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PART I

Acts, Ordinances, President's Orders and Regulations

NATIONAL ASSEMBLY SECRETARIAT

Islamabad, the 8th September, 2015

No. F. 22(17)/2015-Legis.—The following Act of *Majlis-e-Shoora* (Parliament) received the assent of the President on the 5th September, 2015 and is hereby published for general information:—

ACT No. XIV OF 2015

An Act to reform and repeal the Anti-Dumping Duties Ordinance, 2000

WHEREAS it is expedient to give effect in Pakistan to the provisions of Article VI of the General Agreement on Tariffs and Trade, 1994, and to the Agreement on Implementation thereof and to amend and consolidate the law relating to imposition of anti-dumping duties to offset such dumping, to provide a framework for investigation and determination of dumping and injury in respect of goods imported into Pakistan and for matters ancillary thereto or connected therewith;

AND WHEREAS the imposition of anti-dumping duties to offset injurious dumping is in the public interest;

(749)

Price : Rs. 30.50

[1538 (2015)/Ex. Gaz.]

AND WHEREAS it is expedient to provide for certain reforms in the Anti-Dumping Duties Ordinance, 2000 (LXV of 2000), by repealing the said Ordinance and re-enacting the law for the purposes hereinafter appearing;

It is hereby enacted as follows:—

PART I-PRELIMINARY

1. **Short title, extent and commencement.**— (1) This Act may be called the Anti-Dumping Duties Act, 2015.

(2) It extends to the whole of Pakistan.

(3) It shall come into force at once.

2. **Definitions.**— In this Act, unless there is anything repugnant in the subject or context,—

(a) “Appellate Tribunal” means the Appellate Tribunal established under section 64;

(b) “Commission” means the National Tariff Commission established under the law for the time being in force;

(c) “Country” means any country or territory whether a member of the World Trade Organisation or not and includes a customs union or separate customs territory;

(d) “Domestic industry” means the domestic producers as a whole of a domestic like product or those whose collective output of that product constitutes a major proportion of the total domestic production of that product; except when any such domestic producers are related to the exporters or importers, or are themselves importers of the allegedly dumped investigated product. In such a case “domestic industry” may mean the rest of the domestic producers:

Explanation.— For the purposes of this clause, producers shall be deemed to be related to exporters or importers only if—

(i) one of them directly or indirectly controls the other;

(ii) both of them are directly or indirectly controlled by the same third person; or

(iii) together they directly or indirectly control a third person:

Provided that there are grounds for believing or suspecting that the effect of the relationship is such as to cause the producer concerned to behave differently from non-related producers. For that purpose 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;

Provided further that, in exceptional circumstances, as may be determined by the Commission, domestic industry in relation to a product in question may be divided into two or more competitive markets and producers within each such market may be regarded as a separate industry if-

- (i) the producers within such a market sell all or almost all of their production of the product in question in such a market; and
 - (ii) the demand in such a market is not, to any substantial degree, supplied by producers of the product in question located elsewhere in Pakistan;
- (e) "Domestic like product" means a "like product" that is produced by the domestic industry;
- (f) "Dumping margin" in relation to a product, means the amount by which its normal value exceeds its export price;
- (g) "Export price" means export price determined in accordance with Part IV of this Act;
- (h) "Exporting country" means, save as provided in sub-section (3) of section 5, a country from which an investigated product is exported to Pakistan;
- (i) "Injury" means, unless otherwise specified, material injury to a domestic industry, threat of material injury to a domestic industry or material retardation of the establishment of a domestic industry, when dumped imports are causing such injury;
- (j) "interested party" includes—
- (i) any exporter or foreign producer of an investigated product;
 - (ii) any importer of an investigated product;
 - (iii) trade or business association a majority of the members of which are producers, exporters or importers of an investigated product;
 - (iv) the government of an exporting country;
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- (v) any producer of a domestic like product in Pakistan;
- (vi) trade or business associations a majority of the members of which produce a domestic like product in Pakistan; and
- (vii) such other person or group of persons as the Commission may, by notification in the official Gazette, specify;
- (k) "investigated product" means a product which is subject to an anti-dumping investigation as described in the notice of initiation of the investigation;
- (l) "investigation" means an investigation conducted under this Act;
- (m) "like product" means a product which is alike in all respects to an investigated product or, in the absence of such a product, another product which, although not alike in all respects, has characteristics closely resembling those of the investigated product;
- (n) "Normal value" means normal value determined in accordance with Part III of this Act;
- (o) "prescribed" means prescribed by rules made under this Act; and
- (p) "WTO" means the World Trade Organisation established pursuant to the Marrakesh Agreement concluded in Marrakesh, Morocco, on the 15th of April, 1994.

PART II

ANTI-DUMPING MEASURES

3. **Levy of anti-dumping duty.**—(1) The Commission shall, by notification in the official Gazette, impose anti-dumping measures on products imported into Pakistan when it determines, pursuant to an investigation initiated and conducted in accordance with the provisions of this Act that—

- (a) an investigated product is dumped within the meaning of this Act; and
- (b) injury is being caused to domestic industry within the meaning of this Act.

PART III

IDENTIFICATION OF DUMPING AND DETERMINATION OF NORMAL VALUE

4. **Identification of dumping.**— For the purposes of this Act an investigated product shall be considered to be dumped if it is introduced into the commerce of Pakistan at a price which is less than its normal value.

5. **Normal value based on prices in exporting country.**— (1) Save as provided for in section 6, the Commission shall establish normal value of an investigated product on the basis of comparable price paid or payable, in the ordinary course of trade, for sales of a like product when destined for consumption in an exporting country.

(2) Notwithstanding anything contained in sub-section (1), the Commission may establish normal value of an investigated product on the basis of comparable price paid or payable in the ordinary course of trade for sales of a like product when destined for consumption in the country of origin of the investigated product if—

- (a) such products are not produced in an exporting country; or
- (b) there is no comparable price for them in an exporting country.

(3) In the event the Commission decides to establish normal value on the basis of the country of origin of an investigated product pursuant to sub-section (2), any reference to an exporting country in this Act shall be deemed to refer to the country of origin of the investigated product.

6. **Normal value based on export price to a third country or on constructed value.**—(1) When there are no sales of a like product in the ordinary course of trade in domestic market of an exporting country, or when such sales do not permit a proper comparison because of any particular market situation or low volume of the sales in the domestic market of the exporting country, the Commission shall establish normal value of an investigated product on the basis of either—

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

(2) Sales of the like product destined for consumption in the domestic market of the exporting country or sales to an appropriate third country shall normally be considered to be a sufficient quantity for the determination of normal value if such sales constitute five per cent or more of the sales of the investigated product to Pakistan:

Provided that, if such sales constitute less than five per cent of the sales of the investigated product to Pakistan, the Commission shall accept a lower ratio if, on the basis of evidence submitted by interested parties or otherwise available to it, it is satisfied that sales at such lower ratio are nonetheless of sufficient magnitude to provide for a proper comparison.

7. Circumstances in which certain sales may be disregarded in determining normal value.—(1) The Commission may treat sales of a like product in domestic market of an exporting country or sales to a third country at prices below per unit, fixed and variable, cost of production plus administrative, selling and other costs as not being in the ordinary course of trade by reason of price and may disregard such sales in determining normal value only if the Commission determines that such sales were made—

- (a) within an extended period of time which shall normally be a period of one year and in no case less than a period of six months;
- (b) in substantial quantities; and
- (c) at prices which do not provide for the recovery of all costs within a reasonable period of time.

(2) For the purposes of sub-clause (b) of sub-section (1), sales below per unit cost shall be deemed to be in substantial quantities if the Commission establishes that—

- (a) a weighted average selling price of transactions under consideration for the determination of normal value is below a weighted average cost; or
- (b) the volume of sales below per unit cost represents twenty per cent or more of the volume sold in transactions under consideration for the determination of normal value.

(3) If prices which are below per unit cost at the time of sale are above the weighted average cost for the period of investigation, the Commission shall consider such prices as providing for recovery of costs within a reasonable period of time.

8. Calculation of costs for the purposes of sections 6 and 7.—(1) For the purposes of sections 6 and 7, the Commission shall normally calculate costs on the basis of records kept by an exporter or a producer under investigation provided that such records are in accordance with the generally accepted accounting principles of an exporting country and reasonably reflect the costs associated with the production and sale of a like product.

