless special circumstances arise justifying attribution over a different period.

Article 29: Determination of injury

- (1) A determination of injury shall be based on positive evidence and involve an objective examination of both:
- (a) the volume of the subsidized imports and the effect of the subsidized imports on prices in the Moldovan market for like products, and
  - (b) the consequent impact of these imports on the domestic industry.
- (2) With regard to the volume of the subsidized imports, consideration shall be given as to whether there has been a significant increase in subsidized imports, either in absolute terms or relative to production or consumption in the Republic of Moldova. With regard to the effect of the subsidized imports on prices, consideration shall be given as to whether there has been a significant price undercutting by the subsidized imports as compared with the price of a like product of the Republic of Moldova, or whether 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. No one or several of these factors can necessarily give decisive guidance.
- (3) Where imports of a product from more than one country are simultaneously subject to countervailing duty investigations, the effects of such imports shall be cumulatively assessed only if it is determined that:
- (a) the amount of countervailable subsidies established in relation to the imports from each country is more than *de minimis* as defined in Article 35(4) and that the volume of imports from each country is not negligible; and

- (b) a cumulative assessment of the effects of the imports is appropriate in light of the conditions of competition between imported products and the conditions of competition between the imported products and the like domestic product.
- (4) The examination of the impact of the subsidized imports on the national industry concerned shall include an evaluation of all relevant economic factors and indices having a bearing on the state of the industry, including the fact that an industry is still in the process of recovering from the effects of past subsidization or dumping, the magnitude of the amount of countervailable subsidies, actual and potential decline in sales, profits, output, market share, productivity, return on investments, utilization of capacity; factors affecting Moldovan market prices; actual and potential negative effects on cash flow, inventories, employment, wages, growth, ability to raise capital or investments. This list is not exhaustive, nor can one or several of these factors necessarily give decisive guidance.
- (5) It must be demonstrated, from all the relevant evidence presented in relation to paragraph (1), that the subsidized imports are causing injury within the meaning of this Law. Specifically, this shall entail a demonstration that the volume and/or price levels identified pursuant to paragraph (2) are responsible for an impact on the national industry as provided for in paragraph (4), and that this impact exists to a degree which enables it to be classified as material.
- (6) Known factors other than the subsidized imports, which are injuring the national industry, shall also be examined to ensure that injury caused by these other factors is not attributed to the subsidized imports pursuant to paragraph (5). Factors which may be considered in this respect include, inter alia, the volume and prices of non-subsidized imports, contraction in demand or changes in the patterns of consumption, trade restrictive practices of and competition between the foreign and domestic producers, developments in technology and the export performance and productivity of the national industry.
- (7) The effect of the subsidized imports shall be assessed in relation to the production of the national industry of the 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. If such separate identification of that production is not possible, the effects of the 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.
- (8) A determination of a threat of material injury shall be based on facts, 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.

In making a determination regarding the existence of a threat of material injury, consideration should be given to such factors as:

- (a) the nature of the subsidy or subsidies in question and the trade effects likely to arise therefrom;
- (b) a significant rate of increase of subsidized imports into the domestic market indicating the likelihood of substantially increased imports;
- (c) sufficient freely disposable or an imminent, substantial increase in capacity of the exporter indicating the likelihood of substantially increased subsidized exports to the

Moldovan market, taking into account the availability of other export markets to absorb any additional exports;

- (d) whether imports are entering at prices that would, to a significant degree, depress prices or prevent price increases which otherwise would have occurred, and would likely increase demand for further import; and
- (e) inventories of the product being investigated.

No one of the above factors by itself 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 to the national industry would occur.

Article 30: Definition of a national industry

(1) In addition to the definition provided for in Article 2, when domestic producers are related to the exporters or importers or are themselves importers of the allegedly subsidized product, the term "the National industry" may be interpreted as referring to the rest of the producers.

(2) In exceptional circumstances the territory of the Republic of Moldova 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 in that market is not to any substantial degree supplied by producers of the product in question located elsewhere in the Republic of Moldova.

In such circumstances, injury may be found to exist even where a major proportion of the total national industry is not injured, provided there is a concentration of subsidized imports into such an isolated market and provided further that the subsidized imports are causing injury to the producers of all or almost all of the production within such market.

(3) For the purpose of paragraph (1), producers shall be considered to be related to exporters or importers only if:

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

The provisions hereof shall apply, 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. 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.

(4) Where producers of a certain region are to be understood under the term 'national industry', exporters shall be provided opportunity to make undertakings in accordance with Article 34 in respect of the region concerned. In such circumstances, for the purposes of evaluation of measures in the

national interest, the interests of that particular region shall be given the most consideration. If no adequate undertaking is offered, or if there arises any of the situations provided for in Article 34(5) and (6), the countervailing duty, provisional or definitive, may be applied at the nationwide scale. In such circumstances, where practicable, duties may have limited application to certain producers or exporters.

#### Article 31: Initiation of proceedings

1. Any natural or legal person, or any association not having legal personality, acting on behalf of the national industry, which is believed to be injured or threatened by the subsidised imported goods, and having evidence of the existence, degree and effect of such alleged dumping, may lodge a written complaint requesting to initiate an investigation. The complaint shall be considered lodged on the day it is received by the Investigating Authority. The Investigating Authority must register the received complaint and give the complainant party a confirmation of its receipt.

2. A complaint shall include sufficient evidence of the existence of countervailable subsidies, injury and a causal link between the allegedly subsidized imports and the alleged injury. The complaint shall contain such information as is reasonably available to the complainant on the following:

- (a) identity of the complainant and a description of the volume and value of the national production of the like product by the complainant. Where a written complaint is made on behalf of the national industry, the complaint shall identify the industry on behalf of which the complaint is made by a list of all known domestic producers of the like product (or associations of domestic producers of the like product) and a description of the volume and value of the national production of the like product accounted for by such producers;
- (b) a complete description of the allegedly subsidized product, the names of the country or countries of origin and/or export in question, the identity of each known exporter or foreign producer and a list of known persons importing the product in question;
- (c) evidence with regard to the existence, amount, nature and countervailability of the subsidies in question;
- (d) information on the evolution of the volume of the allegedly subsidized imports, the effect of these imports on prices of the like product in the Moldovan market and the consequent impact of the imports on the national industry, as demonstrated by relevant factors and indices having a bearing on the state of the National industry, such as those listed in Article 29(2) and (4).

3. The Investigating Authority shall examine the accuracy and adequacy of the evidence provided in the complaint, in order to determine whether there is sufficient evidence to justify the initiation of an investigation.