(2) For the purposes of sections 6 and 7, the amounts for administrative, selling and general costs and for profits shall be based on actual data pertaining to production and sales in the ordinary course of trade of a like product for consumption in an exporting country by any exporter or producer under investigation:

Provided that where the Commission is satisfied that such amounts cannot be determined on the basis set out in sub-section (2), the amounts may be determined on the basis of –

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

(3) The Commission shall consider all available evidence on the proper allocation of costs, including such information as is made available by any exporter or producer of a like product in the course of an investigation provided that such allocations have been historically utilised by the exporter or producer, in relation to establishing appropriate amortisation and depreciation periods and allowances for capital expenditures and other development cost, as the case may be.

(4) Unless already reflected in the cost allocations under this section, the Commission shall adjust costs appropriately for those non-recurring items of cost which benefit either future or current production or both, or, for circumstances in which costs during the period of investigation are affected by start-up operations. Such adjustment made for start-up operations shall reflect the costs at the end of the start-up period or, if that period extends beyond the period of investigation, the most recent costs which can reasonably be taken into account by the Commission during the investigation.

9. Exports from a country in which the government exercises sufficient control over economic decisions so that the domestic market does not operate freely.—(1) Where the Commission determines that the government of an exporting country exercises sufficient control over economic decisions so that domestic market of such exporting country does not operate freely, the Commission may, determine normal value on the basis of –

- (a) a comparable price paid or payable, in the ordinary course of trade, for sales of a like product when destined for consumption in an appropriate market economy country;

- (b) where the Commission determines that the provisions of clause (a) cannot be applied, a comparable price paid or payable, in the ordinary course of trade, for exports of a like product from an appropriate market economy country to other countries, including Pakistan;
 - (c) where the Commission determines that the provisions of clauses (a) and (b) may not be applied, a price actually paid or payable in Pakistan for a domestic like product, duly adjusted if necessary to include a profit margin corresponding to the margin to be expected under the existing economic circumstances for the sector concerned; or
 - (d) where the Commission determines that the provisions of clauses (a), (b) and (c) may not be applied, any other reasonable basis.
- (2) In identifying an appropriate market economy country for the purposes of sub-section (1), the Commission shall take into account factors such as –
- (a) similarity of the product in terms of materials and end use;
 - (b) similarity of production methods; and
 - (c) availability of necessary information to the Commission.

PART IV

DETERMINATION OF EXPORT PRICE

10. **Export price.**—(1) Save as provided for in sub-sections (2) and (3), an export price shall be a price actually paid or payable for an investigated product when sold for export from an exporting country to Pakistan.

(2) In cases where there is no export price or where it appears to the Commission that an export price is unreliable because of association or a compensatory arrangement between an exporter and an importer or a third party—

- (a) the export price may be constructed on the basis of a price at which imported products are first resold to an independent buyer; or
- (b) if the imported products are not resold to an independent buyer, or not resold in the condition as imported, on such reasonable basis as the Commission may determine.

(3) Where, the Commission determines normal value on the basis of the country of origin pursuant to sub-section (2) of section 5, an export price shall be a price actually paid or payable, as determined by the Commission, for an investigated product when sold for export in the country of origin of the investigated product.

PART V

COMPARISON BETWEEN NORMAL VALUE AND EXPORT PRICE

11. **Comparison.**—(1) To ensure a fair comparison between export price and normal value, the Commission shall, where possible, compare export price and normal value with the same characteristics in terms of level of trade, time of sale, quantities, taxes, physical characteristics, conditions and terms of sale and for delivery at the same place which shall normally be at *ex-factory* level. Where an interested party demonstrates to the Commission that any of the factors set out in this sub-section or any other factors identified by such interested party affect price comparability, the Commission shall make due allowance for differences in such factors to the extent that the same affect price comparability.

(2) In cases where export price is constructed on the basis of a price at which imported products are first resold to an independent buyer pursuant to sub-clause (a) of sub-section (2) of section 10, allowances for costs including duties and taxes incurred between importation and resale, and a reasonable amount for profits accruing, may also be made. If in such cases price comparability has been affected, the Commission shall establish normal value at a level of trade equivalent to a level of trade of a constructed export price, or shall make due allowance as warranted under this section.

(3) The Commission shall indicate to the parties in question what information is necessary to ensure a fair comparison and shall not impose an unreasonable burden of proof on those parties.

12. **Comparison methods.**—(1) Subject to section 11, existence of dumping margin shall normally be established on the basis of a comparison of a weighted average normal value with a weighted average of prices of all comparable export transactions or by a comparison of normal value and export prices on a transaction-to- transaction basis.

(2) Normal value established on a weighted average basis may be compared to prices of individual export transactions if—

- (a) the Commission finds a pattern of export prices, which differs significantly among different purchasers, regions or time periods; and
- (b) the Commission provides an explanation as to why such differences cannot be taken into account appropriately by the use of a weighted average-to-weighted average or transaction-to-transaction comparison.

13. **Currency conversion.**—(1) Should the price comparison under sections 11 and 12 require a conversion of currencies, the Commission shall make such conversion using the rate of exchange on the date of sale.

(2) For the purposes of sub-section (1) the date of sale shall normally be the date of contract, purchase order, order confirmation or invoice, whichever establishes the material terms of sale.

(3) Notwithstanding anything in sub-sections (1) and (2), when a sale of foreign currency on forward markets is used in direct relation to an export sale, the Commission shall use the rate of exchange in the forward sale for all the related transactions.

(4) The Commission shall ignore fluctuations in exchange rates and shall allow exporters at least sixty days to have adjusted their export prices to reflect sustained movements in exchange rates during the period of investigation.

14. **Individual dumping margin.**—(1) The Commission shall determine an individual dumping margin for each known exporter or producer of an investigated product.

(2) Notwithstanding anything contained in sub-section (1), where the Commission is satisfied that the number of exporters, producers or importers, or types of products involved is so large as to make it impracticable to determine an individual dumping margin for each known exporter or producer concerned of an investigated product, the Commission may limit its examination to a reasonable number of interested parties or investigated products by using samples which are statistically valid on the basis of information available to the Commission at the time of selection, or to the largest percentage of volume of exports from the country in question which can reasonably be investigated.

(3) The selection of exporters, producers, importers or types of products shall normally be made by the Commission in consultation with the exporters, producers or importers concerned:

Provided that the final selection of the exporters, producers, importers or types of products shall rest with the Commission.

(4) In cases where the Commission has limited its examination as provided for in sub-sections (2) and (3), the Commission shall nevertheless determine an individual dumping margin for any exporter or producer who voluntarily submits the necessary information in time for that information to be considered during the course of an investigation:

Provided that where the Commission determines that the number of exporters or producers is so large that individual examinations would be unduly burdensome

to the Commission and prevent the timely completion of the investigation, the Commission may decline to determine an individual dumping margin on the basis of such voluntary responses and limit its examination to such exporters and producers selected pursuant to sub-section (2).

PART VI-DETERMINATION OF INJURY

15. **Determination of injury.**—(1) A determination of injury, for the purposes of this Act shall be based on an objective examination of all relevant factors by the Commission which shall include but shall not be limited to—

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

(2) With regard to volume of dumped imports, the Commission shall consider whether there has been a significant increase in dumped imports, either in absolute terms or relative to production or consumption in Pakistan.

(3) With regard to effect of dumped imports on prices in domestic market, the Commission shall consider whether—

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

(4) No one or several of the factors identified in sub-section (2) or (3) shall be deemed to necessarily give decisive guidance and the Commission may take into account such other factors as it considers relevant for the determination of injury.

(5) In circumstances where domestic industry in relation to a product in question has been divided into two or more competitive markets, and producers within each such market are regarded as a separate industry under the second proviso to the explanation to clause (c) of section 2, injury may be found to exist even where a major portion of the total domestic industry does not suffer injury provided that, there is a concentration of dumped imports into such a market, and provided further that dumped imports are causing injury to the producers of all or almost all of the production within such market.

16. **Cumulation.**—Where imports of a like product from more than one country are the subject of simultaneous investigations under this Act the Commission may cumulatively assess the effects of such imports on domestic industry only if it determines that—

- (a) dumping margin in relation to an investigated product from each country is more than the negligible amount as specified in clause (a) of sub-section (3) of section 41, and volume of dumped imports from each investigated country is not less than the negligible quantity as specified in clause (b) of sub-section (3) of section 41; and
- (b) a cumulative assessment of the effects of the imports is appropriate in the light of—
 - (i) the conditions of competition between the imports; and
 - (ii) the conditions of competition between the imports and a domestic like product.