4. An investigation may be initiated in order to determine whether or not the alleged subsidies are specific within the meaning of Article 26(2) and (3).

5. An investigation may also be initiated in respect of subsidies, which are non-countervailable according to Article 27 (2), (3) or (4), in order to determine whether or not the conditions laid down in those paragraphs have been met.



6. An investigation shall not be initiated unless it has been determined, on the basis of an examination of the degree of support for, or opposition to, the complaint expressed by the domestic producers of the like product, that the complaint has been made by or on behalf of the national industry. The complaint shall be considered to have been made by or on behalf of the national industry if it is supported by those domestic producers whose collective output constitutes more than 50 per cent of the total production of the like product produced by that portion of the national industry expressing either support for or opposition to the complaint. However, no investigation shall be initiated when Moldovan producers expressly supporting the complaint account for less than 25 per cent of total production of the like product produced by the national industry.

7. The Investigating Authority shall avoid, unless a decision has been made to initiate an investigation, any publicizing of the complaint for the initiation of an investigation. However, as soon as possible after the receipt of a properly documented complaint and in any event before the initiation of an investigation, the Investigating Authority shall notify the government of the country of origin and/or export concerned.

8. The evidence of both subsidies and injury shall be considered simultaneously in the decision whether or not to initiate an investigation. A complaint shall be rejected where there is insufficient evidence of either countervailable subsidies or of injury to justify proceeding with the case. Proceedings shall not be initiated against countries whose imports in the Republic of Moldova represent a market share of below 1 per cent, unless such countries collectively account for 3 per cent or more of the consumption of the Republic of Moldova.

9. The complaint may be withdrawn prior to the start of the investigation, in which case the proceedings shall be terminated, provided that such termination of the investigation is in the interests of the Republic of Moldova.

10. Where the Investigating Authority has sufficient evidence as regards the existence of such subsidies as well as injury to a national industry and a causal link between the two, it may independently initiate an investigation even in the absence of a complaint.

11. Where the Investigating Authority believes that there is sufficient evidence to justify initiating proceedings, it shall initiate proceedings within 45 days of the lodging of the complaint and publish a notice in the Official Monitor of the Republic of Moldova. Where insufficient evidence has been presented, the complainant shall be so informed within 45 days of the date on which the complaint is lodged with the Investigating Authority.

12. The notice of initiation of the proceeding shall indicate the product and countries concerned, give a summary of the information received and provide that all relevant information is to be communicated to the Investigating Authority; it shall state the periods within which interested parties may make themselves known, present their views in writing and submit information, or may apply to be heard by the Investigating Authority in accordance with Article 32 (3).

13. The Investigating Authority shall advise the exporters, importers and representative associations of importers or exporters known to it to be concerned, as well as the country of origin and/or export and the complainants, of the initiation of the proceedings.

14. A countervailing duty investigation shall not hinder the procedures of customs clearance of the allegedly subsidised product.

Article 32: The countervailing duty investigation

1. The countervailing duty investigation shall cover both subsidization and injury and these shall be investigated simultaneously. An investigation period shall be selected, which shall normally cover the period of at least 6 months directly preceeding the initiation of investigation. Information relating to a period subsequent to the investigation period shall, normally, not be taken into account.

2. Parties receiving questionnaires used in a countervailing duty investigation shall be given at least 30 days for reply. The time limit for reply 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 day on which it was sent to the respondent or transmitted to the appropriate diplomatic representative of the country of origin and/or export. An extension of the 30-day period may be granted, due account being taken of the time limits of the investigation, provided the party shows due cause for such extension, in terms of its particular circumstances.

3. The interested parties may be heard by the Investigating Authority if they have, within the period prescribed in the notice published in the Official Monitor of the Republic of Moldova, made a request for a hearing showing that they are an interested party likely to be affected by the result of the proceedings and that there are particular reasons why they should be heard.

4. Opportunities shall, on request, be provided by the Investigating Authority for the interested parties, which have made themselves known in accordance with Article 31(12), to meet those parties with adverse interests, so that opposing views may be presented and rebuttal arguments offered. Provision of such opportunities must take account of the need to preserve confidentiality and of the convenience to the parties. There shall be no obligation on any party to attend a meeting, and failure to do so shall not be prejudicial to that party's case. Oral information provided pursuant to this paragraph shall be taken into account in so far as it is subsequently reproduced in writing.

5. The complainants, the representatives of the country of origin and/or export, importers and exporters and their representative associations, users and consumer organizations, which have made themselves known in accordance with Article 31(12), may, upon request, inspect all information made available by any party to an investigation, as distinct from internal documents prepared by the authorities of the Republic of Moldova, provided that it is relevant to the defence of their interests and not confidential within the meaning of Article 45 and that it is used in the investigation. Such parties may respond to such information and their comments may be taken into consideration, to the extent that they are sufficiently substantiated in the response.

6. Except in circumstances provided for in Article 44 the information supplied by interested parties and upon which findings are based shall be examined for accuracy to the degree possible.

7. An investigation shall be concluded either by its termination or by a ruling to impose a countervailing duty. An investigation shall normally be concluded within one year of its initiation. In the cases provided for in Articles 34 and 35, such investigation shall be concluded within 15 months of its initiation.

Article 33: Provisional countervailing measures

(1) Provisional countervailing measures may be applied if proceedings have been initiated in accordance with the provisions of Article 31, a public notice has been given to that effect and interested parties have been given adequate opportunities to submit information and make comments; a preliminary affirmative determination has been made that the imported product benefits from

countervailable subsidies and of consequent injury to the national industry. The provisional measures shall be imposed no sooner than 60 days from the initiation of the proceedings but no later than nine months from the initiation of the proceedings.

(2) The amount of the provisional countervailing duty shall not exceed the total amount of countervailable subsidies as provisionally established but it should be less than this amount, if such lesser duty would be adequate to remove the injury to the national industry.

(3) Provisional countervailing duty may be secured by a guarantee and the release of the products concerned for free circulation in the Republic of Moldova shall be conditional upon the provision of such guarantee.

(4) Provisional countervailing duties shall have a maximum period of validity of four months.

#### Article 34: Undertakings

1. Investigations may be terminated without the imposition of provisional or definitive countervailing duties upon acceptance by the Investigating Authority of satisfactory voluntary undertakings under which any exporter undertakes to revise its prices, so that the Investigating Authority is satisfied that the amount of countervailable subsidies is offset or the injurious effect of the subsidies is eliminated. Price increases under such undertakings shall not be higher than necessary to offset the amount of countervailable subsidies as preliminarily established, and should be less than the amount of countervailable subsidies if such increases would be adequate to remove the injury to the National industry.

2. Undertakings may be suggested by the Investigating Authority, but no exporter shall be obliged to enter into such an undertaking. The fact that exporters do not offer such undertakings, or do not accept an invitation to do so, shall in no way prejudice the investigation of the case. However, it may be determined by the Investigating Authority that a threat of injury is more likely to be realized if the subsidized imports continue. Undertakings shall not be sought or accepted from exporters unless a provisional affirmative determination of subsidization and injury caused by such subsidization has been made. Save in exceptional circumstances, undertakings may not be offered later than the end of the period during which representations may be made pursuant to Article 46(5).

3. The exporter concerned should be provided with the reason for which it is proposed to reject the offer of an undertaking and should be given an opportunity to make comments thereon. The reason for rejection shall be set out in the definitive decision.

4. The Investigating Authority shall have consultations with the Moldovan Government regarding the acceptability of the undertakings offered by exporters, and based on those it shall submit a report to the Government, suggesting to conclude the investigation. The investigation shall be deemed concluded, unless the Government decides otherwise within one month's time.

5. If the undertakings are accepted, the investigation of subsidization and injury shall normally be completed. In such a case, if a negative determination of subsidization or injury is made, the undertaking 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 authorities may require that an undertaking be maintained for a reasonable period. In the event that an affirmative determination of subsidization and injury is made, the undertaking shall continue consistent with its terms and the provisions of this Chapter.

6. The Investigating Authority may 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 breach of the undertaking.

7. In case of breach or withdrawal of undertakings by any party, a definitive duty shall be imposed in accordance with Article 35, on the basis of the facts established within the context of the investigation which led to the undertaking, provided that such investigation was concluded with a final determination on subsidization and injury, and the exporter concerned, except in the case of withdrawal of undertakings by the exporter, has been given an opportunity to comment.

8. A provisional duty may be imposed in accordance with Article 33 on the basis of the information available, where there is reason to believe that an undertaking is being violated, or in case of violation or withdrawal of undertakings where the investigation which led to the undertaking was not concluded.

Article 35: Termination without measures and introduction of definitive countervailing duties

(1) Where the complaint is withdrawn, proceedings may be terminated unless such termination would not be in the Moldovan interest. The investigation or proceedings shall be similarly terminated where protective measures are unnecessary.

(2) There shall be immediate termination of the proceedings where it is determined that the amount of countervailable subsidies is *de minimis*, in accordance with the provisions of paragraph (4), or where the volume of subsidized imports, actual or potential, or the injury, is negligible.

(3) For all proceedings initiated pursuant to Article 31(11), injury shall normally be regarded as negligible where the market share of the imports is less than the amounts set out in Article 31(8). With regard to investigations concerning imports from developing countries, the volume of subsidized imports shall also be considered negligible if it represents less than 4 per cent of the total imports of the like product in the Republic of Moldova, unless imports from developing countries whose individual shares of total imports, although within the above quotas, collectively account for more than 9 per cent of the total imports of the like product in the Republic of Moldova.

(4) Normally, the amount of the countervailable subsidies shall be considered to be *de minimis* if such amount is less than 1 per cent ad valorem. As regards investigations concerning imports from developing countries the *de minimis* threshold shall be 2 per cent ad valorem; and for those developing countries members of the WTO, which benefit from special treatment, the *de minimis* subsidy threshold shall be 3 per cent ad valorem.

(5) Where the facts as finally established show the existence of countervailable subsidies and injury caused thereby, a definitive countervailing duty shall be imposed by the Investigating Authority, unless the subsidy or subsidies are withdrawn. The amount of the countervailing duty shall not exceed the amount of countervailable subsidies from which the exporters have been found to benefit, but should be less than the total amount of countervailable subsidies, if such lesser duty would be adequate to remove the injury to the national industry.

(6) A definitive countervailing duty shall be imposed in the appropriate amounts in each case, on a non-discriminatory basis, on imports of a product from all sources found to benefit from countervailable subsidies and causing injury, except as to imports from those sources from which undertakings under the terms of this Chapter have been accepted. The decision of the Investigating

Authority imposing the duty shall specify the duty for each supplier, or, if that is impracticable, the supplying country concerned.

(7) When the Investigating Authority has limited its examination in accordance with Article 43, any countervailing duty applied to imports from exporters or producers, which have made themselves known in accordance with Article 43 but were not included in the examination, shall not exceed the weighted average amount of countervailable subsidies established for the parties in the sample. For the purpose of this paragraph, the Investigating Authority shall disregard any zero and *de minimis* amounts of countervailable subsidies and amounts of countervailable subsidies established under the circumstances referred to in Article 44. Individual duties shall apply to imports from any exporter or producer for which an individual amount of subsidization has been calculated as provided for in Article 43.

#### Article 36: Retroactivity

(1) Provisional countervailing measures and definitive countervailing duties shall only be applied to products, which enter for consumption in the Republic of Moldova after the time when the decision taken under Article 33(1) enters into force, subject to the exceptions set out in this Chapter.

(2) A definitive countervailing 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 but not prior to the initiation of the investigation, provided that the imports have been registered in accordance with Article 41(4), the importers concerned have been given by the Investigating Authority an opportunity to comment, and:

- (a) there are 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 Chapter; and,
- (b) it is deemed necessary, in order to preclude the recurrence of such injury, to assess countervailing duties retroactively on those imports.

(3) Where the facts as finally established show that there is an injury (however, not a threat of injury or a material retardation of the establishment of an industry), or that there is a threat of injury, where in the absence of provisional measures the effect of the subsidised imports might lead to an injury, countervailing duties may be levied retroactively for the period to which the provisional measures have been applied.

(4) If the definitive countervailing duty is higher than the provisional duty paid or payable, the difference shall not be collected. If the definitive duty is lower than the provisional duty paid or payable, the duty shall be recalculated.

(5) Excepting the cases provided for in paragraph (3) hereof, where a threat of injury or of a material retardation of the establishment of a national industry is established but no actual injury has yet been caused, definitive countervailing duties may be levied only starting from the day on which a threat of injury or of a material retardation is established.

(6) Where a final determination of the Investigating Authority is negative, any guarantees provided for the period of application of provisional measures, shall be repaid within 45 working days.