17. **Examination of impact of dumped imports on domestic industry.**—(1) An examination of impact of dumped imports on domestic industry concerned shall include an evaluation by the Commission of all relevant economic factors and indices having a bearing on the state of the domestic industry, including, but not limited to—

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

Explanation.—The list of factors specified in sub-section (1) shall not be exhaustive, nor shall one or several of these factors be deemed to necessarily give decisive guidance.

(2) The Commission shall assess effect of dumped imports in relation to production of a domestic like product in Pakistan when available data permit separate identification of that production on the basis of criteria of production process, producer's sales and profits:

Provided that if such separate identification of that production is not possible, the Commission shall assess effects of dumped imports by examination of the

production of the narrowest group or range of products, which includes a domestic like product, for which necessary information can be provided.

18. Causation.—(1) The Commission shall satisfy itself that dumped imports are, through the effects of dumping, as provided in sections 15 and 17, causing injury within the meaning of this Act. The consideration of a causal relationship between dumped imports and injury to domestic industry shall be based on an examination by the Commission of all relevant evidence before it.

(2) The Commission shall examine any known factors other than dumped imports which are injuring domestic industry and injuries caused by such other factors shall not be attributed by the Commission to the dumped imports.

(3) Factors which may be relevant for the purposes of an examination by the Commission pursuant to sub-section (2) may include the following, namely:—

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

19. Threat of material injury.—(1) In making a determination regarding existence of a threat of material injury, the Commission shall consider all relevant factors, including but not limited to, such factors as—

- (a) a significant rate of increase of dumped imports into domestic market indicating the likelihood of substantially increased importation;
- (b) sufficient freely disposable, or an imminent and substantial increase in capacity of an exporter indicating the likelihood of substantially increased dumped exports to market in Pakistan, taking into account the availability of other export markets to absorb any additional exports;
- (c) whether imports are entering at prices that shall have a significant depressing or suppressing effect on prices in Pakistan, and would likely increase demand for further imports; and
- (d) inventories of an investigated product.

(2) No one factor specified in sub-section (1) shall by itself, be deemed to necessarily give decisive guidance and in making a determination regarding a threat

of material injury the Commission shall, on the basis of the totality of the factors considered, satisfy itself that further dumped exports are imminent and that, unless protective action is taken, material injury shall occur.

PART VII

INITIATION AND CONDUCT OF INVESTIGATIONS

20. Requirement of a written application.—(1) Subject to section 24 and save as provided for in section 25, an investigation by the Commission shall only be initiated upon a written application by or on behalf of domestic industry.

(2) An application under sub-section (1) shall—

- (a) be submitted to the Commission in such manner, number and form and with such fee as may be prescribed;
- (b) include evidence of dumping and injury within the meaning of this Act and the causal link between the dumped imports and the alleged injury, as is reasonably available to the applicant; and
- (c) contain such further information as may be prescribed.

21. Notice to government of exporting country.—Upon receipt of a duly documented application compliant with the requirements of sections 20 and 24, the Commission shall promptly give notice to the government of each exporting country of the receipt of such application.

22. Withdrawal of application before initiation.—An application under section 20 may be withdrawn prior to initiation, in which case it shall be considered not to have been made:

Provided that upon the withdrawal of an application any fee paid along with the application pursuant to clause (i) of sub-section (2) of section 20 shall stand forfeited in favour of the Commission.

23. Initiation of an investigation.—(1) Subject to section 24, the Commission shall examine accuracy and adequacy of evidence provided in an application to determine whether it is compliant with the requirements of section 20 and if so whether there is sufficient evidence to justify initiation of an investigation.

(2) An application under section 20 shall be rejected as soon as the Commission is satisfied that sufficient evidence is not available to indicate dumping or any injury to justify initiation of an investigation.

(3) The Commission may seek additional information from an applicant before deciding whether to initiate an investigation and such information shall be provided by the applicant to the Commission within such time and in such manner as may be prescribed.

(4) When the Commission is satisfied that —

- (a) an application under section 20 has been made by or on behalf of domestic industry; and
- (b) there is sufficient evidence of dumping and injury within the meaning of this Act,

the Commission shall initiate an investigation.

(5) Where the Commission does not consider it appropriate to initiate an investigation, it shall inform all the applicants of the reasons for not initiating the investigation and shall inform the exporting country of its decision.

24. Application by or on behalf of domestic industry.—(1) For the purposes of section 20, an application shall be considered to have been made by or on behalf of domestic industry only if it is supported by those domestic producers whose collective output constitutes more than fifty per cent of the total production of a domestic like product produced by that portion of the domestic industry expressing either support for or opposition to the application.

(2) For the purposes of section 23, no investigation shall be initiated when domestic producers expressly supporting an application account for less than twenty-five percent of the total production of a domestic like product produced by domestic industry.

(3) In the case of fragmented industries involving an exceptionally large number of producers, the Commission may determine support and opposition for an application submitted under section 20 by using statistically valid sampling techniques.

25. Self-initiation.—The Commission may, *suo moto*, initiate an investigation without having received a written application by or on behalf of domestic industry if it has sufficient evidence of dumping and injury, within the meaning of this Act to justify initiation of an investigation.

26. Imposition of anti-dumping measures on behalf of a third country.—(1) An application for imposition of anti-dumping measures may be made to the Commission on behalf of a third country by its authorities provided that—

- (a) such application is supported by price information to show that imported goods are being dumped and by detailed information to show that such dumping is causing injury to domestic industry concerned in the third country; and

- (b) the government of the third country affords all assistance to the Commission to obtain such further information as the Commission may require.

(2) In considering an application received under sub-section (1), the Commission shall consider the effects of alleged dumping on the industry concerned as a whole in the third country and injury shall not be assessed in relation only to the effect of the alleged dumping on the industry's exports to Pakistan or on the industry's total exports of the product.

(3) The decision whether or not to initiate an investigation pursuant to an application received under sub-section (1) shall rest with the Commission:

Provided that the Commission shall not initiate such investigation until the Federal Government has requested and received approval for such an initiation from the Council for Trade in Goods of the WTO.

27. Notice of decision to initiate investigation.—(1) When the Commission has decided to initiate an investigation it shall –

- (a) give notice to all exporters, importers and any representative associations of importers or exporters known to the Commission to be concerned, as well as representatives of the exporting country, the applicant and other interested parties known to the Commission to have an interest therein; and
- (b) publish a copy of such notice in the official Gazette and in at least one issue each of a daily newspaper in the English language and a daily newspaper in the Urdu language having wide circulation in Pakistan.

(2) The notice of initiation of an investigation referred to in sub-section (1) shall be in such form and contain such information as may be prescribed and the initiation of investigation shall be effective on the date on which such notice is published in the newspapers as provided for in clause (b) of sub-section (1).

28. Provision of copy of an application.— Subject to the requirement to protect confidential information pursuant to section 31, the Commission shall, after initiation of an investigation, provide to any interested party the full text of the written application received by the Commission under sub-section (1) of section 20:

Provided that where the Commission determines that the number of interested parties is particularly high, the Commission shall only provide the full text of the written application received by it under sub-section (1) of section 20 to exporting country or to the relevant trade association of exporting country.

PART VIII

CONDUCT OF INVESTIGATIONS

29. **Duration of investigation.**—The Commission shall, except in special circumstances, conclude an investigation within twelve months, and in no case more than eighteen months, after its initiation.

30. **Customs clearance.**—Any proceedings or investigation under this Act shall not hinder the procedures of customs clearance.

31. **Confidentiality.**—(1) Subject to sub-section (2), the Commission shall, during and after an investigation, keep confidential any information submitted to it and such information shall not be disclosed without specific permission of the party submitting it.

(2) Any information which is—

- (a) by nature confidential, because its disclosure shall 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 the information was acquired;
- (b) determined by the Commission to be of a confidential nature for any other reason; or
- (c) provided as confidential by parties to an investigation, shall, on good cause shown, be kept confidential by the Commission.

(3) The following types of information shall be deemed to be by nature confidential, unless the Commission determines that disclosure in a particular case would neither be of significant competitive advantage to a competitor nor have a significantly adverse effect upon a person supplying the information or upon a person from whom such information was acquired, namely: —

- (a) business or trade secrets concerning the nature of a product, production processes, operations, production equipment, or machinery;
 - (b) information concerning financial condition of a company which is not publicly available; and
 - (c) information concerning costs, identification of customers, sales, inventories, shipments, or amount or source of any income, profit, loss or expenditure related to manufacture and sale of a product.
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(4) Any party seeking any information to be kept confidential shall request for the same at the time the information is submitted, along with the reasons warranting confidentiality. The Commission shall consider such request expeditiously and inform the party submitting the information if it determines that the request for keeping the information confidential is not warranted.

(5) Any party submitting any information with the request to keep it confidential shall furnish non-confidential summary of all such information. Such summary may take the form of ranges or indexation of figures provided in the confidential version or marked deletions in text or in such other form as the Commission may require:

Provided that such non-confidential summary shall permit a reasonable understanding of the substance of the information submitted in confidence:

Provided further that any deletion in text shall, unless otherwise allowed by the Commission, only relate to names of the buyer or supplier.

(6) In exceptional circumstances, any party submitting confidential information may indicate that such information is not susceptible of summary, in which case a statement of the reasons why summarisation is not possible shall be provided. If the Commission concludes that the non-confidential summary provided fails to satisfy the requirements of sub-section (5), it may determine that the request for keeping the information confidential is not warranted.

(7) If the Commission finds that a request for keeping the information confidential is not warranted, and if the supplier of such information is unwilling to make it public or to authorise the disclosure in generalised or summary form, the Commission shall disregard such information and return the same to the party submitting it.

(8) Subject to sub-section (9), notwithstanding anything contained in this Act or in any other law for the time being in force, any confidential information received or obtained, directly or indirectly, by the Commission pursuant to or in connection with an investigation shall not be subject to disclosure by the Commission to any Ministry, Division, department, agency or instrumentality of the Federal Government or a Provincial Government without the prior permission of the party submitting such confidential information.

(9) The provisions of sub-section (8) shall not preclude the supply of any information called for by the Appellate Tribunal pursuant to section 72:

Provided that the obligation to protect confidential information as provided for in this Chapter shall, *mutatis mutandis*, extend to the Appellate Tribunal.

32. **Reliance on best information available.**—(1) Subject to sub-section (2), if, at any time during an investigation, any interested party—

- (a) refuses access to, or otherwise does not provide, necessary information within the period of time as may be prescribed; or
- (b) otherwise significantly impedes the investigation, the Commission may reach preliminary and final determinations, whether affirmative or negative, on the basis of the best information available.

(2) The provisions of the Schedule to this Act shall be followed in the application of sub-section (1).

(3) The Commission shall take due account of any difficulties experienced by interested parties, in particular, small companies, in supplying information requested by it and may, where it deems fit, provide such assistance as is practicable including, but not limited to, extension of any time period prescribed for submission of information under this Act.

(4) The Commission shall satisfy itself of the accuracy of the information supplied by interested parties during the course of an investigation in such manner as may be prescribed.

33. **Information to parties.**—The Commission shall provide an opportunity to all interested parties to see information submitted to it, which is not confidential and is relevant to the presentation of their case.

PART IX

INVESTIGATION PROCEDURES, PRELIMINARY AND FINAL DETERMINATIONS

34. **Proposed schedule for investigation.**—The Commission shall, in a notice of initiation of an investigation referred to in section 27, include the proposed schedule for conduct of an investigation, including the proposed time limits for submission of written arguments, the proposed date for any hearing, if requested, the proposed date for preliminary determination, and the proposed date for final determination.

35. **Acquisition of information by the Commission.**—The Commission shall solicit, gather, obtain, verify, accept and reject information for the purposes of an investigation in such manner as may be prescribed.

36. **Assessments to be on the basis of data relating to defined periods.**—(1) The Commission shall base its assessments of dumping and injury on data relating to defined periods which shall be the periods for which information is required by the Commission.

(2) For the purposes of an investigation of dumping, an investigation period shall normally cover twelve months preceding the month of initiation of the investigation for which data is available and in no case the investigation period shall be shorter than six months.

(3) For the purposes of an investigation of injury, the investigation period shall normally cover thirty-six months:

Provided that the Commission may at its sole discretion, select a shorter or longer period if it deems it appropriate in view of available information regarding domestic industry and an investigated product.

37. Preliminary determination.—(1) The Commission shall make a preliminary determination of dumping and injury, if any, not earlier than sixty days and not later than one hundred and eighty days, after initiation of an investigation. Such preliminary determination shall be based on the information available to the Commission at that time.

(2) The Commission shall issue a notice of preliminary determination, whether affirmative or negative, which shall, subject to the requirements of section 31, set forth in sufficient detail the findings and conclusions reached on all issues of fact and law considered material. Such notice of preliminary determination may also contain such other information as may be prescribed.

(3) The Commission shall publish a copy of the notice of preliminary determination in the official Gazette and in at least one issue each of a daily newspaper in the English language and a daily newspaper in the Urdu language having wide circulation in Pakistan.

(4) The Commission shall forward a copy of the notice of preliminary determination to exporting country and to other known interested parties.

38. Written arguments.—In an investigation, any interested party may submit written arguments to the Commission in such form and manner and within such time as may be prescribed.

39. Final determination.—(1) The Commission shall normally make a final determination of dumping and injury within one hundred and eighty days of the date of publication of a notice of preliminary determination in the official Gazette under sub-section (3) of section 37.

(2) The final determination shall be based on information obtained by the Commission during the course of the investigation that has been disclosed by the interested parties:

Provided that the Commission shall not be precluded from taking into consideration information or data received or collected from any other source.

(3) The Commission shall, subject to the requirements for the protection of confidential information under section 31, issue a notice of the final determination, whether affirmative or negative, containing relevant information on the matters of fact and law and reasons that have led to the determination.

(4) Without prejudice to the generality of the provisions of sub-section (3) and in addition to such further information as may be prescribed, the notice of the final determination referred to in sub-section (3) shall specify:—

- (a) the amount of the dumping margin, if any, found to exist and the basis for such determination;
- (b) the amount of the definitive anti-dumping duties to be imposed, where applicable; and
- (c) if definitive anti-dumping duties are to be collected with regard to the imports to which provisional measures were applied along with the reasons for the decision to do so.

(5) The Commission shall publish a copy of the notice of the final determination referred to in sub-section (3) in the official Gazette and in at least one issue each of a daily newspaper in the English language and a daily newspaper in the Urdu language having wide circulation in Pakistan:

Provided that such notice may, if the Commission deems it fit, only contain a summary of the salient features of the final determination:

Provided further that where the notice of the final determination contains only a summary of the salient features of the final determination, the Commission shall make available to any interested party applying for the same in writing a copy of the complete notice of final determination.

(6) The copy of the notice of the final determination shall be forwarded by the Commission to the exporting country and to other known interested parties.

PART X

TERMINATION OF INVESTIGATION WITHOUT ADOPTION OF MEASURES

40. **Withdrawal of an application.**—An application submitted pursuant to section 20 may be withdrawn at any time after an investigation has been initiated, in which case the Commission shall terminate the investigation without imposition of any measures provided for in this Act :

Provided that the Commission may, if it considers it fit to do so, continue an investigation notwithstanding the withdrawal of an application as provided for in

this section in which event, the Commission may, subject to the provisions of this Act impose such measures as are provided for in this Act.

41. Termination for insufficient evidence, negligible dumping margin or negligible volume.—(1) An investigation may be terminated at any time by the Commission if it is satisfied that there is not sufficient evidence of either dumping or injury to justify proceeding with an investigation.

(2) The Commission shall immediately terminate an investigation if it determines that dumping margin is negligible or that volume of dumped imports, actual or potential, or injury, is negligible.

(3) For the purposes of sub-section (2)—

- (a) dumping margin shall be considered to be negligible if it is less than two per cent, expressed as a percentage of the export price; and
- (b) volume of dumped imports shall normally be regarded as negligible if the volume of dumped imports of an investigated product is found to account for less than three per cent of total imports of a like product unless imports of the investigated product from all countries under investigation which individually account for less than three per cent of the total imports of a like product collectively account for more than seven per cent of imports of a like product.

42. Notice of conclusion of an investigation without imposition of measures.—(1) The Commission shall, subject to the requirements for the protection of confidential information under section 31, issue a notice of the conclusion of an investigation without imposition of measures which shall set forth in sufficient detail the findings and conclusions reached on all issues of fact and law considered material by the Commission including the matters of fact and law which have led to arguments being accepted or rejected.

(2) The Commission shall publish a copy of the notice of conclusion of an investigation without imposition of measures referred to in sub-section (1) in the official Gazette and summary thereof in at least one issue each of a daily newspaper in the English language and a daily newspaper in the Urdu language having wide circulation in Pakistan.

(3) Termination of an investigation under sections 40 or 41 or conclusion of an investigation without imposition of measures shall not be a bar to filing of a *de novo* application for a new investigation immediately after termination or conclusion of the investigation. The Commission shall treat the application in accordance with provisions of this Act.