Article 37: Duration of countervailing measures and reviews

- (1) A countervailing measure shall remain in force only as long as and to the extent necessary to counteract the countervailable subsidies, which are causing injury.
- (2) A definitive countervailing measure shall expire five years from its imposition or five years from the date of the most recent review, which has covered both subsidization and injury, unless it is determined in a review by the Investigating Authority that the expiry would be likely to lead to continuation or recurrence of subsidization and injury. In such cases the measure shall remain in force pending the outcome of such review.
- (3) An expiry review shall be initiated where the request contains sufficient evidence that the expiry of measures would be likely to result in a continuation or recurrence of subsidization and injury. Such a likelihood may, for example, be indicated by evidence of continued subsidization and injury or evidence that the removal of injury is partly or solely due to the existence of measures or evidence that the circumstances of the exporters, or market conditions, are such that they would indicate the likelihood of further injurious subsidization.
- (4) In carrying out investigations, the interested parties shall be provided with the opportunity to comment on the matters set out in the review request. Conclusions shall be reached with due account taken of all relevant and duly documented evidence presented in relation to the question of whether the expiry of measures would be likely, or unlikely, to lead to the continuation or recurrence of subsidization and injury.
- (5) A notice of impending expiry shall be published in the Official Monitor of the Republic of Moldova at an appropriate time in the final year of the period of application of those measures.
- (6) The need for the continued imposition of measures may also be reviewed, provided that a reasonable period of time of at least one year has elapsed since the imposition of the definitive measure, upon a request by any exporter, importer or the domestic producers.
- (7) An interim review shall be initiated where the request contains sufficient evidence as regards the necessity to vary or remove the measure offsetting the countervailable subsidy and the injury caused by it.
- (8) Where the countervailing duties imposed are less than the amount of countervailable subsidies found, an interim review shall be initiated if the Moldovan producers provide sufficient evidence that the duties have led to no movement or insufficient movement of resale prices of the imported product in the Republic of Moldova. If the investigation proves the allegations to be correct, countervailing duties may be increased to achieve the price increase required to remove injury; however, the increased duty level shall not exceed the amount of the countervailable subsidies.
- (9) In carrying out investigations pursuant to paragraphs (6), (7) and (8), the Investigating Authority shall consider whether the circumstances with regard to subsidization and injury have changed significantly, or whether existing measures are achieving the intended results in removing the injury previously established under Article 29. In these respects, account shall be taken in the final determination of all relevant and duly documented evidence.
- (10) Any exporter whose exports are subject to a definitive countervailing duty but who was not individually investigated during the original investigation for refusal to cooperate with the

Investigating Authority, shall be entitled, upon request, to an accelerated review in order that the Investigating Authority may promptly establish an individual countervailing duty rate for that exporter.

#### Article 38: Refunds

(1) Notwithstanding Article 37 (2)-(5), an importer may request reimbursement of duties collected where it is shown that the amount of countervailable subsidies, 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) In requesting a refund of countervailing duties, the importer shall submit an application to the Investigating Authority. The application shall be submitted within six months of the date on which the amount of the definitive duties to be levied was duly determined or of the date on which a decision was made definitively to collect the amounts secured by way of provisional duty.

(3) An application for refund shall be considered to be duly supported by evidence only where it contains precise information on the amount of refund of countervailing duties claimed and all customs documentation relating to the calculation and payment of such amount. It shall also include evidence, for a representative period, of the amount of countervailable subsidies for the exporter or producer to which the duty applies. In cases where the importer is not associated to the exporter or producer concerned and such information is not immediately available or the exporter or producer is unwilling to release it to the importer, the application shall contain a statement from the exporter or producer that the amount of countervailable subsidies has been reduced or eliminated, as specified in this Article, and that the relevant supporting evidence shall be provided to the Investigating Authority. Where such evidence is not forthcoming from the exporter or producer within a reasonable period of time, the application shall be rejected.

(4) Based on evidence, the Investigating Authority shall decide whether and to what extent the application should be granted or it may decide at any time to initiate an interim review. The information and findings from such review shall be used to determine whether and to what extent a refund is justified. Refunds of duties shall normally take place within 12 months, and in no circumstances more than 18 months after the date on which a request for a refund, duly supported by evidence, has been made. The payment of any refund authorized should normally be made within 90 days of the above-mentioned decision.

#### Article 39: General provisions on reviews and refunds

(1) The relevant provisions of Articles 31 and 32, excluding those relating to time limits, shall apply to any review carried out pursuant to Article 37. Any such review shall be carried out expeditiously and shall normally be concluded within 12 months of the date of initiation of the review.

(2) Reviews pursuant to Article 37 shall be initiated by the Investigating Authority. Where warranted by reviews, measures shall be repealed or maintained pursuant to Article 37 (2)-(5), or repealed, maintained or amended pursuant to Article 37 (6)-(10). Where measures are repealed for individual exporters, but not for the country as a whole, such exporters shall remain subject to the proceedings and may be re-investigated in any subsequent review carried out for that country pursuant to Article 37.

(3) Where a review of measures pursuant to Article 37 (6)-(9) is in progress at the end of the period of application of measures as defined in Article 37 (2)-(5), the measures shall also be investigated under the provisions of Article 37 (2)-(5).

(4) In all review or refund investigations carried out pursuant to Articles 37 and 38, the Investigating Authority shall apply the same methodology as in the investigation which led to the duty, with due account taken of Articles 28 and 43.

#### Article 40: Circumvention

(1) Countervailing duties imposed pursuant to this Law may be extended to imports from third countries of like products, or parts thereof, when circumvention of the countervailing measures in force is taking place. Circumvention shall be defined as a change in the pattern of trade between third countries and the Republic of Moldova, which stems from a practice, process or work for which there is insufficient cause or economic justification, other than the imposition of the duty, and there is evidence that the remedial effects of the duty are being undermined, in terms of the prices and/or quantities of the like products, and the imported like product and/or parts thereof still benefit from the subsidy.

(2) Investigations shall be initiated pursuant to this Article where the request contains sufficient evidence regarding the factors set out in paragraph (1). Investigations shall be initiated by the Investigating Authority, which shall also instruct the customs authorities to make imports subject to registration in accordance with Article 41(4) or request guarantees. Investigations shall be carried out by the Investigating Authority, which may be assisted by customs authorities, and shall be concluded within nine months. Where the facts, as finally ascertained, justify the extension of measures, this shall be done by the Investigating Authority, from the day, on which registration was imposed pursuant to Article 41(4) or on which guarantees were requested.

(3) Products shall not be subject to registration pursuant to Article 41(4) or countervailing measures where they are accompanied by a customs certificate declaring that the importation of the goods does not constitute circumvention. Such certificates may be issued to importers, upon written application, by a decision of the Investigating Authority. Such certificates shall remain valid for the period and under the conditions set down therein.

(4) Nothing in this Article shall preclude the normal application of the provisions in force concerning customs duties.

#### Article 41: General provisions regarding countervailing duties

(1) Provisional or definitive countervailing duties shall be imposed by decision of the Investigating Authority, and collected in the form, at the rate specified and according to the other criteria laid down in the decision imposing such duties. Such duties shall also be collected independently of the customs duties, taxes and other charges normally imposed on imports. No product shall be subject to both anti-dumping and countervailing duties.

(2) Decisions imposing provisional or definitive countervailing duties, and decisions accepting undertakings or terminating investigations or proceedings, shall be published in the Official Monitor of the Republic of Moldova. Such decisions shall contain, with due regard to the protection of confidential information, the names of the exporters or countries involved, a description of the product and a summary of the facts and considerations relevant to the subsidy and injury



determinations. In each case, a copy of the decision shall be sent to known interested parties. The provisions of this paragraph shall apply *mutatis mutandis* to reviews.

(3) In the national interests, measures imposed pursuant to this Chapter may be suspended by a decision of the Investigating Authority for a period of nine months. The suspension may be extended for a further period, not exceeding one year. Measures may only be suspended where market conditions have temporarily changed to an extent that injury would be unlikely to resume as a result of the suspension, and provided that the comments of the national industry have been taken into account. Measures may at any time be reinstated if the reason for suspension is no longer applicable.

(4) The Investigating Authority may direct the customs authorities to take the appropriate steps to register imports, so that measures may subsequently be applied against these imports from the date of such registration. Imports may be made subject to registration following a request from the national industry, which contains sufficient evidence to justify such action. Registration shall be introduced by decision of the Investigating Authority, which shall specify the purpose of the action and, if appropriate, the estimated amount of possible future liability. Imports may not be made subject to registration for a period longer than nine months.

#### Article 42: Verification visits

(1) The Investigating Authority shall, where it considers appropriate, carry out visits to examine the records of importers, exporters, traders, agents, producers, trade associations and organizations, to verify information provided on subsidization and injury. In the absence of a proper and timely reply a verification visit may not be carried out.

(2) The Investigating Authority may carry out investigations in foreign countries as required, provided that it obtains the agreement of the firms concerned, that it notifies the country in question and that the latter does not object to the investigation. As soon as the agreement of the firms concerned has been obtained, the Investigating Authority should notify the country of export of the names and addresses of the firms to be visited and the dates agreed.

(3) The firms concerned shall be advised of the nature of the information to be verified during verification visits and of any further information which needs to be provided during such visits, though this should not preclude requests being made during the verification for further details to be provided in the light of information obtained.

#### Article 43: Sampling

(1) In cases where the number of complainants, exporters or importers, types of product or transactions is large, the investigation may be limited to a reasonable number of parties, products or transactions by using samples which are statistically valid on the basis of information available at the time of the selection; or to 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 in accordance with the sampling requirements shall rest with the Investigating Authority, though preference shall be given to choosing a sample in consultation with, and with the consent of, the parties concerned, provided such parties make themselves known and make sufficient information available, within three weeks of initiation, to enable a representative sample to be chosen.

(3) In cases where the examination has been limited in accordance with this Article, an individual amount of countervailable subsidization 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 Law, except where the number of exporters or producers is so large that individual examinations would be unduly burdensome and would prevent completion of the investigation in good time.

(4) Where it is decided to sample and there is a degree of non-cooperation by some or all of the parties selected which is likely to materially affect the outcome of the investigation, a new sample may be selected. However, if a material degree of non-cooperation persists or there is insufficient time to select a new sample the relevant provisions of Article 44 shall apply.

#### Article 44: Non-cooperation

(1) In cases in which any interested party refuses access to, or otherwise does not provide, necessary information within the time limits provided for in this Law, or significantly impedes the investigation, preliminary or final findings, 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. Interested parties should be made aware of the consequences of non-cooperation.

(2) Failure to give a computerized response shall not be deemed to constitute non-cooperation provided that the interested party shows that presenting the response as requested would result in an unreasonable extra burden or unreasonable additional cost.

(3) Where the information presented by an interested party is not ideal in all respects, it should nevertheless not be disregarded, provided that any deficiencies are not such as to cause undue difficulty in arriving at a reasonably accurate finding and provided the information is appropriately submitted in timely fashion, is verifiable and the party has acted to the best of its ability.

(4) If evidence or information is not accepted, the supplying party should be informed forthwith of the reasons therefor and shall be granted an opportunity to provide further explanations within the time limit specified. If the explanations are considered unsatisfactory, the reasons for rejection of such evidence or information shall be disclosed and given in published findings.

(5) If determinations, including those regarding the amount of countervailable subsidies, are based on the provisions of paragraph (1), including the information supplied in the complaint, it shall, where practicable and with due regard to the time limits of the investigation, be checked by the Investigating Authority 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 the investigation.

#### Article 45: Confidentiality

(1) Any information supplied by any interested party during the investigation or after its conclusion shall be treated as confidential by the Investigating Authority in accordance with paragraph (2) hereof.

(2) Any information, which is by nature confidential (for example, because its disclosure would be of significant competitive advantage to a competitor or because its disclosure would have a significantly adverse effect upon a person supplying the information or upon a person from whom he

acquired the information) or which is provided on a confidential basis by parties to an investigation, shall, upon good cause shown, be treated as such by the Investigating Authority.

(3) Interested parties providing confidential information shall be required by The Investigating Authority to furnish non-confidential summaries thereof. Those 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, and a statement of the reasons why summarization is not possible must be provided.

(4) If the Investigating Authority considers that a request for confidentiality is not warranted and if the supplier of the information is unwilling to authorize its disclosure, such information may be disregarded by the Investigating Authority.

(5) This Article shall not preclude the disclosure of general information by the Moldovan authorities, and in particular the reasons on which decisions taken pursuant to this Law are based, nor disclosure of the evidence relied on by the Moldovan authorities in so far as is necessary to explain those reason in court proceedings. Such disclosure must take into account the legitimate interest of the parties concerned that their business or governmental secrets should not be divulged.