PART XI

PROVISIONAL MEASURES

43. Imposition of provisional measures.—(1) The Commission may impose provisional measures if it makes an affirmative preliminary determination of dumping and injury, and determines that provisional measures are necessary to prevent injury being caused during the course of an investigation:

Provided that provisional measures shall not be applied sooner than sixty days from the date of initiation of the investigation:

Provided further that the amount of the provisional anti-dumping duty shall not exceed the margin of dumping as provisionally established, but it may be less than the margin if such lesser duty would be adequate to remove the injury to the Domestic Industry.

(2) A negative preliminary determination of dumping shall not automatically terminate an investigation, but no provisional measures shall be imposed in such case.

(3) The provisions of sections 51 and 52 shall be followed in the application of provisional measures.

44. Form of provisional measures.—Provisional measures shall take the form of security by way of cash deposit in an amount equal to the provisionally determined dumping margin set forth in the notice of preliminary determination referred to in sub-section (2) of section 37:

Provided that release of a product concerned for free circulation in Pakistan shall be subject to provision of such security by way of cash deposit.

45. Duration of application of provisional measures.—Provisional measures shall be applied for a period not exceeding four months:

Provided that the Commission may, upon request by exporters which the Commission considers to be representing a significant percentage of the trade involved, extend the period of application of provisional measures to a period not exceeding six months.

PART XII

PRICE UNDERTAKINGS

46. Acceptance of price undertaking.—(1) Where the Commission has made a preliminary affirmative determination of dumping and injury in accordance with the provisions of this Act the Commission may suspend or terminate an

investigation without imposition of anti-dumping duties, whether preliminary or definitive, upon receipt of satisfactory price undertaking from an exporter to revise its prices or to cease export to the area in question at dumped prices so that the Commission is satisfied that injurious effect of dumping in question is eliminated:

Provided that the Commission shall not seek or accept any price undertaking from an exporter unless the Commission has made a preliminary affirmative determination of dumping and injury in accordance with the provisions of this Act.

(2) Price increases under such price undertakings shall not be higher than necessary to eliminate dumping margin and shall be less than the provisionally determined dumping margin set forth in the notice of preliminary determination referred to in sub-section (2) of section 37 if, the Commission determines that such lesser price increase would be adequate to remove injury to domestic industry.

(3) The Commission may suggest price undertakings, but no exporter shall be forced to enter into any such undertaking and the fact that exporters do not offer such undertakings, or do not accept an invitation to do so, shall not prejudice consideration of the case by the Commission:

Provided that in such circumstances the Commission shall be free to determine that a threat of injury is more likely to be realised if the dumped imports continue.

47. Conditions for acceptance of price undertaking.—(1) Except in extraordinary circumstances, a price undertaking shall not be offered later than sixty days before the proposed date of final determination as set forth in a notice of initiation of an investigation in accordance with the provisions of section 34.

(2) Notwithstanding anything contained in this section, the decision to accept a price undertaking shall rest with the Commission.

Explanation.—The Commission may not accept a price undertaking if it considers the acceptance thereof to be impractical because the number of actual or potential exporters is too great, or for reasons of general policy or for any other reason.

(3) If the Commission decides not to accept a price undertaking, it shall provide to an exporter the reasons which have led it to consider acceptance of a price undertaking as inappropriate and the exporter may, not later than seven days from the submission of such reasons, submit its written response to the Commission on the reasons given by the Commission.

(4) The Commission may require an exporter from whom a price undertaking has been accepted, to provide, periodically, information relevant to the

fulfillment of such undertaking, and to permit verification of such information. The communication of such information shall be subject to the provisions of section 31.

(5) Failure to provide any information requested by the Commission pursuant to sub-section (4) shall be deemed to be a violation of a price undertaking.

(6) Where the Commission accepts a price undertaking or a price undertaking is terminated, it shall publish a notice to this effect in the official Gazette and in at least one issue each of a daily newspaper in the English language and a daily newspaper in the Urdu language having wide circulation in Pakistan. Such notice shall contain the non-confidential part of the price undertaking accepted, when applicable, and details of the findings and conclusions reached by the Commission on all the issues of fact and law considered material by the Commission and such other information as the Commission may determine necessary:

Provided that where the notice relates to acceptance by the Commission of a price undertaking it shall contain such further information as may be prescribed.

(7) A notice of acceptance of a price undertaking or termination thereof referred to in sub-section (6) shall be forwarded by the Commission to the country the product of which is the subject of such notice and to other interested parties known to have an interest therein.

(8) Where the Commission continues an investigation pursuant to sub-section (1) of section 48, it shall publish a notice of the continuation of the investigation, setting forth the proposed date for final determination, and any other modifications to the proposed schedule of the investigation as originally set out in the notice of initiation of the investigation in accordance with section 34:

Provided that the final determination in such case shall be made by the Commission no later than one hundred and eighty days from the date of publication of the notice of acceptance of a price undertaking referred to in sub-section (6) in the official Gazette.

48. Completion of an investigation.—(1) If one or more price undertakings are accepted by the Commission, it shall nevertheless complete an investigation of dumping and injury if it receives a request from an exporter in writing to continue such investigation, or where the Commission so decides of its own accord.

(2) In the event the Commission makes a negative determination of dumping or injury pursuant to an investigation continued under sub-section (1), a price undertaking in question shall automatically lapse except in a case where the Commission determines that such a determination is due in large part to the existence of such price undertaking in which case, the Commission may require that an

undertaking be maintained for a reasonable period of time to be determined by the Commission.

(3) In the event the Commission makes an affirmative determination of dumping and injury pursuant to an investigation continued under sub-section (1), a price undertaking in question shall continue consistent with its terms and the provisions of this Act.

49. Violation of price undertaking.— If a price undertaking is violated or deemed to be violated, the Commission may, subject to the provisions of this Act take expeditious action, which may include immediate application of provisional measures using the best information available. In such cases, definitive duties may be levied in accordance with the provisions of this Act on products imported for consumption not more than ninety days before the application of such provisional measures, except that any such retroactive assessment shall not apply to imports entered before such violation of the price undertaking.

PART XIII

IMPOSITION AND COLLECTION OF ANTI-DUMPING DUTIES

50. Mandatory imposition of anti-dumping duty.— (1) When the Commission has established the existence of dumping and injury in accordance with the provisions of this Act, it shall, by notification in the official Gazette, impose an anti-dumping duty.

(2) The amount of the anti-dumping duty shall not exceed the margin of dumping established but it may be less than the margin if such lesser duty would be adequate to remove injury to the Domestic Industry.

51. Imposition and collection of anti-dumping duties.— (1) Anti-dumping duties, whether provisional or definitive, as the case may be, imposed under this Act shall —

- (a) take the form of *ad valorem* or specific duties:

Provided that provisional measures shall take the form of security by way of cash deposit;

- (b) be imposed in addition to other import duties levied on an investigated product;
- (c) be collected in the same manner as customs-duties under the Customs Act, 1969 (IV of 1969);
- (d) be levied and collected on a non-discriminatory basis on imports of such product from all sources found to be dumped and causing injury,

except as to imports from those sources from which price undertakings have been accepted by the Commission in accordance with the provisions of Part XII of this Act; or

- (e) will not be levied on imports that are to be used as inputs in products destined solely for export and are covered under any scheme exempting customs duty for exports under the Customs Act, 1969.

(2) Save as provided for in sub-section (3), the Commission shall establish an individual anti-dumping duty for each known exporter or producer of dumped imports.

(3) Subject to sub-sections (4) and (7), where the Commission has limited its examination of dumping margin in accordance with sub-sections (2) and (3) of section 14, any anti-dumping duty applied to imports from exporters or producers not included in an examination by the Commission shall not exceed a weighted average dumping margin established with respect to selected exporters or producers.

(4) The Commission shall disregard for the purposes of sub-section (3) any negligible margins, as defined in sub-section (3) of section 41, and margins established under the circumstances referred to in section 32.

(5) Save as provided for in sub-section (4) of section 14, the Commission shall apply individual anti-dumping duties to imports from any exporter or producer not included in an examination who has provided the necessary information during the course of an investigation.

(6) The Commission may apply a residual anti-dumping duty rate for imports from exporters and producers not known to the Commission at time of final determination at a rate which shall not exceed a weighted average of individual dumping margins established for exporters and producers examined during an investigation, excluding margins established in accordance with section 32.

(7) Where all dumping margins are established pursuant to section 32, the Commission shall use such alternative method of determining dumping margins for exporters or producers not included in its examination as it considers reasonable in the circumstances.