(6) The Investigating Authority shall not reveal, without specific permission from the supplier, any information received pursuant to this Law, for which confidential treatment has been requested by its supplier.

(7) Information received pursuant to this Law shall be used only for the purpose for which it has been requested.

#### Article 46: Disclosure

(1) The complainants, importers and exporters and their representative associations, and representatives of the country of export may request disclosure of the details underlying the essential facts and considerations, on the basis of which provisional measures have been imposed. Requests for such disclosure shall be made in writing immediately following the imposition of provisional measures and the disclosure shall be made in writing as soon as possible thereafter.

(2) The parties mentioned in paragraph (1) may request final disclosure of the essential facts and considerations on the basis of which it is intended to recommend the imposition of definitive measures, or the termination of an investigation or proceedings without the imposition of measures.

(3) Requests for final disclosure in accordance with paragraph (2) shall be addressed to the Investigating Authority in writing and be received, in cases where a provisional duty has been applied, not later than one month after publication of the imposition of that duty. Where a provisional duty has not been imposed, parties shall be provided with an opportunity to request final disclosure within time limits set by the Investigating Authority.

(4) Final disclosure shall be given in writing. It shall be made, with due regard to the protection of confidential information, as soon as possible and, normally, not later than one month prior to a definitive decision or the submission by the Investigating Authority of any proposal for final action pursuant to Article 35. Where the Investigating Authority is not in a position to disclose certain facts or considerations at that time, these shall be disclosed as soon as possible thereafter. Disclosure shall not prejudice any subsequent decision, which may be taken by the Investigating Authority, but where

such decision is based on any different facts and considerations these shall be disclosed as soon as possible.

(5) Representations made after final disclosure is given shall be taken into consideration only if received within a period to be set by the Investigating Authority in each case, which shall be at least 10 days, due consideration being given to the urgency of the matter.

#### Article 47: National Interests

(1) A determination as to whether the national interests call for intervention shall be based on an assessment of all the various interests taken as a whole, including the interests of the domestic industry and users and consumers, and a determination pursuant to this article shall only be made where all parties have been given the opportunity to make their views known pursuant to paragraph (2) in such an examination, the need to eliminate the trade-distorting effects of injurious subsidization and to restore effective competition shall be given special consideration. Measures, as determined on the basis of subsidization and injury found, may not be applied where the authorities, on the basis of all the information submitted, can clearly conclude that it is not in the national interests to apply such measures.

(2) In order to provide a sound basis on which the Investigating Authority can take account of all views and information in the decision on whether or not the imposition of measures is in the national interests, the complainants, importers and their representative associations, representative users and representative consumer organizations may, within the time limits specified in the notice of initiation of the countervailing duty investigation, make themselves known and provide information to the Investigating Authority.

(3) The parties, which have acted in conformity with paragraph (2), may request a hearing. Such requests shall be granted when they are submitted within the time limits set in paragraph (2), and when they set out the reasons, in terms of the national interests, why the parties should be heard.

(4) The parties, which have acted in conformity with paragraph (2), may provide comments on the application of any provisional duties imposed. Such comments shall be received within one month of the application of such measures if they are to be taken into account and they, or appropriate summaries thereof, shall be made available to other parties who shall be entitled to respond to such comments.

(5) The parties, which have acted in conformity with paragraph (2), may request the facts and considerations on which final decisions are likely to be taken to be made available to them. Such information shall be made available to the extent possible and without prejudice to any subsequent decision taken by the Investigating Authority.

(6) Information shall be taken into account only where it is supported by actual evidence, which substantiates its validity.

### **CHAPTER IV: SAFEGUARDS**

#### Article 48: General Principles

Safeguard measures (limitation of imports of a product or certain products) shall be imposed only after the Investigating Authority makes a positive definition of penetration of such products in the Republic of Moldova in excessively large quantities, as compared, in absolute or relative terms, to

the national production and consumption and/or where a product is imported terms and conditions, which cause or might cause a serious injury to a national industry.

Article 49: Investigation Procedure

- (1) The investigation shall seek to determine whether imports of the product in question are causing or threatening to cause serious injury to the Moldovan producers concerned.
- (2) For the purposes of this Chapter, the following definitions shall apply:
  - (a) 'serious injury' means a significant overall impairment in the position of Moldovan producers,
  - (b) 'threat of serious injury' means serious injury that is clearly imminent;
  - (c) 'domestic producers' means the producers as a whole of the like or directly competing products operating within the territory of the Republic of Moldova, or those whose collective output of the like or directly competing products constitutes a major proportion of the total national production of those products.

Article 50: Initiation of Investigation

- (1) Where it is apparent to the Investigating Authority that there is sufficient evidence to justify the initiation of an investigation, the Investigating Authority shall:
  - (a) initiate an investigation and publish a notice in the Official Monitor of the Republic of Moldova; such notice shall give a summary of the information received, and stipulate that all relevant information is to be communicated to the Investigating Authority; it shall state the period within which interested parties may make known their views in writing and submit information; it shall also state the period within which interested parties may apply to be heard orally by the Investigating Authority in accordance with paragraph (3);
  - (b) commence the investigation.
- (2) The Investigating Authority shall seek all information it deems to be necessary and, where it considers necessary it makes appropriate endeavour to check this information with importers, traders, agents, producers, trade associations and organizations.

Interested parties which have come forward pursuant to paragraph (1)(a) and representatives of the exporting country may, upon written request, inspect all information made available to the Investigating Authority in connection with the investigation other than internal documents prepared by the Moldovan Authorities, provided that that information is relevant to the presentation of their case and not confidential within the meaning of Article 53 and that it is used by the Investigating Authority in the investigation. Interested parties, which have come forward, may communicate their views on the information in question to the Investigating Authority; those views may be taken into consideration where they are backed by sufficient evidence.

- (3) The Investigating Authority may hear the interested parties. Such parties must be heard where they have made a written application within the period laid down in the notice published in the

Official Monitor of the Republic of Moldova, showing that they are actually likely to be affected by the outcome of the investigation and that there are special reasons for them to be heard orally.

(4) When information is not supplied within the time-limits set by this Law, or the investigation is significantly impeded, findings may be made on the basis of the facts available. Where the Investigating Authority finds that any interested party has supplied it with false or misleading information, it shall disregard the information and may make use of facts available.

#### Article 51: Results of Investigation

(1) Where the Investigating Authority considers, within nine months of the initiation of the investigation, that no surveillance or safeguard measures are necessary, the investigation shall be terminated within a month. The decision to terminate the investigation, stating the main conclusions of the investigation and a summary of the reasons therefor, shall be published in the Official Monitor of the Republic of Moldova.

(2) If the Investigating Authority considers that surveillance or safeguard measures are necessary, it shall take the necessary decisions in accordance with Articles 55, 56 and 57, no later than nine months from the initiation of the investigation. In exceptional circumstances, this time-limit may be extended by a further maximum period of two months; the Investigating Authority shall then publish a notice in the Official Monitor of the Republic of Moldova setting forth the duration of the extension and a summary of the reasons therefor.

#### Article 52: Provisional Safeguard Measures

(1) The provisions of Articles 49 to 54 shall not preclude the use, at any time, of surveillance measures in accordance with Articles 55 and 56 or provisional safeguard measures in accordance with Article 57.

(2) Provisional safeguard measures shall be applied:

- (a) in critical circumstances where delay would cause damage which it would be difficult to repair, making immediate action necessary, and
- (b) where a preliminary determination provides clear evidence that increased imports have caused or are threatening to cause serious injury.

(3) The duration of such measures shall not exceed 200 days.

(4) Provisional safeguard measures should take the form of an increase in the existing level of customs duty (whether the latter is zero or higher) if such action is likely to prevent or repair the serious injury.

(5) Should the provisional safeguard measures be repealed because no serious injury or threat of serious injury exists, the customs duties collected as a result of the provisional measures shall be automatically refunded as soon as possible.

#### Article 53: Confidentiality

(1) Information received pursuant to this Law shall be used only for the purpose for which it was requested.

(2) The Investigating Authority shall not reveal any information of a confidential nature received pursuant to this Law, or any information provided on a confidential basis without specific permission from the supplier of such information.

(3) Each request for confidentiality shall state the reasons why the information is confidential. However, if it appears that a request for confidentiality is unjustified and if the supplier of the information does not wish to make it public, the information concerned may be disregarded.

(4) Information shall in any case be considered to be confidential if its disclosure is likely to have a significantly adverse effect upon the supplier or the source of such information.

(5) The preceding paragraphs shall not preclude reference by the Moldovan authorities to general information and in particular to reasons on which decisions taken pursuant to this regulation are based. The said authorities shall, however, take into account the legitimate interest of legal and natural persons concerned that their business secrets should not be divulged.

#### Article 54: Serious Injury

(1) Examination of the trend of imports, of the conditions in which they take place and of serious injury or threat of serious injury to the national industry resulting from such imports shall cover in particular the following factors:

- (a) the volume of imports, in particular where there has been a significant increase, either in absolute terms or relative to production or consumption in the Republic of Moldova;
- (b) the price of imports, in particular where there has been a significant price undercutting as compared with the price of a like product in the Republic of Moldova;
- (c) the consequent impact on Moldovan producers as indicated by trends in certain economic factors, such as production, capacity utilization, stocks, sales, market share, price levels, profits, return on capital employed, cash flow, employment;
- (d) factors (other than trends in imports) which are causing or may have caused injury or threat of injury to the Moldovan producers concerned.

(2) Where a threat of serious injury is alleged, the Investigating Authority shall also examine whether it is clearly foreseeable that a particular situation is likely to develop into actual injury. In this regard account may be taken of factors such as:

- (a) the rate of increase of the exports to the Republic of Moldova;
- (b) export capacity in the country of origin or export, as it stands or is likely to be in the foreseeable future, and the likelihood that that capacity will be used to export to the Republic of Moldova.

#### Article 55: Surveillance Measures

(1) Where the trend in imports of a product threatens to cause injury to Moldovan producers, and where the national interests so require, import of that product may be subject, as appropriate, to:

- (a) retrospective surveillance carried out in accordance with the decision of the Investigating Authority;
- (b) prior surveillance carried out in accordance with Article 56.

(2) The surveillance measures shall have a limited period of validity. Unless otherwise provided in the decision of the Investigating Authority, they shall cease to be valid at the end of the second six-month period following the six months in which the measures were introduced.

#### Article 56: Prior Surveillance

(1) Products under preliminary surveillance may be put into free circulation in the Republic of Moldova only on production of a surveillance document. Such document shall be endorsed by the Investigating Authority, free of charge, for any quantity requested and within a maximum of five working days of receipt of an application by any importer. The importer's application for a surveillance document shall specify: the applicant's name and address (including a contact phone), registration number for VAT collection purposes, description of the goods concerned, indicating its trade name, code, place of origin and of shipment, quantity in kilograms or other weight measurement units, value of goods, CIF price (cost, insurance, freight) to Moldovan border, and the applicant's dated and signed declaration worded as follows: "I, the undersigned, hereby confirm that the information contained in my application is true and correct and also that I am duly registered as resident of the Republic of Moldova". Additional information to that provided for in the above mentioned form may be required.

(2) A finding that the unit price at which the transaction is effected exceeds that indicated in the import document by less than 5 per cent or that the total value or quantity of the products presented for import exceeds the value or quantity given in the import document by less than 5 per cent shall not preclude the release for free circulation of the product in question. The Investigating Authority, taking account of the nature of the products and other special features of the transactions concerned, may fix a different percentage, which, however, should not normally exceed 10 per cent.

(3) Import documents may be used only for such time as arrangements for liberalization of imports remain in force in respect of the transactions concerned. Such documents may not in any event be used beyond the expiry of a period, which shall be laid down at the same time and by means of the same procedure as the imposition of surveillance.

(4) Where the decision taken pursuant to Article 55 so requires, the origin of products under surveillance must be proved by a certificate of origin.

#### Article 57: Safeguard Measures

(1) Where a product is imported into the Republic of Moldova in such greatly increased quantities and/or on such terms or conditions as to cause, or threaten to cause, serious injury to the national industry, the Investigating Authority, in order to safeguard the national interests, may:



- (a) limit the period of validity of import documents within the meaning of Article 56 to be endorsed after the entry into force of this measure;
- (b) alter the import rules for the product in question by making its release for free circulation conditional on production of an import authorization, the granting of which shall be governed by such provisions and subject to such limits as the Investigating Authority shall lay down.

The measures referred to in (a) and (b) shall take effect immediately.

(2) The measures referred to in paragraph (1) shall be taken only when the two conditions indicated in the first subparagraph of that paragraph are met.