52. Refund of anti-dumping duties paid in excess of dumping margin.—(1) An importer shall be granted a refund of the actual amount of anti-dumping duties collected if the Commission determines that dumping margin, on the basis of which such anti-dumping duties were paid, has been eliminated or reduced to a level which is below the level of the anti-dumping duty in force.

(2) An importer may submit an application for refund of anti-dumping duties collected within any twelve months period to the Commission not later than sixty days from the end of such period.

(3) An application under sub-section (2) shall contain such information as may be prescribed.

Explanation:—When investigating an application for refund under this section, the Commission shall apply the relevant provisions of this Act to its determinations. In particular, when determining whether and to what extent a refund should be made when an export price is constructed on the basis of a price at which imported products are first resold to an independent buyer due to the absence of export price or because it appears that the export price is unreliable pursuant to sub-section (2) of section 10, the Commission shall take account of any change in normal value, any change of costs incurred between importation and resale, and any movement in resale price which is duly reflected in subsequent selling prices, and shall calculate the export price with no deduction for the amount of anti-dumping duties paid when satisfactory evidence of the above is provided.

(4) The Commission shall provide an importer making an application under sub-section (2) with an explanation of the reasons for the decision concerning a request for refund.

(5) A refund of anti-dumping duties under this section shall normally take place within twelve months, and in no case later than eighteen months, after the date on which an application for refund compliant with the requirements of sub-section (3) is received by the Commission.

53. Anti-dumping and countervailing duties and fees to be held in a non-lapsable personal ledger account.—(1) The Commission shall establish and maintain a non-lapsable personal ledger account in its name for the purposes of Anti-Dumping Duties and Countervailing Duties.

(2) All anti-dumping and countervailing duties collected under the laws specified in sub-section (1) shall be held in that account.

(3) The account established under sub-section (1) shall be maintained and operated in such manner as may be prescribed.

PART XIV

RETROACTIVITY

54. Retroactive application of definitive anti-dumping duties in certain circumstances.—A definitive anti-dumping duty may be collected on products, which were imported for consumption not more than ninety days prior to the date of application of provisional measures if, the Commission determines, for a dumped product in question, that:

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

- (b) injury is caused by massive dumped imports of a product in a relatively short time which in the light of timing and volume of dumped imports and other circumstances including, but not limited to, a rapid build-up of inventories of the imported product, is likely to seriously undermine the remedial effect of the definitive anti-dumping duty to be applied, provided that the importers concerned have been given an opportunity of being heard in respect of such proposed action.

55. Imposition of definitive anti-dumping duties retroactively.—

(1) Where the Commission makes a final determination of injury but not of a threat thereof or of material retardation of the establishment of an industry or, in the case of a final determination of a threat of injury, where the Commission determines that the effect of dumped imports would, in the absence of provisional measures, have led to a determination of injury, definitive anti-dumping duties may be levied retroactively for the period for which provisional measures, if any, have been applied.

(2) If definitive anti-dumping duty imposed under sub-section (1) is higher than the amount of provisionally determined dumping margin set forth in the notice of preliminary determination referred to in sub-section (2) of section 37, the difference shall not be collected, and if such definitive anti-dumping duty is lower than the amount of such provisionally determined dumping margin the difference shall be refunded by the Commission within forty-five days of such determination.

(3) Save as provided for in sub-section (1), where the Commission makes a determination of threat of injury or material retardation, but no injury has yet occurred, definitive anti-dumping duties may be imposed only from the date of the determination of threat of injury or material retardation and any cash deposit made during the period of application of provisional measures shall be refunded by the Commission within forty-five days of such determination.

(4) Where the Commission makes a negative final determination, any cash deposit made during the period of application of provisional measures shall be refunded by the Commission within forty-five days of such determination.

56. Circumstances in which provisional measures and anti-dumping duties shall apply.—Save as provided for in sections 49, 54 and 55, provisional measures and definitive anti-dumping duties shall only be applied to products which enter into Pakistan for consumption on or after the date of publication of a notice of affirmative preliminary or final determination in an investigation.

PART XV

DURATION AND REVIEW OF ANTI-DUMPING DUTIES AND PRICE UNDERTAKINGS

57. Duration of anti-dumping duty.—Subject to the provisions of this Act any anti-dumping duty imposed under this Act shall remain in force only as long as and to the extent necessary to counteract dumping, which is causing injury.

58. Review of anti-dumping duty.—(1) Any definitive anti-dumping duty imposed under this Act shall be terminated on a date not later than five years from the date of its imposition or from the date of the most recent review under section 59, if such review has covered both dumping and injury.

(2) The Commission shall, not later than ninety days preceding the date of expiry of a definitive anti-dumping duty, publish a notice of impending expiry of such anti-dumping duty in the official Gazette and in at least one issue each of a daily newspaper in the English language and a daily newspaper in the Urdu language having wide circulation in Pakistan.

(3) A definitive anti-dumping duty shall not expire if the Commission determines, in a review initiated before the date of expiry on its own initiative or upon a duly substantiated request made by or on behalf of domestic industry within forty-five days from public notice of impending termination of the definitive anti-dumping duty concerned, that the expiry of such anti-dumping duty would be likely to lead to continuation or recurrence of dumping and injury and such anti-dumping duty shall remain in force pending the outcome of such a review.

59. Review for change of circumstances.—(1) The Commission shall review the need for continued imposition of anti-dumping duty, where warranted, on its own initiative or, provided that a period of twenty-four months has elapsed since the imposition of definitive anti-dumping duty, upon a written request submitted by any interested party, which contains positive information substantiating the occurrence of changed circumstances justifying a need for a review including sufficient information to enable the Commission to calculate export price and normal value of a product in question.

(2) The Commission shall, upon initiation of a review under sub-section (1), publish a notice in the official Gazette and in at least one issue each of a daily newspaper in the English language and a daily newspaper in the Urdu language having wide circulation in Pakistan.

(3) In undertaking a review under sub-section (1), the Commission shall consider whether continued imposition of anti-dumping duty is necessary to offset dumping and whether injury would be likely to continue to recur if anti-dumping duty were removed or varied and if, as a result, the Commission determines that

continued imposition of anti-dumping duty is no longer warranted it shall be terminated immediately.

(4) The Commission may require an applicant requesting a review under this section to fill in an additional questionnaire provided by it requiring such information and for such period as the Commission deems necessary before such review is initiated in which case the review shall be initiated following the receipt by the Commission of such questionnaire duly filled in.

60. Newcomer review.—(1) If a product is subject to definitive anti-dumping duties, the Commission shall carry out a review for the purpose of determining individual dumping margins for any exporters or producers in an exporting country concerned who did not export the product to Pakistan during the period of investigation if such exporters or producers can show that they are not related to any of the exporters or producers in the exporting country who are subject to the anti-dumping duties on an investigated product.

(2) A review under sub-section (1) shall be initiated within thirty days following the date of receipt of an application for such review by any producer or exporter concerned and shall normally be completed within six months from its initiation and, in any event, no later than twelve months:

Provided that the Commission may require an applicant requesting a review under sub-section (1) to fill in an additional questionnaire provided by it requiring such information and for such period as the Commission deems necessary before such review is initiated in which case a review under sub-section (1) shall be initiated within thirty days following the receipt by the Commission of such questionnaire duly filled in.

(3) No anti-dumping measures shall be imposed on imports from any exporters or producers referred to in sub-section (1) while the review under sub-section (2) is being carried out:

Provided that the Commission may require a cash deposit in the amount of the residual anti-dumping duty rate determined pursuant to sub-section (5) of section 51 to ensure that, should such a review result in a determination of dumping in respect of such producers or exporters, anti-dumping duties can be levied retroactively to the date of initiation of the review.

61. Duration and review of price undertakings.—The provisions of sections 57, 58 and 59 shall apply, *mutatis mutandis*, to price undertakings accepted in accordance with Part XII of this Act.

62. Evidence and procedure.—(1) The provisions of sections 27, 31, 32, 33, 35, 39, and 46 shall apply, *mutatis mutandis*, to any review carried out under Part XV of this Act.

(2) Any review conducted under sections 58 and 59 shall be carried out expeditiously and shall normally be concluded within twelve months of the date of initiation of the review.

63. Anti-circumvention measures.—(1) Anti-dumping duties imposed pursuant to this Act may be extended to imports from third countries, of the like product, whether slightly modified or not, or to imports of the slightly modified like product from the country subject to measures, or parts thereof, when circumvention of the measures in force is taking place. Anti-dumping duties not exceeding the residual anti-dumping duty imposed in accordance with section 39 may be extended to imports from companies benefiting from individual duties in the countries subject to measures 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 Pakistan or between individual companies in the country subject to measures by Pakistan, 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 of injury or that the remedial effects of the duty are being undermined in terms of the prices or quantities of the like product, and where there is evidence of dumping in relation to the normal values previously established for the like product, if necessary in accordance with the provisions of this Act.