(3) If establishing a quota, account shall be taken in particular of:

- (a) the desirability of maintaining, as far as possible, traditional trade flows;
- (b) the volume of goods exported under contracts concluded on normal terms and conditions before the entry into force of a safeguard measure provided that such contracts have been made known to the Investigating Authority;
- (c) the need to avoid jeopardizing achievement of the aim pursued in establishing the quota.

(4) Any quota shall not be set lower than the average level of imports over the last three representative years for which statistics are available unless a different level is necessary to prevent or remedy serious injury.

(5) In cases in which a quota is allocated among supplier countries, allocation may be agreed with those of them having a substantial interest in supplying the product concerned for import into the Republic of Moldova. Failing this, the quota shall be allocated among the supplier countries in proportion to their share of imports into the Republic of Moldova of the product concerned during a previous representative period, due account being taken of any specific factors which may have affected or may be affecting the trade in the product.

(6) The safeguard measures referred to in this article shall apply to every product which is put into free circulation after their entry into force.

(7) However, such measures shall not prevent the release for free circulation of products already on their way to the Republic of Moldova provided that the destination of such products cannot be changed and that those products which, pursuant to articles 55 and 56, may be put into free circulation only in production of an import document are in fact accompanied by such a document.

#### Article 58: Products Originating in Developing Countries

No safeguard measure may be applied to a product originating in a developing country member of the WTO as long as that country's share of Moldovan imports of the product concerned does not exceed 3, provided that developing country members with less than a 3 per cent import share collectively account for not more than 9 per cent of total community imports of the product concerned to the Republic of Moldova.

#### Article 59: Duration of Safeguard Measures

- (1) The duration of safeguard measures must be limited to the period of time necessary to prevent or remedy serious injury and to facilitate adjustment on the part of Moldovan producers. The period should not exceed four years, except in the cases where it may be extended in accordance with paragraph (2).
- (2) Such initial period may be extended, provided it is determined that:
  - (a) the safeguard measure continues to be necessary to prevent or remedy serious injury,
  - (b) and there is evidence that Moldovan producers are adjusting.
- (3) The total period of application of a safeguard measure, including the period of application of any provisional measures, the initial period of application and any prorogation thereof, may not exceed eight years.
- (4) If the duration of the measure exceeds one year, the measure must be progressively liberalized at regular intervals during the period of application, including the period of extension.
- (5) Where imports of a product have already been subject to a safeguard measure no further such measure shall be applied to that product until a period equal to the duration of the previous measure has elapsed. Such period shall not be less than two years.
- (6) Notwithstanding paragraph (5), a safeguard measure of 180 days or less may be reimposed for a product if:
  - (a) at least one year has elapsed since the date of introduction of a safeguard measure on the import of that product; and
  - (b) such a safeguard measure has not been applied to the same product more than twice in the five-year period immediately preceding the date of introduction of the measure.

### **CHAPTER V: FINAL AND TRANSITORY PROVISIONS**

#### Article 60: Investigating Authority

- (1) The powers and organizational structure of the Investigating Authority shall be established by the Government Decision to the effect. A half of the members in the Investigating Authority shall be selected from among the staff of the Moldovan Ministry of economy, and the other half shall be formed of representatives of other central public administration authorities.
- (2) The Ministry of Economy and Reform shall, within 6 months, develop and submit to the Government for approval the internal regulations and procedures of the Investigating Authority, and it shall approve regulations regarding the implementation of this Law.

#### Article 61: Reviews of existing legislation

The Government of the Republic of Moldova shall, within 3 months after the effective date hereof, review all existing legal provisions which contradict this law.

Article 62: Entry into force

This law shall enter into force on the day of its publication, subject to prior ratification by the Republic of Moldova of its accession to World Trade Organization.

Chairman of the Parliament (Dumitru Diacov)

Chisinau, 17.02.2000  
Nr. 820-XIV

## **ANNEX**

### **ILLUSTRATIVE LIST OF EXPORT SUBSIDIES**

- (1) The provision by governments of direct subsidies to a firm or an industry contingent upon export performance.
- (2) Currency retention schemes or any like practices which involve a bonus on exports.
- (3) Internal transport and freight charges on export shipments, provided or mandated by governments, on terms more favourable than for domestic shipments.
- (4) The provision by governments or their agencies either directly or indirectly through government-mandated schemes, of imported or domestic products or services for use in the production of exported goods, on terms or conditions more favourable than for provision of like or directly competitive products or services for use in the production of goods for domestic consumption, if (in the case of products) such terms or conditions are more favourable than those commercially available on world markets to their exporters.
- (5) The full or partial exemption, remission, or deferral specifically related to exports, of direct taxes or social welfare charges paid or payable by industrial or commercial enterprises.
- (6) The allowance of special deductions directly related to exports or export performance, over and above those granted in respect of production for domestic consumption, in the calculation of the base on which taxes are charged.
- (7) The exemption or remission, in respect of the production and distribution of exported products, of indirect taxes in excess of those levied in respect of the production and distribution of like products when sold for domestic consumption.
- (8) The exemption, remission or deferral of prior-stage cumulative indirect taxes on goods or services used in the production of exported products in excess of the exemption, remission or deferral of like prior-stage cumulative indirect taxes on goods or services used in the production of like products when sold for domestic consumption; provided, however, that prior-stage cumulative indirect taxes may be exempted, remitted or deferred on exported products even when not exempted, remitted or deferred on like products when sold for domestic consumption, if the prior-stage cumulative indirect taxes are levied on inputs that are consumed in the production of the exported product.
- (9) The remission or drawback of import charges in excess of those levied on imported inputs that are consumed in the production of the exported product; provided, however, that in particular cases a firm may use a quantity of home market inputs equal to, and having the same quality and characteristics as the imported inputs as a substitute for them in order to benefit from this provision if the import and the corresponding export operations both occur within a reasonable time period, not to exceed two years.
- (10) The provision by governments (or special institutions controlled by governments) of export credit guarantee or insurance programmes, of insurance or guarantee programmes against increases in the cost of exported products or of exchange risk programmes, at premium rates which are inadequate to cover the long-term operating costs and losses of the programs.

(11) The grant by governments (or special institutions controlled by and/or acting under the authority of governments) of export credits at rates below those which they actually have to pay for the funds so employed (or would have to pay if they borrowed on international capital markets in order to obtain funds of the same maturity and other credit terms and denominated in the same currency at the export credit), or the payment by them of all or part of the costs incurred by exporters or financial institutions in obtaining credits, in so far as they are used to secure a material advantage in the field of export credit terms.

(12) Any other charge on the public account constituting an export subsidy in the sense of Article XVI of GATT 1994.

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