(2) The practice, process or work referred to in sub-section (1) includes, *inter alia*, the slight modification of the product concerned to make it fall under customs tariff which are normally not subject to the measures, provided that the modification does not alter its essential characteristics, the consignment of the product subject to measures *via* third countries, the re-organisation by exporters or producers of their patterns and channels of sales in the country subject to measures in order to eventually have their products exported to Pakistan through producers benefiting from an individual duty rate lower than that applicable to the products of the manufacturers, and, in the circumstances indicated in sub-section (3), the assembly of parts by an assembly operation in Pakistan or a third country.

(3) An assembly operation in Pakistan or a third country shall be considered to circumvent the measures in force where,-

- (a) the operation started or substantially increased since, or just prior to, the initiation of the anti-dumping investigation and the parts concerned are from the country subject to measures;
- (b) the parts constitute 60% or more of the total value of the parts of the assembled product, except that in no case shall circumvention be considered to be taking place where the value added to the parts brought in, during the assembly or completion operation, is greater than 25% of the manufacturing cost;

- (c) the remedial effects of the duty are being undermined in terms of the prices or quantities of the assembled like product and there is evidence of dumping in relation to the normal values previously established for the like or similar products.

(4) Investigations shall be initiated pursuant to this section on the initiative of the Commission or at the request of any interested party on the basis of sufficient evidence regarding the factors set out in sub-sections (1) and (2). Investigations shall be concluded by the Commission within nine months.

PART XVI

APPEAL TO APPELLATE TRIBUNAL

64. Establishment of the Appellate Tribunal.—(1) The Federal Government shall, by notification in the official Gazette, establish an Appellate Tribunal for the purposes of exercising jurisdiction under this Act.

(2) The Appellate Tribunal shall be composed of three members appointed by the Federal Government, consisting of a Chairman and two members.

(3) All members of the Appellate Tribunal shall be citizens of Pakistan and shall be employed on a full-time basis.

(4) The Members of the Appellate Tribunal shall have no past record of any specific activities or conduct that could reasonably call into question their ability to discharge their duties as members of the Appellate Tribunal with honesty, integrity, reliability, competence and objectivity.

(5) In making such appointments the Federal Government shall ensure that the membership of the Appellate Tribunal, taken as a whole, possesses substantial and directly relevant professional experience and qualifications needed to properly discharge its functions.

65. Qualifications and eligibility.—(1) The members of the Appellate Tribunal shall,—

- (a) have at least a masters or professional degree or qualification from an accredited university or institute in international trade laws, business and commercial laws, economics, accountancy, tariffs and trade, commerce and trade, or a trade-related subject; knowledge of trade remedy laws would be an advantage;
- (b) have at least fifteen years of professional work experience in international trade law, business and commercial laws, economics, accountancy, harmonized tariffs, commerce and trade, tariffs and trade

or other trade-related technical field; direct work experience in trade remedy laws would be an advantage ;

- (c) have no past record of criminal conviction, other than for minor offences; and
- (d) have no past record of any specific activities or conduct that could reasonably call into question their ability to discharge their duties as members of the Appellate Tribunal with honesty, integrity, reliability, competence and objectivity.

66. Disqualification.—(1) No person shall be appointed or continue as member or an employee of the Tribunal if such person;

- (a) has been convicted of an offence involving moral turpitude;
- (b) has been or is adjudged insolvent;
- (c) is incapable of discharging his duties by reasons of physical, physiological or, mental unfitness and has been so declared by a duly constituted Medical Board appointed by the Federal Government; or
- (d) fails to disclose any conflict of interest at or within the time provided for such disclosure by or under this Act or contravenes any of the provisions of this Act pertaining to unauthorized disclosure of information.
- (e) is or has been a Member or employee of the Commission unless a period of two years has elapsed after he has ceased to be such Member or employee of the Commission.

67. Terms and Conditions.—(1) The Chairman and Members of the Tribunal shall be appointed for a period of five years. This term shall be extendable for a period of one year unless the Federal Government notifies otherwise.

(2) The terms and conditions of the Chairman and Members of the Tribunal shall be as may be prescribed.

(3) The Chairman and Members appointed under the repealed Anti-Dumping Duties Ordinance, 2000 (LXV of 2000) shall continue to act as Chairman and Members only till the appointment of Chairman and Members under this Act:

Provided that the Federal Government shall ensure the establishment of Appellate Tribunal along with appointment of its Chairman and Members within a period of ninety days from commencement of this Act.

68. Decisions, determinations and Quorum.—(1) Decisions and determinations of the Appellate tribunal shall be taken by majority.

(2) If there are less than three members of the Tribunal, the presence of two members serving shall constitute a quorum.

(3) In the case of a quorum of two, the decision shall be taken by consensus.

(4) Any decision or determination taken at a meeting where a quorum is present shall constitute a valid and enforceable decision or determination of the Tribunal.

69. Operation of the Appellate Tribunal in the absence of the Chairman or a Member.—(1) If the Chairman's or any of the member's position becomes vacant, the Government shall designate a new member or one of the existing members to serve as Chairman.

(2) The absence of a Chairman, or the temporary incapacity of the Chairman, shall not affect the other members' ability to act as the Appellate Tribunal and to exercise its powers and authority under this Act.

70. Appellate procedures.—(1) Any interested party may prefer an appeal to the Appellate Tribunal against—

- (i) the initiation of an investigation or a preliminary determination, where it is alleged that it does not satisfy the requirements laid down in sections 23 and 37 respectively;
- (ii) an affirmative or negative final determination by the Commission under section 39;
- (iii) any final determination pursuant to a review;
- (iv) an order of the Commission for termination of investigation under Section 41; or
- (v) a determination of the Commission under section 52.

(2) An appeal under clause (i) of sub-section (1) shall be filed within thirty days of the publication of notice of initiation or notice preliminary determination, as the case may be.

(3) The Appellate Tribunal shall handle such an appeal as a priority and shall issue its decision on the appeal within thirty days of the filing of an appeal with the Appellate Tribunal:

Provided that the filing of an appeal under clause (i) of sub-section (1) shall have no effect on the Commission's conduct of investigation.

(4) All appeals under clauses (ii), (iii), (iv) and (v) of sub-section (1) shall be filed within forty-five days from the date of publication in newspapers of a public notice or as the case may be, date of the decision of the Commission of any affirmative or negative final decision or determination or termination of investigation by the Commission, and shall be in such form and contain such information as may be prescribed.

(5) Such an appeal shall be disposed of and the decision of the Appellate Tribunal pronounced, as expeditiously as possible as but not later than forty-five from the date of receipt of an appeal compliant with the requirements contained in this Act.

(6) The Appellate Tribunal shall hear the appeal from day-to-day.

(7) In examining an appeal under sub-section (1), the Appellate Tribunal may make such further inquiry as it may consider necessary, and after giving the Commission and an appellant an opportunity of being heard, pass such order as it thinks fit, confirming, altering or annulling a determination of the Commission appealed against:

Provided that in case the Appellate Tribunal decision requires action by the Commission, it shall remand the case to the Commission.

(8) After examining the appeal, the Appellate tribunal shall assess the facts related to the impugned determination of the Commission. The Appellate Tribunal shall determine whether the establishment of the facts of the Commission was proper and whether the commission's evaluation of those facts was unbiased and objective. The Appellate tribunal shall base this determination on the official record maintained by the Commission or any other documents relied upon by the Commission in reaching the determination being appealed.

(9) Where the Appellate Tribunal determines that the Commission's establishment of the facts was proper and its evaluation was unbiased and objective, it shall confirm the appealed determination of the Commission provided that the Appellate Tribunal is satisfied that in reaching its determination, the Commission complied with the relevant provisions of this Act .

(10) The decision of the Appellate Tribunal shall be in writing, detailing the issues raised in the appeal and the arguments adopted by the appellant and the Commission. The Appellate tribunal shall also provide reasons for reaching its decision with reference to the provisions of this Act and the facts of the case.

(11) The Appellate Tribunal shall provide copies of its decision to all the appellants and the respondents including the Commission no later than five days from the date of rendering its decision.

(12) The Appellate Tribunal may, if it deems necessary, require an appellant to provide security in such form as may be prescribed, at the time of filing of an appeal.

(13) The decision of the Appellate Tribunal shall be appealable in the High Court. The High Court shall render a decision within ninety days of receiving an appeal from the decision of the Appellate Tribunal:

Provided that the High Court shall not make an interim order against the conduct of investigation by the Commission unless the Commission has been given notice of the application and has had an opportunity of being heard and the High Court, for reasons to be recorded in writing, is satisfied that the interim order would not have the effect of prejudicing or interfering with the carrying out of a public work or of otherwise being harmful to the public interest [or State property] or of impeding the assessment or collection of public revenues:

Provided further that The Appellate Tribunal may, if it thinks fit, accept an application from any party to an appeal in which the Appellate Tribunal has rendered its decision, for a clarification of any of the issues raised by the Appellate Tribunal in its decision:

Provided also that such application shall specify the precise issue in respect of which a clarification is sought and give reasons as to why a clarification is necessary:

(14) The Appellate Tribunal shall only accept such application if it is satisfied that a material issue discussed in its decision requires further clarification or elaboration. The party likely to be adversely affected by such clarification shall also be given a notice by the Appellate Tribunal:

Provided that no application under this sub-section shall be accepted by the Appellate Tribunal later than thirty days of its decision.

(15) The Appellate Tribunal shall perform its functions under this Act in accordance with such procedures as may be prescribed.

(16) A determination of the Commission shall be given full force and effect during the pendency of any appeal of such determination.

(17) A person duly authorized by any interested party is entitled to appear, plead and act on behalf of such party before the Appellate Tribunal.

71. Disclosure of interest.—(1) The following shall apply to members of the Appellate Tribunal including the Chairman .

(2) A Member shall be deemed to have an interest in a matter if he has any interest, pecuniary or otherwise, in such matter which could reasonably be regarded as giving rise to a conflict between his duty to honestly perform his functions, so that his ability to consider and decide any question impartially or to give any advice without bias, may reasonably be regarded as impaired.

(3) A Member having any interest in any matter to be discussed or decided by the Tribunal, shall prior to discharge of any function or business of the Commission, disclose in writing to the Secretary to the Tribunal, the fact of his interest and the nature thereof.

(4) A Member shall give written notice to the Secretary to the Tribunal of all direct or indirect pecuniary or other material or personal interests that he has or acquires in a body corporate involved in a matter before the Tribunal.

(5) A disclosure of interest under sub-section (2) shall be made a part of the record of the Tribunal in that particular matter.

72. Powers of the Appellate Tribunal.—The Appellate Tribunal shall, for the purpose of deciding an appeal, be deemed to be a civil court and shall have the same powers as are vested in such court under the Code of Civil Procedure, 1908 (V of 1908), including the powers of—

- (a) enforcing the attendance of any person and examining him on oath;
- (b) compelling the production of documents; and
- (c) issuing commission for the examination of witnesses and documents.

73. Power of the Appellate Tribunal to call for and examine record.—The Appellate Tribunal may call for and examine the official records of an investigation conducted by the Commission and any other information or documents relied upon by the Commission in reaching a determination appealed against for the purpose of satisfying itself as to the legality or propriety of an impugned determination of the Commission.

74. Power to make rules.—The Federal Government may, by notification in the official Gazette, make rules for carrying out the purposes of this Act.

75. Protection to persons prejudiced in employment because of assisting the Commission.—(1) An employer shall not—

- (a) dismiss an employee, or prejudice an employee in his employment, because the employee has assisted the Commission in connection with an inquiry or investigation under this Act; or

- (b) dismiss or threaten to dismiss an employee, or prejudice or threaten to prejudice an employee in his employment, because the employee proposes to assist the Commission in connection with an inquiry or investigation under this Act.

(2) For the purposes of sub-section (1), a person shall be taken to assist the Commission in connection with an inquiry if the person –

- (a) gives information, whether orally or in writing, or gives documents, to the Commission in connection with an inquiry or investigation under this Act; or
- (b) gives evidence or produces documents, at an inquiry, investigation or hearing held under this Act.

76. Appointment of advisers and consultants.—(1) Subject to sub-section (2), the Commission may, employ and pay consultants and agents, and technical, professional and other advisers, including bankers, economists, actuaries, accountants, lawyers and other persons to do any act required to be done in the exercise of its powers, the performance of its functions or for the better implementation of the purposes of this Act.

(2) The decision to employ and the terms and conditions of employment of external advisers and consultants pursuant to sub-section (1) shall be made by the Commission in accordance with such policy guidelines as may be established by the Federal Government, in consultation with the Commission, from time to time.

77. Removal of difficulty.—If any difficulty arises in giving effect to any of the provisions of this Act, the Federal Government may make such order, not inconsistent with the provisions of this Act, as may appear to it to be necessary for the purpose of removing the difficulty:

Provided that no such power shall be exercised after the expiry of one year from the coming into force of this Act.

78. Act to override other laws.—The provisions of this Act shall have effect notwithstanding anything inconsistent therewith contained in any other law for the time being in force:

Provided that this provision shall not apply on the National Tariff Commission law for the time being in force.

79. Repeal.—The Anti-Dumping Ordinance, 2000 (LXV of 2000) is hereby repealed.

80. **Savings.**—Notwithstanding the repeal under section 79, nothing in this Act shall affect or be deemed to affect anything done, action taken, investigation or proceedings commenced, order, rule, regulation, appointment, document, or agreement made, fee directed, resolution passed, direction given, proceedings taken or instrument executed or issued under or pursuant to the repealed Anti-Dumping Ordinance 2000 (LXV of 2000), and any such thing, action, investigation, proceedings, orders, rule, regulation, appointment, document, agreement, fee, resolution, direction, proceedings or instrument shall, if in force at the commencement of this Act and not inconsistent with any of the provisions of this Act continue in force and have effect as if had been respectively done, taken, commenced, made, directed, passed, given, executed or issued under this Act.

THE SCHEDULE

[See section 32(2)]

BEST INFORMATION AVAILABLE

1. As soon as possible after initiation of an investigation, the Commission should specify in detail the information required from any interested party, and the manner in which that information should be structured by the interested party in its response. The Commission should also ensure that the interested party is aware that if information is not supplied within a reasonable time, the Commission shall be free to make determination on the basis of facts available, including those contained in an application for initiation of an investigation by domestic industry.

2. The Commission may also request an interested party to provide its response in a particular medium such as computer tape or computer language. Where such a request is made, the Commission should consider the reasonable ability of the interested party to respond in the preferred medium or computer language, and should not request the party to use for its response a computer system other than that used by the party. The Commission should not maintain a request for a computerised response if the interested party does not maintain computerised accounts and if presenting the response as requested would result in an unreasonable extra burden on the interested party or it would entail unreasonable additional cost and trouble. The Commission should not maintain a request for a response in a particular medium or computer language if the interested party does not maintain its computerised accounts in such medium or computer language and if presenting the response as requested would result in an unreasonable extra burden on the interested party or it would entail unreasonable additional cost and trouble.

3. All information which is verifiable, which is appropriately submitted so that it can be used in an investigation without undue difficulties, which is supplied in a timely fashion, and, where applicable, which is supplied in a medium or computer language requested by the Commission, should be taken into account when

determinations are made. If a party does not respond in the preferred medium or computer language but the Commission finds that the circumstances set out in para 2 have been satisfied, any failure to respond in the preferred medium or computer language shall not be considered to significantly impede the investigation.

4. Where the Commission does not have the ability to process information if provided in a particular medium such as computer tape, the information should be supplied in the form of written material or any other form acceptable to the Commission.

5. If an information provided is not ideal in all respects, this shall not justify the Commission from disregarding it, provided an interested party has acted to the best of its ability.

6. If evidence or information is not accepted by the Commission, the supplying party shall be informed forthwith of the reasons therefore, and shall be given an opportunity to provide further explanations within a reasonable period, as may be determined by the Commission, due account being taken of the time-limits of an investigation. If the explanations are considered by the Commission as not being satisfactory, the reasons for rejection of such evidence or information should be given in any published determinations.

7. If the Commission has to base its findings, including those with respect to normal value, on any information from a secondary source, including any information supplied in an application for initiation of an investigation, it shall do so with special circumspection. In such cases, the Commission shall, where practicable, check the information from other independent sources at their disposal, such as published price lists, official import statistics and customs returns, and from the information obtained from other interested parties during the investigation provided that if an interested party does not co-operate and thus relevant information is being withheld from the Commission, this situation may lead to a result which is less favourable to the party than if the party did co-operate.

MOHAMMAD RIAZ,
Secretary.

